

Challenges of 2015 for  
Management Companies  
Do you have the right  
angle of approach?



# Management companies, at crossroads with...

## 01 *Transfer pricing*

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All tax jurisdictions are nowadays putting focus and efforts on collecting taxes. In this context, Luxembourg taxpayers and the tax administration are receiving an increasing number of requests from foreign tax authorities to ensure that the taxpayers are able to justify that the remuneration for intra-group transactions is in line with the market price. Following this trend, taxpayers should therefore take action to ensure compliance with the arm's length principle and prepare transfer pricing documentation to be able to respond to enquiries made by Luxembourg or foreign tax authorities and in the worst cases to avoid a tax adjustment.

## 02 *VAT*

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The investment management industry needs to pay careful attention to VAT since it is particularly exposed to potential large amounts of non-deductible VAT. It is therefore key for management companies to implement an appropriate monitoring of VAT in their organisations to ensure that they are compliant with the VAT Authorities' requirements and take actions where appropriate to manage both their VAT position and their VAT costs accordingly.

## 03 *Regulatory requirements*

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In parallel, growing **substance** and organisational requirements are impacting Luxembourg management companies (CSSF 12/546 & AIFMD mainly). Additional requirements are expected with the coming regulation (UCITS V & ESMA guidelines on Compliance function).

Key **regulatory requirements** can be summarised as follows:

- A '**sponsorship letter**' and ad-hoc guarantees can be required by the CSSF
- More detailed qualification requirements and stringent incompatibility regime to be observed for **Directors and Conducting Officers**
- Challenges on **operating models** and extent of centralisation
- Ensuring that internal **governance** and delegated **control frameworks** are in line with regulations, and that adequate policies are maintained
- Expertise and extent of **decision-making**, application of **proportionality** to meet substance requirements, and adequate support in terms of human and technical aspects
- **Delegation and sub-delegation** due diligence requirements and necessary approvals through the CSSF
- Impacts on control framework through **UCITS V**

In the framework of the fast evolving legal and regulatory environment, it is crucial for management companies to identify and understand which challenges they will be confronted with as from January 2015 on. To this extent, the three main angles of the forthcoming challenges can be summarised as described below.



## *Transfer pricing*

- Are there intragroup transactions in your structure raising transfer pricing issues?
- Is the remuneration applied at arm's length?
- What risks is your institution facing if it is non-compliant with transfer pricing rules or documentation?
- Is your (existing) group transfer pricing policy compliant with the Luxembourg law?
- Are you ready today to address and proactively respond to a request from tax authorities on transfer pricing?
- How to ensure that your current distribution model remuneration is sustainable tax wise and compliant with transfer pricing regulations applicable in Luxembourg and abroad?



## *VAT*

- Are relevant services agreements drafted appropriately so as to support the benefit of a VAT exemption?
- Is the current fee structuring efficient on the VAT side?
- Is the investment funds' VAT liability appropriately anticipated for the purpose of NAV calculation purposes?
- Are expenses subject to reverse-charge VAT adequately captured?
- Which is the most appropriate VAT deduction methodology to manage effective VAT deduction rate?



## *Regulatory requirements*

- What will be the key impacts of the incompatibility regime on the organisational structure?
- How to ensure that the Human Resources meet the new qualification requirements?
- How to review the delegation and sub-delegation models in terms of reporting, due diligence and supervision?
- How to address stringent requirements on the sharing of resources at the management company level (experience, knowledge, availability, etc.)?
- What are the proportionality conditions on derogations to substance requirements?
- Anticipate sanctions regime under UCITS V and strengthen your control framework and oversight

# *Luxembourg management companies*



# Our multi-disciplinary offering addresses key industry challenges

Our assessment of your challenges naturally led us to develop a targeted service card to assist you in elaborating or maintaining a sustainable business model in line with 2015 regulatory trends and requirements:

## 01



### Transfer pricing

Transfer pricing policy and documentation	Transfer pricing review	Identify functional profile, intragroup transactions and points of attention from a Luxembourg perspective. Selection of the most sustainable OECD methodology to support the arm's length remuneration of the management company based on its profile
	Transfer pricing documentation	Assistance for the preparation of the adequate transfer pricing documentation to be able to proactively prepare documentation to deliver upon request to the tax authorities
Direct tax	Advance Pricing Agreement	Optionally, filing an Advance Pricing Agreement (APA) may provide a greater certainty on the acceptability of your transfer pricing policy with the local direct tax authorities as well as on the duration of the validity of such policy (usually during 5 years)
	Other tax considerations	Address tax considerations (i.e. efficiency drivers) based on the preliminary transfer pricing validation

## 02



### VAT

VAT documentation	VAT Audit	Assistance with the setting-up of strong supporting documentation based on our experience with the VAT office in charge of management companies and investment funds
Efficiency mapping	Fee structure	Design of efficient fee structuring (including on a cross-border basis within the context of UCITS IV and AIFMD)
	Deduction methodology	Design of an efficient VAT deduction methodology
	Scan product	Ensure accurate calculation of your VAT liability through a clear and regular view on the current VAT liability of the funds for NAV calculation purposes
	Risk & opportunities health check	Identify any VAT risks likely to result in additional VAT payable amounts in case of a VAT audit

# 03



## Regulatory requirements

Regulatory requirements	Regulatory substance health check	Assess the regulatory and organisational adequacy of a management company or a self-managed SICAV against CSSF Circular 12/546 on substance
	Due diligence on delegated functions	Identify all the material facts likely to influence the capacity of a third party to provide proper service, in line with regulatory requirements for initial and ongoing due diligence
	Authorisation filing	Assist in the authorisation procedure for all AIFMs with AUM above €100 million and AIFMs that choose to 'opt in'
	Regulatory watch	Screening of regulatory sources in countries of your choice; Production of synthetic report to assess impacts of regulation on your business

## Operational

Internal control framework set up	Set up of an ad hoc internal control framework including compliance plan, RM process and adequate reporting lines
Operating model review	Review the set up of your operating model (local vs centralised; operational hubs vs centres of excellence), delegation model and HR/IT infrastructure in accordance with the transfer pricing model

## Risk management

UCITS package	Risk Management Process review, gap analysis and development; risk reporting outsourcing (market risk, liquidity risk, leverage); SRRI outsourcing; risk model validation; back-testing reporting
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## Pricing

Valuation related services	Transform the requirements of independent valuation of assets into process optimisation, counterparty review and risk assessment
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