

Luxembourg Tax Alert

New LTA Circular on real estate levy provides valuable update on reporting obligation

4 February 2022

On 20 January 2022, the Luxembourg tax authorities (LTA) released a new Circular ([PRE IMM n° 1 du 20 janvier 2022](#)) regarding the real estate levy introduced by the Luxembourg law of 19 December 2020. For more information about this legislation, please refer to our dedicated [Tax Alert](#).

Background

Since 1 January 2021, a 20% real estate levy has applied to certain Luxembourg investment vehicles that own real estate assets located in Luxembourg. These assets can be owned either directly by the vehicle or indirectly through a Luxembourg tax transparent entity (e.g., SCS, SCSp, SCI and SNC), a *Fond Commun de Placement* (FCP) or any other foreign transparent entity. The investment vehicles in scope are:

- **Alternative Investment Funds (AIFs)** that fall under Part II of the amended law of 17 December 2020 concerning undertakings for collective investment (UCIs);
- **Specialized Investment Funds (SIFs)** referred to in the amended law of 13 February 2007; and
- **Reserved Alternative Investment Funds (RAIFs)** referred to in article 1 of the amended law of 23 July 2016.

The real estate levy only applies to the above vehicles that have a **corporate legal form**. Therefore, it does not apply to investment vehicles incorporated as partnerships (such as a Luxembourg SCS/SCSp), incorporated as contractual agreements (such as a Luxembourg FCP), or foreign-established vehicles.

In a nutshell, the 20% real estate levy applies to the following income:

- 1) Gross rental income (excluding VAT) arising from real estate located in Luxembourg;
- 2) Capital gains resulting from the alienation of real estate assets located in Luxembourg; and
- 3) Capital gains resulting from the alienation of shares/interests in tax transparent entities holding real estate located in Luxembourg.

This income can be derived **directly** by the concerned investment vehicles or **indirectly** through tax transparent entities.

Reporting obligation

Along with providing practical examples of the real estate levy's application, the new Circular also includes information regarding the reporting obligation of concerned investment vehicles.

The Circular states that, going forward, concerned vehicles must file a dedicated form on the MyGuichet platform by 31 May (Y+1). Therefore, concerned vehicles must file this form by 31 May 2022 at the latest for revenue derived in 2021. They must then pay the levy before 10 June (Y+1) to avoid being fined. The form must include an annex that lists each real estate asset and income type, certified by an auditor (*réviseur d'entreprises agréé*) in Luxembourg.

Furthermore, the law also introduced a one-time reporting obligation for the 2020 and 2021 calendar years. In this respect:

- All Luxembourg investment vehicles that have a corporate form must inform the LTA whether (i) they have held or, alternatively, (ii) confirm they did not hold real estate assets located in Luxembourg at any point of time during the 2020 and 2021 calendar years. A dedicated form for this purpose will also be available on the MyGuichet platform. The reporting obligation also targets Luxembourg (corporate) investment vehicles holding Luxembourg real estate assets through a tax transparent entity.
- All Luxembourg investment vehicles that changed their legal form during the 2020 and 2021 calendar years to partnerships (SCS or SCSp) or FCP and that held, either directly or indirectly (through transparent entities) Luxembourg-based real estate assets at the time must inform the LTA of this change.

This reporting requirement must be carried out via the MyGuichet platform by **31 May 2022**. Concerned entities that do not comply with this reporting obligation may entail a fixed fine of EUR10,000.

Therefore, to comply with this law by 31 May 2022 and to avoid being fined, Luxembourg investment funds (Part II, SIF or RAIF) with a corporate form (SA, SARL or SCA), regardless of their investment strategy (private equity, venture capital, real estate, debt, infrastructure, hedge funds, arts, etc.), need to inform the LTA whether or not they held any real estate in Luxembourg (directly, or indirectly through a tax transparent entity) during 2020 or 2021.

If you have any questions about this Circular or need help with the reporting obligation, please contact us.

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