

## Luxembourg Tax Alert

### New draft law would include securitization vehicles subject to Securitisation Regulation (EU) 2017/2402 within scope of interest deduction limitation rules

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On 9 March 2022, the Luxembourg government released a new draft law amending the interest deduction limitation rules of article 168bis of the Luxembourg income tax law. Article 168bis was introduced by the law of 21 December 2018 implementing EU directive 2016/1164 of 12 July 2016, which provides rules against tax avoidance practices that directly affect the functioning of the internal market ("ATAD 1").

Article 4(7) of ATAD 1 allows EU member states to exclude financial undertakings as defined under article 2(5) of ATAD 1 from the scope of the rule limiting the deductibility of interest. When implementing this option under domestic law, Luxembourg considered that the financial undertakings listed in article 2(5) of ATAD 1 could evolve and include financial undertakings regulated under a new EU directive or EU regulation. Thus, Luxembourg included in the list securitization entities within the meaning of article 2, point 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017, which provides a general framework for securitization, creates a specific framework for simple, transparent, and standardized securitization, and amends Directives 2009/65/EC, 2009/138/EC, and 2011/61/EU as well as Regulations (EC) No. 1060/2009 and (EU) No. 648/2012 ("2017 EU regulation").

The commentaries to the new draft law state that the European Commission (EC) considers, in its reasoned opinion sent to Luxembourg on 2 December 2021, that the list of financial undertakings within the meaning of article 2(5) of ATAD 1 is "static" in nature and therefore could not be extended to securitization entities referred to in article 2(2) of the 2017 EU regulation.

Taking notice of the EC's interpretation, the draft law released by the Luxembourg government removes securitization entities within the meaning of article 2(2) of the 2017 EU regulation from the list of financial undertakings not subject to the interest limitation rules.

If enacted as drafted, the amendment would apply to tax years beginning on or after 1 January 2023, thus avoiding retroactivity. While the draft law still needs to go through the legislative process, no material change is expected.

Luxembourg securitization vehicles within the scope of article 2(2) of the 2017 EU regulation that have never been subject to the interest limitation rules should anticipate this upcoming change and review their position to assess how the application of the rules would affect them. However, Luxembourg securitization vehicles within the scope of article 2(2) of the 2017 EU regulation mainly deriving interest income and other economically equivalent taxable revenue should not be materially impacted by the interest limitation rules going forward.

Other Luxembourg securitization vehicles outside the scope of article 2(2) of the 2017 EU regulation would not benefit from the exemption repealed by the draft law and interest deduction limitation rules that already apply to them would remain the same. Other financial undertakings listed in article 2(5) of ATAD 1, such as alternative investment funds, would not be affected by the draft law.

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