ATOZ
TAX ADVISERS

INSIGHTS

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TAXAND

CONTENTS

EDITORIAL

Greetings!

We have already enjoyed early spring days, so it's time for our first 2026 ATOZ Insights.

On 6 January 2026, the Luxembourg tax authorities launched online procedures via MyGuichet.lu for **Pillar Two compliance**. We outline the **key obligations** for Luxembourg constituent entities, including mandatory registration, GloBE Information Return filings and Top-up Tax Return procedures.

We also analyse the permanent establishment risks arising from **cross-border remote work** for Luxembourg businesses, focusing initially on the **OECD's 2025 Commentaries** regarding the **assessment of a fixed place of business** and subsequently on the **dependent agent rules**.

We then delve into the **evolving concept of beneficial ownership**, analysing its key role in **accessing treaty and EU directive benefits**, as well as **recent case law trends** emphasising substance, control and economic reality.

We also explore Luxembourg's recent implementation of **DAC8**, which significantly **expands** the scope of tax transparency and automatic exchange of information, notably by introducing **new reporting obligations for crypto-asset service providers and updating existing DAC regimes**.

For **VAT**, we analyse a new Luxembourg **District Court judgement** on the **application of administrative VAT penalties**, even absent fraudulent intent and outline its implications for taxpayers.

Rounding off our Luxembourg coverage, we turn to legislative updates and take a deep dive into a new **draft law introducing deferred payment of minimum share capital for SARLs**, a reform aimed at modernising Luxembourg's corporate framework.

From the **Middle East**, we analyse the UAE Federal Tax Authority's first comprehensive **Corporate Tax Guide on Advance Pricing Agreements**. The guide establishes a formal framework for obtaining prospective **transfer pricing certainty**, with the aim of reducing disputes and preventing double taxation.

Read our full April 2026 ATOZ Insights below!

The ATOZ Editorial team

Pillar Two compliance: Essential guidance for Luxembourg entities

OUR INSIGHTS AT A GLANCE

- Luxembourg's Pillar Two compliance framework is now operational, with mandatory electronic registration, filing and payment procedures in place via MyGuichet.lu.
- Luxembourg constituent entities of in-scope multinational and large domestic groups must comply with strict timelines for registration, GloBE Information Return (GIR) filings and Top-up Tax Returns, even where no tax is ultimately due.
- However, centralised GIR filing is possible but subject to notification requirements and exchange of information conditions.
- Non-compliance may result in significant financial penalties making early coordination between global Pillar Two reporting and local Luxembourg compliance functions essential.
- This article focuses on the various Luxembourg compliance obligations to be managed by businesses.

The Luxembourg Tax Authorities ("**LTA**") have confirmed that Luxembourg's Pillar Two compliance framework is now fully operational following the launch, on 6 January 2026, of dedicated online procedures via MyGuichet.lu[1]. These new procedures enable taxpayers to (i) **register** Luxembourg constituent entities ("**CEs**"), (ii) **submit** the GloBE Information Return ("**GIR**") where Luxembourg acts as the filing jurisdiction and (iii) **file** the local **Top-up Tax Return**.

For in-scope groups with a 31 December year end, the first GIR and associated Top-up Tax filings are due by **30 June 2026**.

These developments signal the transition from a forward-looking disclosure regime to **active local compliance obligations** to be managed in parallel with global Pillar Two reporting.

Registration, updates and deregistration obligations

Under Article 49 of the Luxembourg law dated 22 December 2023 (the "**Pillar Two Law**") implementing the EU Directive of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise ("**MNE**") groups and large-scale domestic groups ("**LSDGs**") in the Union (known as the "**Pillar Two Directive**"), Luxembourg CEs that form part of MNE groups or LSDGs must comply with registration, rectification, update and deregistration requirements.

Registration

Registration is required for the fiscal year in which:

- A group first becomes subject to the Pillar Two Law; or
- A Luxembourg CE joins a group already within scope.

The registration must be completed **within 15 months** after the fiscal year-end (extended to **18 months** for the transition year).

As part of the registration, each CE must provide, where applicable:

- CE identity and tax identification number ("**TIN**");
- Name of the relevant MNE or LSDG;
- Identity, TIN and jurisdiction of the Ultimate Parent Entity ("**UPE**");
- Fiscal year in which the group becomes subject to Pillar Two;
- Fiscal year in which the CE joined (if different);
- Fiscal year for which the procedure applies;

[1] https://guichet.public.lu/en/entreprises/fiscalite/declaration/pilier-2.html

- Identity of the designated group filing entity;
- Identity of the designated local filing entity;
- Identity of the designated umbrella Undertaxed Profits Rule ("**UTPR**"), paying entity;
- Identity of the designated umbrella Qualified Domestic Minimum Top-up Tax ("**QDMTT**") paying entity;
- Contact information for the individual responsible for the registration.

Updates and rectifications

Any changes to registration information must be submitted to the LTA within **15 months** following the fiscal year in which the change occurred. Any change submission must use the same electronic procedure as the initial registration.

Deregistration

Deregistration is required when a group ceases to fall within scope or when a CE no longer qualifies as a Luxembourg CE (e.g. liquidation, restructuring or change in scope). Deregistration must also occur within **15 months** following fiscal year-end.

These obligations also apply, with necessary adjustments, to Luxembourg joint ventures and joint venture-affiliated entities.

Filing of the GloBE Information Return (GIR) and notification requirements

Filing obligation

Under Article 50 of the Pillar Two Law, Luxembourg CEs must **file a GIR** within **15 months** after fiscal year end (or **18 months** for the transition year).

A CE is exempt from filing the GIR locally if the GIR is filed by the UPE or another designated filing entity in a jurisdiction that maintains an **eligible competent authority agreement** with Luxembourg.

Centralised vs local filing (as clarified under DAC9)

Based on the Luxembourg law dated 19 December 2025 on the exchange of information with respect to "Top-up Tax information return", which transposes Directive (EU) 2025/872 also called DAC9 (the "**DAC9 Law**") (as reflected in our previous ATOZ Alert), Luxembourg entities benefit from clarified rules regarding centralised versus local GIR submissions:

- A Luxembourg CE is **exempt from local filing** if a compliant GIR is filed abroad and automatically exchanged.
- If the anticipated exchange does not occur, the CE must **file a local GIR within one month** of notification by the LTA.

Luxembourg's legislation mandates use of the **standardised GIR template** aligned with **Annex VII of DAC9**, with a structured approach to **automatic exchange of information** based on other jurisdictions' taxing rights.

On 23 March 2026, the draft Grand-Ducal Regulation establishing the list of jurisdictions that have concluded an eligible competent authority agreement with the Grand Duchy of Luxembourg for the automatic exchange of GIR was published (the "**Draft GDR**").

The Draft GDR lists:

- **All EU Member States**, as DAC9 serves as the applicable agreement for intra-EU exchanges; as well as
- **Non-EU jurisdictions** that have signed the Multilateral Competent Authority Agreement on the exchange of GloBE Information ("**GIR MCAA**") and have notified the OECD Secretariat of their intention to exchange such information with Luxembourg for fiscal years starting on or after 31 December 2023. The list of non-EU jurisdictions **may be updated prior to the publication** of the Draft GDR in the Official Journal to reflect any additional notifications made to the OECD under the GIR MCAA (current last update: 31 March 2026).

Top-up Tax Returns: IIR, UTPR and QDMTT

Under Article 51 of the Pillar Two Law, certain Luxembourg entities must submit a **Top-up Tax Return** and pay applicable amounts under:

- the Income Inclusion Rule ("**IIR**"),
- the UTPR, and
- the QDMTT.

Entities required to file

The following must **file** a Top-up Tax Return:

- Luxembourg UPEs, Intermediate Parent Entities or Partially Owned Parent Entities liable under the IIR;
- The designated UTPR paying entity;
- The designated QDMTT paying entity.

Importantly, **a Top-up Tax Return must be filed even if no Top-up Tax is due**.

Deadline and payment

- Filing deadline: **15 months** after fiscal year-end (18 months for transition year)
- Payment deadline: within **one month** after filing

Electronic filing framework

All filings must be made electronically via **MyGuichet.lu**.

Filing	Method
Registration & Deregistration	online form and XML format
GIR	XML format only
Top-up Tax Return	online form and XML format

According to the LTA, there are no plans to provide software publishers and other IT service providers with a pre-validation or testing platform. The syntactic validation of a created XML file can be carried out using most XML file editors and the semantic rules will be validated online by the assistant. The fact that the GIR is available solely in XML format undermines accessibility, since many taxpayers and advisers do not have access to the required – and costly – software.

As mentioned above, Luxembourg law also provides a legal basis for automatic exchange of GIRs, aligned with OECD Pillar Two standards and DAC9 requirements.

Penalties

Luxembourg applies significant sanctions for non-compliance:

- EUR 5,000 for late or incorrect notifications, registrations or deregistrations;
- Up to EUR 250,000 for late, incomplete or incorrect GIR submissions[2];
- Up to EUR 300,000 under DAC9 for misuse of local filing exemption.

The statute of limitations for audits and enforcement is ten years.

Transitional simplifications and deferred tax guidance

As noted in the DAC9 Law (see our previous Alert), transitional simplified jurisdictional reporting is available for fiscal years starting before 1 January 2029 and ending before 1 July 2030.

Key takeaways

Luxembourg's Pillar Two framework is now fully implemented and mandatory. Even when no tax is ultimately due, entities must respect strict deadlines for registration, GIR filing, or notification and Top-up Tax Returns. Centralised GIR filing is permitted but requires careful structuring and proper notification. Non-compliance can lead to significant penalties and prolonged enforcement periods. Effective coordination between global Pillar Two reporting teams and Luxembourg compliance functions is essential to ensure accuracy and timely submissions.

Next steps for Luxembourg entities

Luxembourg CEs should first determine whether they fall within the Pillar Two scope based on fiscal year and group structure. They should promptly initiate or complete registration, decide whether GIR filing will be local or centralised and ensure the appropriate notifications are submitted. Preparing GIR XML-format data and confirming alignment with the standardised template is key. Entities must also identify which Luxembourg entities are responsible for IIR, UTPR and QDMTT and anticipate potential tax implications. Finally, monitoring LTA updates, especially regarding automatic exchange of information and correction procedures, is critical.

We remain at your disposal to support you through these requirements and would be pleased to assist you with any questions or next steps.

Questions?

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[2] This sanction does not apply where the entity is exempt from filing the GIR.

Cross-border remote work and PE risks for Luxembourg enterprises

OUR INSIGHTS AT A GLANCE

- The expansion of cross-border remote work has significantly increased permanent establishment (PE) risk for Luxembourg enterprises.
- The OECD's 2025 Commentaries introduce clearer quantitative (a 50% working time threshold) and qualitative criteria (a commercial reason test) to assess when remote working arrangements may create a fixed place of business, also called "Material PE".
- While dependent agent PE, also named "Personal PE", rules remain unchanged, employees who habitually negotiate or conclude contracts abroad continue to pose elevated risk.
- Luxembourg businesses must carefully monitor remote work patterns, document business justifications and pay particular attention to senior or client-facing roles performed outside Luxembourg.
- This article analyses the PE implications of cross-border remote work for Luxembourg enterprises, focusing on Material and Personal PEs.

The spread of cross-border remote work has transformed business organisation and significantly impacted the interpretation of the permanent establishment ("**PE**") concept under Article 5 of the OECD Model Tax Convention ("**OECD MTC**") under the 2017 OECD MTC commentaries (the "**2017 Commentaries**").

On 19 November 2025, the OECD published new guidance and targeted clarifications, including a structured framework combining quantitative and qualitative criteria to assess when a home office or other remote working location may constitute a PE (the "**2025 Commentaries**").

This article reviews the PE implications of cross-border remote work for Luxembourg enterprises, focusing on fixed place of business ("**Material PEs**") and dependent agent PEs ("**Personal PEs**").

Material permanent establishment (fixed place of business)

A Material PE requires three cumulative conditions: (a) a fixed place, (b) constituting a *place of business of the enterprise* and (c) through which the business of the enterprise is carried on, without being merely preparatory or auxiliary. The 2025 Commentaries clarify these requirements.

Fixity (geographical and temporal)

The fixity requirement includes both geographical and temporal permanence. A fixed location must be identifiable and stable over time.

- **Geographical permanence** is met where the employee works consistently from a single identifiable location, such as a primary residence. The use of multiple homes or travel-based work (digital nomads) typically fails this test.
- Sporadic or random home working does not meet **temporal permanence**. By contrast, remote work exceeding six months often establishes temporal permanence. The 2025 Commentaries confirm in this respect that remote work carried out for fewer than three consecutive months within a 12-month period generally fails the permanence test.

Place of business

Under the 2017 Commentaries, the term "place of business" is broadly construed to cover any tangible physical space (premises, facilities or installations) through which an enterprise carries on its business activities, whether or not used exclusively for that purpose. The requirement that a location be at the disposal of the enterprise was a central element under the 2017 Commentaries, including in the context of home working arrangements.

The 2025 Commentaries depart from the traditional "at the disposal" test and instead introduce a hybrid approach combining:

- **A quantitative test**: If, based on the actual conduct of the individual, remote activities represent less than **50% of the employee's total working time over any 12-month period**, no place of business generally exists.
- **A qualitative test**: If the 50% threshold is exceeded, the existence of a commercial reason for working in the foreign State becomes decisive. A **commercial reason** exists if remote work meaningfully facilitates business operations (e.g. access to customers, suppliers, time-zone alignment, collaboration).

In any case, the existence of a place of business depends on a case-by-case assessment of the facts and circumstances.

Carrying on core business

Even if a location qualifies as a fixed place of business, a PE arises only where core business activities – not merely preparatory or auxiliary tasks – are performed through the fixed place of business. *Preparatory activities* typically precede core business operations for a short period, while *auxiliary activities* support the core business without forming an essential part of it (i.e. routine administrative support). Core activities typically include management functions, client-facing work and essential value-creating activities.

A further consideration is the anti-fragmentation rule, which prevents enterprises from artificially avoiding PE status by splitting core business functions into several seemingly auxiliary activities. However, the anti-fragmentation rule is not automatically applicable to Luxembourg's tax treaties, as Luxembourg has reserved the right not to adopt this rule and the relevant BEPS MLI provisions.

Dependent agent permanent establishment (Personal PE)

Since the 2025 Commentaries do not modify the rules governing Personal PEs, the analysis continues to rely on the principles set out in the 2017 Commentaries.

The concept of a Personal PE may arise where (a) a person acting in a state on behalf of an enterprise (b) habitually concludes contracts or habitually plays the principal role leading to the conclusion of (c) contracts that are routinely accepted by the enterprise without material modification, subject to the potential application of the (d) independent agent exception.

This form of PE is subsidiary in nature, as it applies only when no fixed place of business PE exists.

A person acting on behalf of the enterprise

A person is regarded as acting on behalf of an enterprise when their activities involve the enterprise to a meaningful extent in business operations within the relevant state. The mere participation in internal discussions or in preliminary stages of contract negotiations does not suffice, as such tasks do not engage the enterprise externally.

Habitually concluding contracts or playing the principal role leading to the conclusion of contracts

Specifically, this applies to people who **habitually**:

- **conclude contracts.**
  - The expression "concludes contracts" covers cases where, under the applicable contract law, a contract is considered to have been concluded by a person, whether or not the terms were actively negotiated and even if the contract is signed outside the relevant state. A contract may be considered concluded in a state even where the signature occurs elsewhere if the material terms are negotiated in that state in a manner that binds the enterprise.

- **play the principal role** in making contracts that the enterprise usually accepts without material changes.
  - The key factor is the principal role played by that person in persuading third parties to enter into contracts with the enterprise. A person substantially involved in negotiating essential terms may be considered to exercise contractual authority even if not formally empowered to do so.
  - This criterion results from the expanded OECD definition of a dependent agent PE introduced in the 2017 version of the OECD MTC. However, to the extent that Luxembourg double tax treaties are concerned, Luxembourg has reserved the right[3] to use the narrower 2014 version of Article 5 (5) of the 2014 Model Tax Convention (the "**2014 OECD MTC**") which only deems a PE to exist if the

[3] 2017 OECD Model Tax Convention, reservation on Article 5 (5), C(5)-72, point 213, as amended by the 2025 Update.

agent had and habitually exercised the authority to conclude contracts in the source state.

The habituality requirement is strict; occasional or incidental involvement is insufficient.

Contracts in the name of the enterprise or to be performed by the enterprise

The determination of whether contracts are concluded "in the name of the enterprise" is interpreted broadly, extending to situations where the enterprise is legally or economically bound by the contractual obligations, even if another party formally signs the agreement.

The 2017 OECD revisions, prompted by BEPS Action 7, emphasise substance over form in order to address structures such as commissionaire arrangements, in which intermediaries formally conclude contracts in their own name while binding the enterprise in substance.

Under Luxembourg double tax treaties that still rely on the 2014 OECD MTC definition of a Personal PE, only contracts that are formally concluded in the name of the enterprise give rise to a Personal PE. Consequently and subject to any treaty-shopping or anti-abuse rules, commissionaire arrangements should not, in principle, result in the creation of a Personal PE.

The independent agent exception

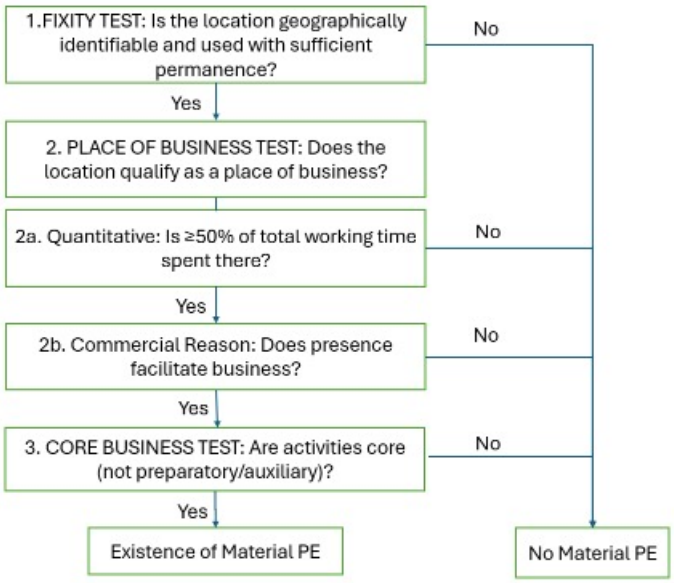
Even where these substantive conditions are met, no Personal PE arises if the person acts in the ordinary course of their business as an independent agent. Independence is evaluated by reference to the degree of control exercised by the enterprise, the extent to which the agent bears entrepreneurial risk and whether the agent's business activities are autonomous and commercially separate from those of the enterprise. Dependence may arise where the agent works exclusively or almost exclusively for one or more closely related enterprises.

Impact of remote work on PE risk

How the OECD 2025 Commentaries apply in typical situations:

- **Occasional home working:** No Material PE.
- **Short-term remote work (<3 months):** No Material PE.
- **Long-term home working (>6 months):** High Material PE risk.
- **Regular weekly home working:** Depends on the time threshold and the commercial reason.
- **Digital nomads:** Generally, no Material PE unless recurring substantial presence exists.
- **Consultants and senior management employees:** Material PE risk if the time threshold is met as they can be seen as conducting core business.

Visual decision tree for PE risk assessments under the 2025 Commentaries



For Personal PEs, significant PE risk exists when employees habitually negotiate or conclude contracts abroad, especially with limited substantive review by the enterprise.

Conclusion

The OECD's 2025 Commentaries provide clarity by establishing a 50% working-time threshold and requiring commercial justification for work in the foreign state. However, the assessment remains fact-specific. Luxembourg enterprises must document remote work arrangements, including time spent abroad and the business purpose. Senior employees performing essential functions from abroad represent the highest PE risk.

Remote work continues to evolve and enterprises must remain vigilant regarding future treaty interpretations and OECD developments.

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The beneficial owner concept: Technical perspectives and case law trends

OUR INSIGHTS AT A GLANCE

- The beneficial owner (BO) concept has evolved into a cornerstone of international taxation, determining access to treaty benefits, EU directive relief and withholding tax exemptions.
- Courts increasingly focus on economic reality rather than formal ownership, scrutinising whether income recipients have genuine control, substance and decision-making autonomy.
- Recent case law across the EU and beyond confirms a strict, fact-based approach, with significant implications for holding, financing and investment structures involving Luxembourg entities.
- In an environment shaped by GAAR, PPT and Pillar Two, robust substance, documented business rationale and transaction specific BO analyses are critical to sustaining defensible tax outcomes.
- This article provides a structured overview of the BO concept as developed in international tax law, EU law and case law. It outlines the definition and core principles of beneficial ownership, the consequences for access to withholding tax relief and recent judicial trends across key jurisdictions.

Over the last decade, the concept of beneficial ownership ("**BO**") has become one of the central pillars of international tax law. Initially developed to prevent treaty shopping and improper access to withholding tax ("**WHT**") relief, the BO concept now plays a decisive role in the application of tax treaties, EU directives and domestic anti abuse rules. Courts and tax authorities increasingly rely on this concept to distinguish genuine economic arrangements from artificial or conduit structures.

This article provides a structured overview of (i) the BO concept and its foundations, (ii) what is at stake for businesses, particularly multinational groups and (iii) the main trends emerging from recent case law across key jurisdictions. It further includes a Luxembourg-focused perspective, practical guidance for businesses and a forward-looking analysis of the interaction between BO, EU GAAR/PPT standards and Pillar Two.

The beneficial owner concept: Definition and core principles

Origins and international meaning

The BO concept originates in international tax treaty practice and is embedded in the OECD Model Tax Convention and its Commentaries. It has an **autonomous international meaning**, independent of domestic civil law notions of ownership. Being the formal recipient of income or being a treaty resident does not automatically make an entity the beneficial owner of that income.

According to the OECD Commentaries, the BO is the person who has the **right to use and enjoy the income**, without being constrained by a legal, contractual or factual obligation to pass it on to another person.

This interpretation has been consistently endorsed by courts, including by the Court of Justice of the European Union ("**CJEU**") in its landmark Danish cases on dividends and interest.

Substance over form and economic reality

Across jurisdictions, the BO analysis is firmly grounded in a **substance-over-form approach**. Courts examine whether the recipient entity genuinely benefits from the income and bears the associated economic risks, rather than merely acting as an intermediary.

Typical factors examined include:

- the nature and scope of the entity's activities;
- its capacity to make independent decisions regarding the use of income;
- the existence of employees, premises and operating expenses;
- the timing and regularity of onward payments;
- the presence of legal or factual pass-through obligations.

Importantly, **substance is necessary but not sufficient**. An entity with offices and personnel may still fail the BO test if it lacks genuine dominion over the income received.

BO and anti-abuse rules

The BO concept operates alongside other anti-abuse mechanisms, including general anti-abuse rules ("**GAARs**"), principal purpose tests ("**PPTs**") and limitation on benefits ("**LOB**") clauses. While the absence of BO is a strong indicator of abuse, courts increasingly emphasise that BO and abuse are **distinct but interacting concepts**. A structure may fail the BO test without necessarily satisfying all elements of abuse and vice versa

What is at stake for businesses?

Access to withholding tax relief

The most immediate consequence of failing the BO test is the **denial of WHT exemptions or reductions** under tax treaties or EU directives, notably the Parent Subsidiary Directive ("**PSD**") and the Interest and Royalties Directive ("**IRD**"). Such denials are frequently applied retroactively and may be accompanied by interest and penalties, significantly increasing the overall tax burden of cross-border transactions.

Compliance and evidentiary burden

Case law shows a clear trend towards shifting the burden of proof onto taxpayers. Certificates of tax residence are no longer always sufficient. Taxpayers must demonstrate, with contemporaneous documentation, the existence of genuine functions, decision-making autonomy and economic risk at the level of the income recipient.

Structural and reputational exposure

Beyond direct tax costs, BO challenges generate **structural uncertainty** for holding, financing and IP models, as well as **reputational risks**. Findings of artificiality or conduit activity may affect advance rulings, investor confidence and the broader perception of a group's tax governance.

Comparative case law trends across jurisdictions

EU landscape after the Danish cases

The Danish cases represent a watershed moment in EU tax jurisprudence. They confirmed that BO refers to the entity that **economically benefits from the income** and has the power to determine its use. National tax authorities and courts have since developed increasingly fact-intensive analyses aligned with these principles.

Jurisdictions such as Denmark, France and Belgium seem to have adopted a **strict anti-conduit approach**, frequently denying BO status where entities lack real decision-making power or are subject to systematic pass-through arrangements. Other jurisdictions, including Italy, Spain and the Netherlands, seem to apply a more **nuanced and contextual analysis**, allowing BO status where sufficient economic rationale and effective dominion over income can be demonstrated.

Beyond the EU

Comparable trends are observed outside the EU, notably in Canada and Switzerland, where courts denied BO status in securities lending or back-to-back financing structures involving contractual compensation or pass-through obligations. These developments confirm the global convergence towards an **economic ownership standard**.

Luxembourg in the European BO landscape

Luxembourg occupies a distinctive position in the European BO debate. As a major hub for holding, financing and investment structures, Luxembourg is frequently at the centre of BO litigation abroad, even though Luxembourg courts themselves have issued relatively few BO-focused decisions.

Luxembourg case law to date confirms a definition of BO aligned with international standards: a BO is a person who **actually enjoys the economic benefit of the income** and can freely determine its use. Luxembourg courts have notably applied this concept in the context of **securities lending arrangements**, emphasising the absence of free disposal where contractual obligations require the return or compensation of income.

From a comparative perspective, Luxembourg entities are often assessed by foreign tax authorities primarily on the basis of economic substance and functional alignment. In practice, certain foreign tax authorities require Luxembourg entities to maintain human and material resources that are disproportionate, both in light of (i) the entity's own functional profile and (ii) the level of substance typically observed in local entities with a comparable profile. Moreover, some foreign tax authorities appear to operate under a presumption of non-compliance, using the threat or application of criminal sanctions as a means of exerting pressure on taxpayers. Such practices seem inconsistent with European Union law and the principles enshrined in double tax treaties.

Against this background, it is worth noting that the European Commission has recently initiated an infringement procedure against France for failing to correctly implement and apply the Parent-Subsidiary Directive (2011/96/EU), on the grounds that France unilaterally applies its own criteria to foreign parent companies in order to challenge their status and deny the tax benefits provided under the Directive.

From a practical standpoint, structures involving Luxembourg companies are more likely to be respected where they perform genuine treasury, holding or investment functions, incur real costs and make autonomous decisions consistent with their corporate interest. Conversely, purely passive Luxembourg entities – particularly those inserted shortly before income flows – remain exposed to challenge.

In practice, Luxembourg's position illustrates a broader European trend: the jurisdiction of residence is less decisive than the **actual role performed** by the entity within the group.

Practical guidance for businesses

To mitigate challenges from tax authorities, businesses should in particular consider the following practical points:

- Ensure **genuine decision-making power** at the level of the income recipient, particularly regarding the use and allocation of funds.
- Align **substance with function**: personnel, premises and expenses should be commensurate with the activities performed.
- Document **non-tax economic rationale** for interposed entities at the time structures are implemented.
- Maintain **flexibility in cash management**, avoiding automatic or immediate pass-through of income.
- Perform **transaction specific BO analyses**, as BO must be assessed per income stream.

Forward-looking perspectives: BO, EU GAAR, PPT and Pillar Two

The future relevance of the BO concept must be assessed in conjunction with broader international anti-avoidance frameworks.

First, as mentioned above, **EU GAAR and PPT standards** increasingly overlap with BO analyses. While conceptually distinct, they rely on similar factual indicators: lack of economic rationale, artificial interposition of entities and misalignment between form and substance. In practice, a structure that fails the BO test is often equally vulnerable under GAAR or PPT scrutiny.

Second, the implementation of **Pillar Two** is expected to reduce – but not eliminate – the importance of BO. Although Pillar Two focuses on effective taxation rather than entitlement to income, BO remains relevant for:

- determining the location of income and covered taxes;
- assessing the allocation of profits within group entities;
- evaluating the substance-based income exclusion.

Finally, tax authorities are likely to adopt a **more integrated approach**, combining BO analyses with GAAR, PPT and minimum taxation considerations. This reinforces the need for coherent and economically grounded structures.

Conclusion

The BO concept has evolved from a technical treaty notion into a central test of economic reality in international tax law. Case law across jurisdictions confirms a clear direction: **Formal entitlement is no longer sufficient**; what matters is effective control, use and enjoyment of income.

For Luxembourg and international businesses alike, the message is consistent: sustainable tax outcomes require **substance, autonomous decision-taking and documented business purposes**. In an environment shaped by heightened transparency, EU anti-abuse principles and Pillar Two, the BO concept will remain a critical benchmark for assessing the robustness of cross-border structures.

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Luxembourg adopts DAC8

OUR INSIGHTS AT A GLANCE

- Luxembourg published its law of 27 March 2026 implementing DAC8, amending the EU framework for administrative cooperation in tax matters.
- Luxembourg's implementation of DAC8 significantly expands the scope of tax transparency and automatic exchange of information, with a particular focus on crypto-assets.
- Crypto-asset service providers – whether EU-based or third country operators with a Luxembourg nexus – face new registration, due diligence and annual reporting obligations starting from 2026.
- The DAC8 law also enhances information exchange on life insurance income, advance tax rulings for individuals and updates existing DAC regimes (DAC2, DAC6, DAC7 and CbCR).
- Businesses should be prepared to upgrade their systems, data governance and compliance processes to meet the heightened regulatory expectations.
- This article sets out new registration, due diligence, reporting and record keeping obligations, as well as simplification measures to prevent duplicate reporting.

Luxembourg published its law of 27 March 2026 (the "**Law**") aimed at implementing Council Directive 2023/2226 dated 17 October 2023, the so-called "**DAC8**", amending Directive 2011/16/EU on administrative cooperation in the field of taxation ("**DAC**"). The European Commission will now be able to close the infringement procedure launched against Luxembourg[4] for failing to transpose DAC8 on time. EU Member States were indeed required to transpose DAC8 by 31 December 2025.

The Law pursues two major objectives:

1. Expanding the scope of transparency and tax information exchange by including new types of reportable transactions, particularly those involving crypto-assets.
2. Updating and consolidating the various tax information exchange mechanisms introduced through successive amendments to DAC. In this regard, the Law notably:

- Introduces new exchange of information on income derived from life insurance products;
- Introduces new exchange of information on certain advance tax rulings related to individual taxpayers;
- Allows the use of exchanged information for non-tax purposes;
- Updates the DAC2 law in relation to the common reporting standard ("**CRS**"), mainly to align it with recent OECD standards;
  - Modifies the DAC6 law regarding the professional secrecy of intermediaries;
  - Amends DAC7 in relation to the volume of data to be transmitted; and
  - Updates Country-by-Country Reporting requirements.

In this article, we outline the main provisions of the Law and its main impact, notably for Luxembourg taxpayers and crypto-asset service providers.

Exchange of information on crypto-assets

Crypto-asset service providers in scope of the reporting

[4] The EU Commission also sent a letter of formal notice (the first step of an infringement procedure) to Belgium, Bulgaria, Czech Republic, Estonia, Greece, Cyprus, Malta, the Netherlands, Poland, Portugal and Spain.

The Law introduces due diligence and reporting obligations for crypto-asset service providers authorised in the Grand Duchy of Luxembourg under the Markets in Crypto-Assets (MiCA) Regulation, as well as for crypto-asset service providers that do not hold such authorisation, provided they have a sufficient nexus with the Grand Duchy of Luxembourg, such as tax residency or a permanent establishment.

The Law will impact crypto-asset service providers and crypto-asset operators facilitating transactions for EU residents, irrespective of the size or location of the providers, i.e. whether based in the EU or in a third country.

The Law targets service providers operating in the crypto-asset market. This includes activities such as managing crypto-asset portfolios, the custody and administration of crypto-assets on behalf of third parties, operating crypto-asset exchange platforms, exchanging crypto-assets for funds or other crypto-assets and executing orders on behalf of clients.

Starting from the 2027 calendar year, the Commission de surveillance du secteur financier ("**CSSF**") shall electronically communicate, no later than 31 March each year, the identity of all crypto-asset service providers that held an authorisation, under the MiCA Regulation, in the Grand Duchy of Luxembourg during the previous calendar year to the Administration des contributions directes ("**ACD**").

Definition of crypto-assets

Under the Law, the definition of crypto-assets under DAC8 is broader than under the MiCA Regulation. It encompasses all types of crypto-assets that may be used for payment or investment purposes.

To ensure terminological and conceptual consistency with the Law of 18 December 2015 on the Common Reporting Standard ("**CRS Law**"), which governs the reporting obligations for financial accounts, the Law provides that electronic money products and central bank digital currency instruments, which are excluded from the scope of DAC8, are incorporated into the CRS Law. This ensures that such financial products are still subject to regulatory oversight and reporting obligations, thus maintaining comprehensive coverage across both frameworks.

Reportable Users

Reportable Users are defined by the Law as EU-resident individuals or entities that are customers of a reporting crypto-asset service provider. Specific carve-outs are provided for users that are:

- companies listed on regulated stock exchanges and their related parties,
- governmental entities,
- international organisations,
- central banks and certain other financial institutions.

Transactions entered into by entities falling within the scope of these carve-outs are not reportable.

Crypto-asset service provider obligations

Registration obligation

When crypto-asset service providers are subject to reporting and due diligence obligations set out in the Law, they must register with the ACD and follow the due diligence procedures outlined in said Law. This registration must be completed before the end of the period within which such crypto-asset operator must report the relevant information. Any modification to the information to be communicated to the ACD at the time of the registration must be notified to the ACD within one month of the modification.

"*The communication pursuant to paragraph 3 of this Article shall take place using the standard computerised form referred to in Article 20(5) within nine months following the end of the calendar year to which the reporting requirements applicable to Reporting Crypto-Asset Service Providers relate. The first information shall be communicated for the relevant calendar year or other appropriate reporting period as from 1 January 2026.*"

Crypto-asset service providers are, however, exempt from registration in Luxembourg if, under certain conditions, they:

- are **already registered in another EU Member State**; or
- do not have to fulfil the due diligence and reporting obligations in Luxembourg and these obligations are fulfilled in another EU Member State or in a Qualified Non-Union Jurisdiction, by virtue of it being resident for tax purposes in such Member State or Qualified Non-Union Jurisdiction.

Thus, EU registered crypto-asset providers meeting DAC8 related conditions avoid duplicate registration in Luxembourg, as long as they are registered elsewhere in the EU on time.

Registration must be submitted electronically through the secure state platform in accordance with the procedures set by the ACD[5].

Due diligence obligations

Accordingly, they will have to collect and verify information about crypto-asset users that are reportable users or that have controlling persons that are reportable persons. The aim of the due diligence procedures is to allow providers to identify, through self-certification, whether their clients are reportable. The processes above should be completed for both new and pre-existing clients.

If a crypto-asset user fails to provide the required information – despite two reminders and at least sixty days having passed since the initial request – the reporting crypto-asset service provider must block the user from carrying out any reportable transactions.

Reporting crypto-asset service providers must keep detailed records of all actions taken and information used to meet their reporting and due diligence obligations. These records must be retained and accessible for ten years, starting from 31 December of the calendar year during which the reporting occurs.

Reporting obligations

The reporting crypto-asset service providers must then report, for each civil year, information on the crypto-asset users to the ACD, i.e. those who use the service provider to trade and exchange their crypto-assets. They must report annually by 30 June of the following year. In the absence of reportable users, a nil report must be submitted.

All amounts paid or received must be reported in a single consistent fiat currency. If multiple fiat currencies are involved, they must be converted into a single currency at the time of each reportable transaction. Similarly, the fair market value of relevant items must be reported in one consistent fiat currency, determined at the time of each reportable transaction.

The first reports relate to civil years starting on 1 January 2026.

Reporting must be submitted electronically through the secure state platform in accordance with the procedures set by the ACD.

Simplification measures

In order to mitigate the risk of duplicate reporting within the EU and qualified non-EU jurisdictions, the Law establishes a mechanism for exemption from due diligence and reporting obligations in Luxembourg, provided that certain conditions are met.

In addition, to avoid duplication between the procedures laid down in the Law and those under the CRS Law, the Law further provides that if a crypto-asset service provider is also considered a financial institution within the meaning of the CRS Law, such provider may rely on the due diligence procedures already implemented under that law to fulfil its obligations pursuant to DAC8.

Exchange of information

As a final step, the Luxembourg tax authority will transmit the reported information to the competent authorities of the jurisdictions of residence of the reportable users by 30 September of the year following the calendar year subject to reporting. The first exchange will occur for the calendar year starting 1 January 2026.

New exchange of information on income derived from life insurance products

Among the principal provisions of the Law, it is worth noting the establishment of an automatic exchange of information concerning income derived from life insurance products paid to beneficiaries resident in another Member State

[5] Projet de règlement grand-ducal portant exécution de la loi … relative à l'échange automatique et obligatoire des informations déclarées par les Prestataires de Services sur Crypto-actifs

following the death of the insured person. This constitutes a reporting obligation incumbent upon insurance undertakings established in the Grand Duchy of Luxembourg, triggered by the payment of benefits under the life insurance contract, provided that such contracts are not already subject to reporting under the CRS Law.

For taxable periods beginning on or after 1 January 2026, Luxembourg shall exchange at least five categories of income listed in Directive 2011/16/EU. Luxembourg has opted to supplement the information it already exchanges – covering income from employment, directors' fees, pensions and ownership of immovable property – with the exchange of income derived from life insurance products not covered by another information exchange mechanism. Consequently, Luxembourg excludes other categories of income listed, such as income from dividends paid through "non-custodial" accounts.

New exchange of information on certain advance tax rulings

The Law extends the scope of the automatic exchange of information to advance cross-border rulings granted to individuals. It targets advance cross-border rulings issued, amended or renewed after 1 January 2026 and where:

- the amount of the transaction, or series of transactions, covered by the advance cross-border ruling exceeds EUR 1 500 000 (or the equivalent amount in any other currency), if such amount is referred to in the advance cross-border ruling; or
- the advance cross-border ruling determines whether or not a person is considered resident for Luxembourg tax purposes.

For advance cross-border rulings or advance pricing agreements, the Law also requires that, for taxable periods beginning on or after 1 January 2028, additional information – specifically, the tax identification number ("**TIN**") of the persons concerned – be exchanged.

Use of exchanged information for non-tax purposes

The Law authorises the use of exchanged information to support competent authorities in enforcing restrictive measures, strengthening the fight against money laundering and terrorist financing and for the establishment, administration and enforcement of Luxembourg customs duties, VAT and indirect taxes. This aims to enhance the effectiveness of information exchange within a broader framework of administrative cooperation in cases of particular seriousness.

Amendment to the DAC2 law in relation to the Common Reporting Standard

The Law specifies additional information that the Luxembourg competent authority must communicate to the competent authorities of a reportable jurisdiction regarding financial accounts reportable under DAC2 (i.e. the CRS).

The Law also incorporates the most recent OECD developments including the expansion of the DAC2 reporting framework to encompass electronic money ("**e-money**") and central bank digital currencies.

In order to ensure coherence between the Luxembourg framework for DAC8 and DAC2 (i.e. the CRS), the Law introduces clarifying provisions designed to guarantee that reporting obligations applicable to financial institutions equally apply where such institutions perform activities as crypto-asset service providers.

Furthermore, the amendments seek to eliminate any risk of duplicate reporting by preventing situations in which a single transaction would otherwise be reportable under both the DAC8 and the DAC2 regimes. To this end, the definitions of "financial account" and "investment entity" are revised to expressly include digital financial products.

Amendment to the DAC6 law in relation to the professional secrecy of intermediaries

To comply with the judgement of the Court of Justice of the European Union of 8 December 2022 in case C-694/20, Orde van Vlaamse Balies, the Law introduces the necessary adjustments to the law dated 25 March 2020 on reportable cross-border arrangements, the so-called "DAC6 law", to better respect lawyers' professional secrecy.

The Law provides that:

- Lawyers acting as intermediaries are no longer required to notify other intermediaries (who are not their clients)

about their DAC6 reporting obligations.

- However, these lawyers must still inform their own clients about any applicable reporting duties.
- Other intermediaries (e.g. tax advisors, consultants) who benefit from a professional secrecy exemption must continue to notify:
  - Other intermediaries (even if they are not clients), or
  - The relevant taxpayer, if no other intermediary is involved.

Amendment to the DAC7 law reducing the volume of data to be transmitted

Regarding the automatic exchange of information by digital platform operators introduced by the law dated 16 May 2023 on automatic exchange of information for digital platform operators, the so-called "DAC7 law", the main amendment proposed by the Law involves reducing the volume of data to be transmitted when a platform operator subject to DAC7 reporting obligations can rely on direct confirmation of a seller's identity and tax residence through an identification service.

Country-by-country reporting

Regarding the amended law of 23 December 2016 on country-by-country reporting ("**CbCR**"), targeted adjustments are being introduced, notably to provide for the collection and communication of the TIN for each constituent entity, where such number has been assigned by a jurisdiction.

Conclusion

The adoption of Luxembourg's DAC8 implementing law marks a decisive regulatory step forward to strengthen its tax transparency framework that businesses – particularly financial institutions, digital asset players and compliance functions – cannot ignore.

For businesses operating in or through Luxembourg, the Law significantly raises the bar on reporting, governance and data management expectations. Crypto-asset service providers face the most immediate operational impact: the Law brings them into a reporting environment that mirrors, in complexity and scrutiny, long-established regimes such as the CRS. This entails:

- New onboarding and KYC processes,
- Stronger ongoing due diligence requirements,
- Mandatory system upgrades for multi-currency valuation and transaction tracking, and
- Increased regulatory interaction with both the CSSF and the ACD.

Traditional financial institutions are not spared either. The alignment of the CRS with evolving OECD standards – including coverage of e-money, Central Bank Digital Currencies and digital financial products – means that even established reporting processes require reassessment and adaptation, especially where digital asset activities are involved.

At the same time, the Law provides welcome simplifications, notably the mechanisms to avoid duplicate reporting across jurisdictions and frameworks. When leveraged effectively, these can offer efficiency gains and limit unnecessary administrative burdens for multinational operators.

Businesses that invest now in robust reporting infrastructure, data governance and cross framework harmonisation will not only reduce compliance risk but also strengthen their operational resilience as digital asset regulation continues to evolve globally.

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Luxembourg District Court confirms the application of VAT penalties regardless of fraudulent intent

OUR INSIGHTS AT A GLANCE

- On 5 February 2026, the Luxembourg District Court issued a key judgement on the application of administrative VAT penalties under Article 77(3) of the Luxembourg VAT Law (LVL).
- In its ruling, the Court notably:
  - clarifies that this provision does not require proof of fraudulent intent where a VAT infringement results in an undue VAT deduction.
  - confirms the distinction between formal VAT infringements subject to fixed penalties and substantive infringements subject to proportional penalties.
  - confirms that errors attributable to external service providers do not shift liability away from the taxpayer, as VAT compliance remains the taxpayer's sole responsibility.
- This decision may pave the way for a stricter approach by the AEDT in the application of VAT penalties and is relevant to all Luxembourg VAT taxpayers.
- This article analyses the judgement, clarifies the scope of Article 77 of the Luxembourg VAT Law on penalties and highlights key points of attention for Luxembourg VAT taxpayers.

On 5 February 2026, the Luxembourg District Court delivered a significant judgement confirming the applicability of administrative VAT penalties under Article 77(3) of the Luxembourg VAT Law ("**LVL**"). This decision clarifies the scope of the penalties provided for in Article 77 of the LVL and confirms the Luxembourg VAT authorities' ("**AEDT**") position with respect to the application of penalties.

Background of the case

A Luxembourg company opted for VAT on the lease of several buildings and, as a result, deducted input VAT incurred on related investment costs. However, part of these buildings was subsequently leased to a public body that no longer met the requirements for the VAT option.

This change of use triggers an obligation to adjust the input VAT previously deducted and to repay the related VAT to the Treasury. However, the company failed to notify the AEDT and did not perform the required VAT adjustments.

Following a VAT audit, the AEDT concluded that the company had unduly deducted a VAT amount of approximately EUR 4.83 million.

As a result, the AEDT imposed an administrative penalty of EUR 725,000, corresponding to 15% of the VAT at stake, pursuant to Article 77(3) of the LVL.

The company challenged the penalty applied by the AEDT before the Luxembourg District Court, without challenging the underlying VAT adjustment linked to the input VAT unduly recovered. The company's main arguments were (i) the absence of fraudulent intent and (ii) the fact that the irregularities were attributable to its external provider.

Brief overview of statutory penalties

The LVL provides various types of penalties, the most notable of which are the following:

- Article 77(1): A penalty ranging from EUR 250 to EUR 10,000 per infringement applies to formal VAT breaches (late registration, incorrect VAT mentions on invoices, etc.);
- Article 77(3): A penalty ranging from 10% to 50% of the VAT amount evaded or the VAT refund unduly obtained applies, regardless of whether the taxpayer intended this outcome.

Is a fraudulent intent required under Article 77(3) of the LVL?

In this regard, the Court held that the penalty applies where a VAT infringement results in the avoidance of VAT payment or the obtaining of an undue VAT deduction, irrespective of whether this outcome was intended by the taxpayer. Any infringement carried out with the purpose or effect of evading VAT is subject to penalties under Article 77(3) of the LVL.

The Court's position merely confirms that the wording of the LVL is clear and that the absence of intent does not preclude the application of the penalty. The decisive element is the effect, irrespective of any intent. The effect, or result, of the infringement is, in itself, sufficient to trigger a tax penalty.

In the case at hand, the District Court confirmed the 15% penalty applied by the AEDT to the company and ruled that there was no need to refer the matter to the Constitutional Court.

No liability shift to external service providers

The company also argued that the irregularities were due to the negligence of its external accounting service provider.

The District Court also rejected this argument, explicitly stating that any fault of a service provider is attributable to the taxpayer. The taxpayer's liability cannot be waived merely because its provider made errors in the VAT returns, as compliance with VAT obligations remains solely the responsibility of the taxpayer.

Practical implications for Luxembourg VAT taxpayers

The present decision raises important considerations and points of attention for Luxembourg taxpayers:

- historically, Article 77(3) of the LVL does not appear to have been applied frequently, nor to have constituted a general or automatic approach adopted by the VAT authorities in cases where VAT was unduly deducted or refunded;
- in the context of recent VAT audits, we have observed an increasing focus on the potential application of penalties, with the involvement of the AEDT Direction required to decide on their imposition;
- closer monitoring of VAT compliance obligations and deduction methodologies should therefore be prioritised by taxpayers, given that significant penalties may be imposed even in the absence of fraud or intentional wrongdoing.

Key takeaway

This judgement confirms the clarity of the law and reinforces the stricter approach adopted by the VAT authorities in the application of penalties. It highlights the importance for taxpayers of implementing robust internal VAT governance procedures and ensuring full compliance with the LVL.

Indeed, a lack of fraudulent intent will not shield taxpayers from significant penalties.

How we can help

A review of VAT procedures, organisational structures and deduction methodologies can assist taxpayers in navigating VAT matters and mitigating the associated risk of penalties.

We remain available to discuss the potential impact of this judgement on your Luxembourg VAT position.

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SARL incorporation under Draft Law 8669: Legislative simplifications and AML/KYC implications

OUR INSIGHTS AT A GLANCE

- On 16 December 2025, the Luxembourg government submitted a draft law to Parliament proposing amendments to the Law of 10 August 1915 on commercial companies.
- The draft law allows the deferred payment of the statutory minimum share capital of a SARL for up to twelve months following incorporation, with certain limitations.
- The reform maintains existing AML/KYC and notarial requirements and introduces liability, transparency and enforcement mechanisms to protect creditors.
- This article focuses on the key changes proposed by the draft law.

On 16 December 2025, the Luxembourg government submitted a draft law to Parliament proposing amendments to the Law of 10 August 1915 on commercial companies (the "**Draft Law**").

The aim of the Draft Law is to authorise the deferred payment of the statutory minimum share capital of *sociétés à responsabilité limitée* ("**SARL**") for up to twelve months following their incorporation. The proposed reform is intended to modernise Luxembourg's corporate framework and make it more adaptable to the needs of businesses, particularly during the early stages of their development when liquidity constraints may arise.

Nevertheless, the reform does not affect existing anti-money laundering and counter-terrorist financing controls carried out at the time of incorporation, nor the existing requirements relating to notarial verification.

Background

Currently, the incorporation of a Luxembourg SARL requires a minimum share capital of EUR 12,000 which must be fully subscribed and fully paid up at the time of incorporation. This requirement, rooted in the 1933 law introducing the SARL into Luxembourg company law, is no longer considered aligned with present-day business needs. In practice, the obligation to fully pay up the capital prior to incorporation, except in cases of contribution in kind, requires the opening of a bank account before the company is formed, a process that may be significantly delayed due to regulatory verification procedures.

According to the parliamentary documents, this requirement may adversely affect the competitiveness of Luxembourg as a financial centre, in particular where transactions need the rapid incorporation of a vehicle. The reform also seeks to align the Luxembourg regime more closely with the flexibility already available in certain other European jurisdictions and under Directive (EU) 2017/1132 relating to certain aspects of company law, which does not impose a minimum pay-up requirement for private limited liability companies.

Key changes to be introduced

Minimum share capital payment deferral

The Draft Law maintains the requirement that the share capital be **fully subscribed** at incorporation but introduces the **possibility to defer the payment**, in whole or in part, of the minimum share capital in cash for a period of **up to twelve months** from incorporation. The articles of association or the incorporation deed may provide for a shorter payment period.

Founders will therefore be able either to pay up the full amount upon incorporation or to defer payment within the statutory time limit of twelve months from the date of incorporation. This flexibility, subject to any shorter deadline set out in the company's constitutive documents, allows payment timing to be aligned with the company's early-stage liquidity needs.

Contribution in cash vs. contribution in kind and capital increases

The deferred payment option **applies only to the statutory minimum share capital of EUR 12,000**. Any share premiums, as well as any **portion of the capital exceeding the statutory minimum**, must be fully paid at the time of incorporation and **contributions in kind** must continue to be fully paid at incorporation.

The justification for restricting deferral to the minimum share capital is open to question, as a company capable of opening a bank account and depositing amounts above the statutory minimum would seemingly have little incentive to defer payment of the minimum capital.

As deferred payment will only be permitted for contributions in cash corresponding to the statutory minimum share capital, **shares issued post-incorporation** must be fully paid upon issuance, including any related share premiums.

Liability for the unpaid amount

The Draft Law introduces a liability regime largely inspired by that applicable to public limited liability companies (*sociétés anonymes*). Founders and any subsequent shareholders, will be jointly and severally liable towards all interested parties, specifically for ensuring the valid subscription of the share capital of the SARL and its effective payment, including amounts not settled within the twelve-month deferral period. This liability is a matter of public policy: no statutory provision may derogate from it.

According to the Draft Law, in the case of a transfer of shares, the transferring shareholder retains a joint and several right of recourse against the transferee and any subsequent transferees for the unpaid capital amount. This means that if shares are transferred while there is still an unpaid amount on them, the seller (the transferring shareholder) does not lose responsibility for that unpaid amount. Instead, the seller has a joint and several right of recourse against the buyer (the transferee) and any later buyers of those shares.

Concretely, this implies that:

- the company (or creditors, if applicable) can still ultimately look to the original shareholder if the unpaid capital is not settled; and
- the original shareholder may in turn claim reimbursement from the transferee (and any subsequent transferees), even though the shares have already changed hands.

These liability provisions reflect the Luxembourg legislator's emphasis on capital integrity and creditor protection. In practice, this mechanism ensures continuity of liability along the chain of ownership and encourages careful due diligence in share transfers involving partially paid-up capital.

Third parties' protection

To safeguard third parties, the Draft Law introduces additional transparency and liability mechanisms relating to shares that are not fully paid up. In particular, the Draft Law requires the publication, together with the company's balance sheet, of a list of shareholders who have not yet fully paid up their shares, together with the amounts still owed. This ensures that all unpaid contributions are publicly recorded, ensuring the protection of third parties' interests as well as the company.

Penalties for non-payment of subscribed share capital

Where the amounts due in respect of subscribed shares are not paid once they have been duly called by the company's management (gérance), the exercise of the voting rights attached to those shares will be suspended for as long as the payments remain outstanding. These voting rights will be reinstated once the required payments have been made in accordance with the statutory and contractual terms.

This measure is intended to ensure compliance with the obligation to pay the subscribed capital within the applicable timeframe and reinforces legal certainty for the company and third parties. The suspension applies to the shares concerned and therefore affects the shareholder holding those shares, whether that person is the original subscriber or a subsequent transferee.

Simplified SARLs

The Draft Law finally confirms that the deferred payment mechanism for cash contributions applies equally to

simplified SARLs, notwithstanding the specific rules governing their share capital.

A simplified SARL has a share capital ranging from EUR 1 to EUR 12,000. As the maximum share capital of a simplified SARL is capped at EUR 12,000, the deferred payment mechanism applies to the entire amount of the subscribed capital at incorporation. Consequently, no practical difficulties should arise from the application of this mechanism.

Timing

Although the Council of State has already reviewed the Draft Law once and generally endorsed the proposed reform – highlighting in particular its potential to strengthen Luxembourg's competitiveness as a financial centre – the introduction of amendments to the initial text now requires the Draft Law to undergo a second review by the Council of State.

Once this is done and no formal opposition is raised by the Council of State, the Draft Law will follow the legislative process and should be put on the agenda of the Parliament to be voted upon before the end of the year.

Once passed, the law will enter into force on the fourth day after its publication in the Luxembourg Official Journal (i.e. the Mémorial) and will apply to companies incorporated as from that date.

Conclusion

The introduction of the deferred payment mechanism represents a welcome and pragmatic step for Luxembourg, as it lowers entry barriers for company formation and enhances the flexibility of its corporate law framework, particularly for early-stage ventures facing liquidity constraints.

This reform may be regarded as an encouraging first step towards a more comprehensive modernisation of the Luxembourg legal framework. In order to further strengthen the attractiveness of its financial centre, the legislator now has an opportunity to build on this momentum by subsequently addressing structural challenges such as the speed of company registration and the full digitalisation of processes.

Drawing inspiration from innovative models such as the European Commission's "EU Inc." proposal, which advocates a "digital-by-default" framework and incorporation within 48 hours, Luxembourg could complement these adjustments to position itself as a natural leader for startups and scale-ups. Such developments would enable Luxembourg SARLs to remain a leading strategic choice in the face of increasing competition among EU jurisdictions for entrepreneurial activity.

Questions?

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The UAE's framework for Advance Pricing Agreements

OUR INSIGHTS AT A GLANCE

- On 30 December 2025, the UAE Federal Tax Authority issued its first comprehensive Corporate Tax Guide on Advance Pricing Agreements (APA).
- This Guide outlines the legislative basis, objectives and scope of the UAE's APA programme, the types of APAs available, eligibility criteria and materiality thresholds and the procedural stages from pre-filing consultation to conclusion.
- The Guide also describes compliance obligations, fees, timelines and the phased implementation of unilateral, bilateral and multilateral APAs.
- This article describes the UAE's APA framework as well as its practical benefits and strategic considerations for businesses.

Background and legislative framework

On 30 December 2025, the UAE Federal Tax Authority ("**FTA**") issued its first comprehensive Corporate Tax Guide on Advance Pricing Agreements (the "**Guide**"). This publication represents a significant development in the UAE's transfer pricing ("**TP**") and corporate tax landscape. It establishes a formal mechanism through which taxpayers may obtain prospective certainty on the determination of arm's length pricing ("**ALP**") for controlled transactions conducted with Related Parties[6] and Connected Persons. The issuance of the Guide demonstrates the UAE's commitment to enhancing TP governance, reducing tax controversy and aligning its tax system with internationally recognised best practices.

TP requirements have expanded rapidly since 2022, following the introduction of Federal Decree Law No. 47 of 2022 on the Taxation of Corporations and Businesses (the "**Corporate Tax Law**"). This legislation formally embedded the ALP and created TP documentation obligations aligned with OECD standards. Article 59 of the Corporate Tax Law provides the statutory basis for the APA mechanism, allowing taxpayers to agree in advance with the FTA on the pricing criteria applicable to complex or material controlled transactions. The Guide, issued on 30 December 2025, operationalises this framework.

An APA constitutes a binding arrangement between a taxpayer and the FTA covering proposed or existing controlled transactions over a predetermined period. While the Guide does not carry legal force, it reflects the FTA's intended administrative practice and provides taxpayers with clear guidance on accessing, applying for and maintaining an APA. The regime is voluntary, applies only on a prospective basis and is designed to enhance tax certainty, mitigate double-taxation exposure and limit the likelihood of lengthy TP disputes.

By introducing a robust, procedural APA framework consistent with OECD practice, the UAE strengthens its overall tax transparency and reinforces the development of its maturing corporate tax regime. For multinational groups and large domestic enterprises, the APA programme provides a structured and reliable method for securing advance certainty on related-party pricing methodologies.

Purpose of the APA programme

The APA programme has been established to support the

[6] All terms in capital letters that are not defined in this article shall be interpreted as defined under the UAE corporate tax laws

Corporate Tax Law by offering a forward-looking mechanism through which TP outcomes can be agreed in advance with the FTA. Its purpose is fourfold.

- First, the programme enhances prospective certainty by allowing taxpayers and the FTA to pre-agree on TP methodologies for complex or high-value controlled transactions. This reduces the risk of TP adjustments on audit and significantly improves predictability in tax outcomes.
- Second, it facilitates cooperative engagement between taxpayers and the FTA. The APA process requires early dialogue and transparent disclosure, thereby fostering a more collaborative compliance framework.
- Third, the programme contributes to the prevention of double taxation, particularly when bilateral or multilateral APAs become accessible. By avoiding inconsistent TP adjustments across jurisdictions, APAs reduce administrative burdens and the risk of cross-border tax disputes.
- Finally, the programme promotes regulatory alignment as the UAE continues to transition to a fully regulated and OECD-aligned corporate tax environment. APAs support businesses in adapting to these evolving requirements by providing stability and certainty.

What is an APA?

An APA is a formal agreement between a taxpayer and the FTA that establishes the TP methodology and ALP criteria to be applied to specific Controlled Transactions for a period typically spanning three to five Tax Periods. APAs apply only on a prospective basis and, during the initial implementation phase, do not allow for rollback to prior periods.

An APA must set out, in clear terms, the parties involved, the Controlled Transactions covered, the Tax Periods to which the agreement applies, the applicable TP methodology, the critical assumptions underpinning the agreement and any implementation or documentation requirements.

Three types of APAs are recognised:

a. Unilateral APA ("UAPA")

A UAPA is concluded solely between the taxpayer and the FTA and applies to both domestic and cross-border Controlled Transactions[7]. It is binding only on the taxpayer and the FTA and has no effect on foreign tax authorities.

b. Bilateral APA ("BAPA")

A BAPA is agreed between the FTA and a foreign competent authority through the Mutual Agreement Procedure ("**MAP**"). This provides tax certainty in both jurisdictions involved.

c. Multilateral APA ("MAPA")

A MAPA involves more than two competent authorities and is suited to complex multinational arrangements where multiple jurisdictions are implicated.

Eligibility and materiality threshold

APAs are available to Persons[8] entering into domestic or cross-border related-party transactions where material uncertainty exists. These include transactions involving complex structures, arrangements historically subject to audit scrutiny or high-risk TP exposures. Transactions that already benefit from safe harbour treatment, such as low-value-added intra-group services, fall outside the scope of the APA programme.

The APA programme incorporates a materiality threshold of AED 100 million in total Controlled Transactions per Tax Period. This threshold applies at the Tax Group level where relevant. Although the threshold functions as an important indicator of significance, it is not an absolute rule. Taxpayers with transactions below the threshold may nonetheless apply, provided they present a robust justification explaining why certainty is required.

The FTA retains discretion to accept or reject applications based on perceived complexity, factual clarity and overall TP risk – regardless of whether the threshold has been met.

APA process

The APA process comprises four structured stages, each of which is governed by the procedural requirements set out in the APA Guide. Depending on the complexity of the covered transactions, the overall process may extend from several months to more than a year.

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7 Domestic Controlled Transactions that may be covered under a UAPA include, but are not limited to, the following Controlled Transactions undertaken: 1) by a Qualifying Free Zone Person with a Person based in mainland or vice versa, 2) by a Business or Business Activity of a Government Entity, 3) by a Business or Business Activity of a Government Controlled Entity that is not its Mandated Activities, 4) between an Extractive Business and another Business of such Person, or 5) between a Non-Extractive Natural Resource Business and another Business of such Person.

8 Any natural person or juridical person

Stage 1 – Pre-filing consultation

The pre-filing consultation is mandatory. During this phase, the taxpayer and the FTA examine the suitability and potential scope of the APA. This stage may involve a pre-filing meeting and a review of relevant documentation. The consultation typically takes six to nine months, contingent on timely submission of information by the taxpayer.

This stage requires the parties to assess the proposed TP methodology, relevant factual complexity, history of prior APAs or disputes and potential critical assumptions. The FTA must complete this consultation before authorising the taxpayer to proceed to a formal application.

Stage 2 – APA application

Once pre-filing approval is granted, the taxpayer must submit the formal APA application within two months of the FTA's notification or at least twelve months before the first covered Tax Period. The application must include comprehensive TP documentation, economic analyses and the critical assumptions supporting the proposed methodology.

Critical assumptions – such as economic conditions, business model stability, availability of reliable comparables and continuity in the nature of the transactions – must be clearly defined. Should these assumptions materially change, the APA may require revision, suspension, cancellation or renewal, depending on the circumstances.

Stage 3 – Evaluation and negotiation

During this stage, the FTA conducts a detailed evaluation, which may include a review of the TP analysis, interviews with key personnel, site visits and engagement of external experts. The taxpayer is required to provide written comments on the FTA's TP analysis within 30 Business Days. If the parties cannot reach agreement, the APA process may be closed without refund of fees.

Stage 4 – Conclusion and implementation

If agreement is reached, the APA is formally signed by the taxpayer and the FTA. The taxpayer must then adhere to the agreed methodology and fulfil all compliance and documentation requirements throughout the APA term.

Concluding an APA and its legal effect

Once concluded, an APA is binding for the specified Tax Periods, provided the taxpayer fully complies with all terms and conditions. Although binding on the parties, it does not establish precedent for other taxpayers or other Tax Periods. Withdrawal is possible but discouraged. Where full compliance is observed, the FTA will not challenge the ALP or the TP method for covered transactions.

Compliance obligations under an APA

Taxpayers maintaining an APA must apply the agreed TP method consistently, retain appropriate TP documentation, submit annual compliance declarations and notify the FTA of any material changes affecting the critical assumptions.

An APA Annual Declaration must also be filed for each covered Tax Period. The Declaration must confirm that all critical assumptions remain valid, the agreed TP methodology has been consistently applied and the ALP has been correctly reflected in the audited Financial Statements (or relevant adjustments have been properly recorded). The FTA may review the Declaration and initiate revision, cancellation or revocation of the APA in cases of non-compliance.

Revision, cancellation or revocation

An APA may be revised or cancelled where changes in law, business restructuring or invalidated assumptions render the terms no longer appropriate. Revocation applies in more severe cases, including material misrepresentation, non-compliance with APA terms or breach of critical assumptions.

Renewal of an APA

A renewal request may be submitted at least three months prior to the expiry of an existing APA, provided no material changes have occurred and the critical assumptions remain valid. Updated supporting documentation must accompany the renewal request. A pre-filing consultation is not required for renewals.

Fees

The APA process carries the following fees:
- AED 30,000 for an initial application
- AED 15,000 for renewal

These fees are non-refundable.

Timeline

The UAE APA programme is being launched in phases:

Phase I – Unilateral APAs (UAPAs)

The initial phase of the UAE APA programme is limited

to Unilateral APAs, enabling taxpayers to obtain advance certainty on domestic controlled transactions from December 2025. This first stage allows the FTA to build experience, refine procedures and ensure consistency before expanding to more complex cross-border cases. The regime is expected to be extended to cross-border UAPAs in the course of 2026 and businesses with significant international related-party flows should already begin assessing their structures and preparing for future applications.

Future phases – Bilateral and Multilateral APAs

Subsequent phases will introduce Bilateral and Multilateral APAs through the MAP framework. These mechanisms will be particularly valuable for groups seeking coordinated TP certainty across multiple jurisdictions. Their rollout will depend on the FTA's administrative readiness and cooperation with treaty partners and no implementation timeline has yet been announced. Businesses with cross-border exposure should monitor developments closely and prepare to engage early once applications become available.

Benefits and strategic considerations for businesses

The APA programme delivers several tangible advantages for taxpayers. It offers enhanced tax certainty, particularly relevant for complex business models or transactions involving significant TP risk. By preventing inconsistent TP adjustments, APAs reduce the likelihood of double taxation, especially once bilateral arrangements become available.

In practice, businesses considering an APA should begin by assessing whether their TP risk profile justifies entering into the programme. This feasibility assessment should take into account the nature, scale and complexity of their controlled transactions, as well as any historical exposure to TP audits or disputes. An APA is most effective where material uncertainty exists and where advance certainty will meaningfully reduce tax risk.

Once a business determines that an APA may be appropriate, it should prepare thoroughly for the pre-filing stage. This preparation requires the consolidation of transaction-level data, the development of robust functional analyses, the identification of potential TP methodologies and the availability of comparables.

Businesses should also strengthen their internal TP governance framework. Because an APA demands consistency across tax, finance and legal functions, internal controls must be calibrated to ensure that the agreed methodology can be implemented and sustained throughout the term of the agreement. This includes ensuring that systems, intercompany agreements and reporting processes can support the commitments made to the FTA.

Although the initial phase of the UAE programme applies only to domestic transactions, groups with cross-border arrangements should already be planning for the introduction of bilateral APAs. Cross-border structures often carry heightened TP exposure and early strategic planning will place taxpayers in a stronger position once the FTA opens applications for bilateral and multilateral agreements.

Finally, businesses should review and update their TP documentation frameworks. Supporting analyses must align with OECD standards and be capable of withstanding scrutiny by the FTA. High-quality documentation will not only facilitate a smoother APA process but will also reinforce the organisation's broader tax governance posture.

Conclusion

The introduction of the APA programme represents a transformational development in the UAE's tax landscape. It offers a robust mechanism for businesses to secure TP certainty, manage audit risks and align with the UAE's rapidly maturing regulatory environment.

With high thresholds and a rigorous application process, APAs are best suited for large corporate groups and complex transactions, but their benefits – in terms of stability, predictability and dispute avoidance – are substantial.

Businesses operating in the UAE should proactively assess their eligibility and consider early engagement with the FTA to capitalise on the opportunities presented by the new APA framework.

Questions?

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