

Tax Changes!

How do the Real Estate Structures
in Luxembourg prepare themselves?



Agenda

18:30_ Welcome by Vincent Bechet and Emmanuelle Ramponi;

18:50_ **Tax subject matter experts:**

Ariane Brohez - Partner at Loyens & Loeff

Jochem van der Wal - Partner at Loyens & Loeff

Antoine Badot - Partner at KPMG

Dirk Koch - Partner at GSK

19:20_ **Panel discussion:**

Eulalie Briquet - Tax manager at BNP Paribas Real Estate Investment Management

Sven Andersen - Partner at FREO Group and Chief Financial Officer

Alan Picone - Partner Advisory & Consulting Solutions at KPMG Luxembourg

Moderator: Konstanze Ziegler - Tax Partner at KPMG Luxembourg

19:50_ Closing speech

20:00_ Cocktail reception



Tax subject matter experts

Ariane Brohez - Partner at Loyens & Loeff

Jochem van der Wal - Partner at Loyens & Loeff



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ITS / REAL ESTATE

Mandatory Disclosure Directive

LuxReal, 4 December 2018

28936347

- The Directive obliges intermediaries (or taxpayers) to report information on:
 - **potentially** aggressive tax planning arrangements with a cross-border dimension; and
 - arrangements designed to circumvent reporting requirements like the CRS and UBO reporting.
- The term "**reportable cross-border arrangement**" ('RCBA') means any cross-border arrangement that contains at least **one of the hallmarks** (i.e. **potential** aggressive tax feature) set out in Annex IV to the Directive.
 - It suffices that an arrangement fall within the scope of one of those to be treated as reportable to the tax authorities.
 - The so-called generic hallmarks and some of the specific hallmarks apply only if the main benefit is satisfied.
 - This will be the case if it can be established that **the main benefit** or one of the main benefits which having regard to all relevant facts and circumstances, a person may be reasonably expect to derive from an arrangement **is the obtaining of a tax advantage**.
 - The reporting is **mandatory** despite national practices or anti-abuse rules.
- Who is potentially affected?
 - All intermediaries, especially lawyers, civil law notaries, accountants, bankers, tax advisors, consulting firms, family offices, trust companies, business agents, etc.
 - In certain circumstances, obligations to report shift to the taxpayer
- Penalties in case of non-compliance should be effective, proportionate and dissuasive.

Overview Hallmarks listed in the Directive

Generic hallmarks linked to m.b.t.

Specific hallmarks linked to m.b.t.

Hallmarks related to cross-border transactions

Hallmarks concerning the automatic exchange of information and BO

Hallmarks concerning TP

Participant agrees with condition of confidentiality not to disclose how the arrangement could secure a tax advantage

Acquiring a loss-making company, discontinuing its core business and using the losses to reduce the tax liability

Deductible payments between associated enterprises to tax jurisdictions which are included in the EU list of non-cooperative third-country jurisdictions

Deductible payments between associated enterprises where the recipient is not resident for tax purposes in any jurisdiction

An arrangement which may undermine the reporting obligation or any equivalent agreements on the automatic exchange of financial account information

Transfer of hard-to value intangible assets

Intermediary is entitled to receive fixed fee linked to (the amount of) the tax advantage derived

The conversion of income into another category of revenue taxed at lower level or exempt

Depreciation on same asset in multiple jurisdictions

An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures where the BO is made unidentifiable.

Use of unilateral safe harbour rules

Providing advice that has been standardised and made available to more than one taxpayer without a need for significant customisation

Use of linked companies or entities with no substance and with circular transactions taking place between them

Relief from double taxation on the same income or capital in more than one jurisdiction

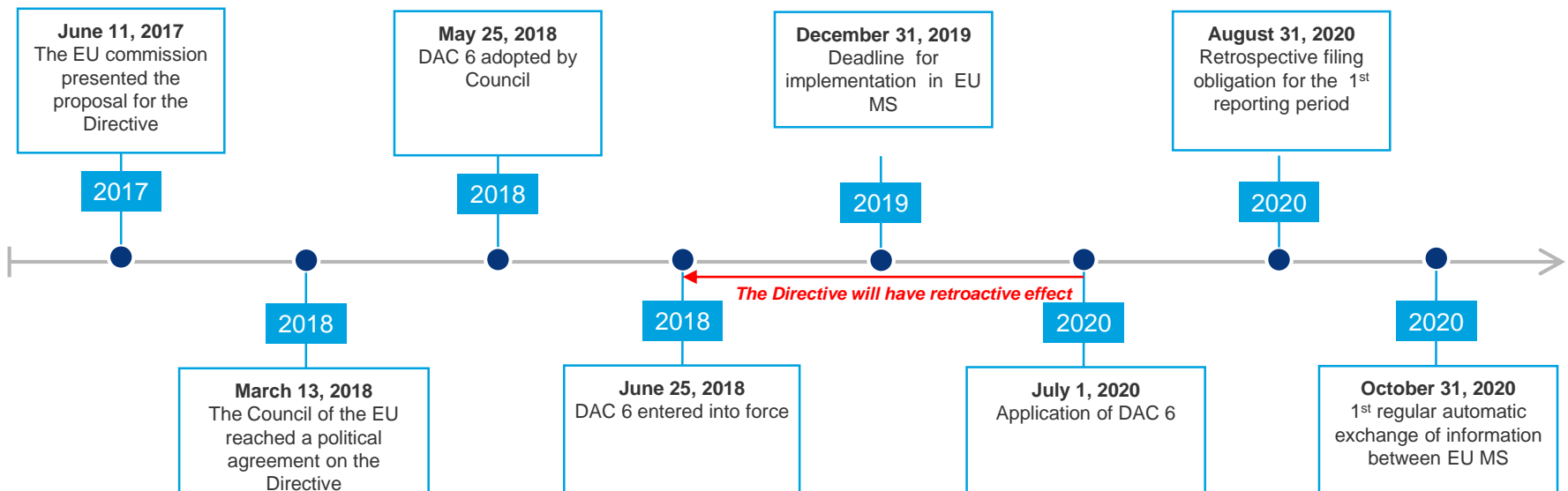
Intra-group cross-border transfer of functions/risks/assets subject to EBIT-test of transferor

Deductible payments between associated enterprises to tax jurisdictions with no corporate tax or zero or almost zero rates

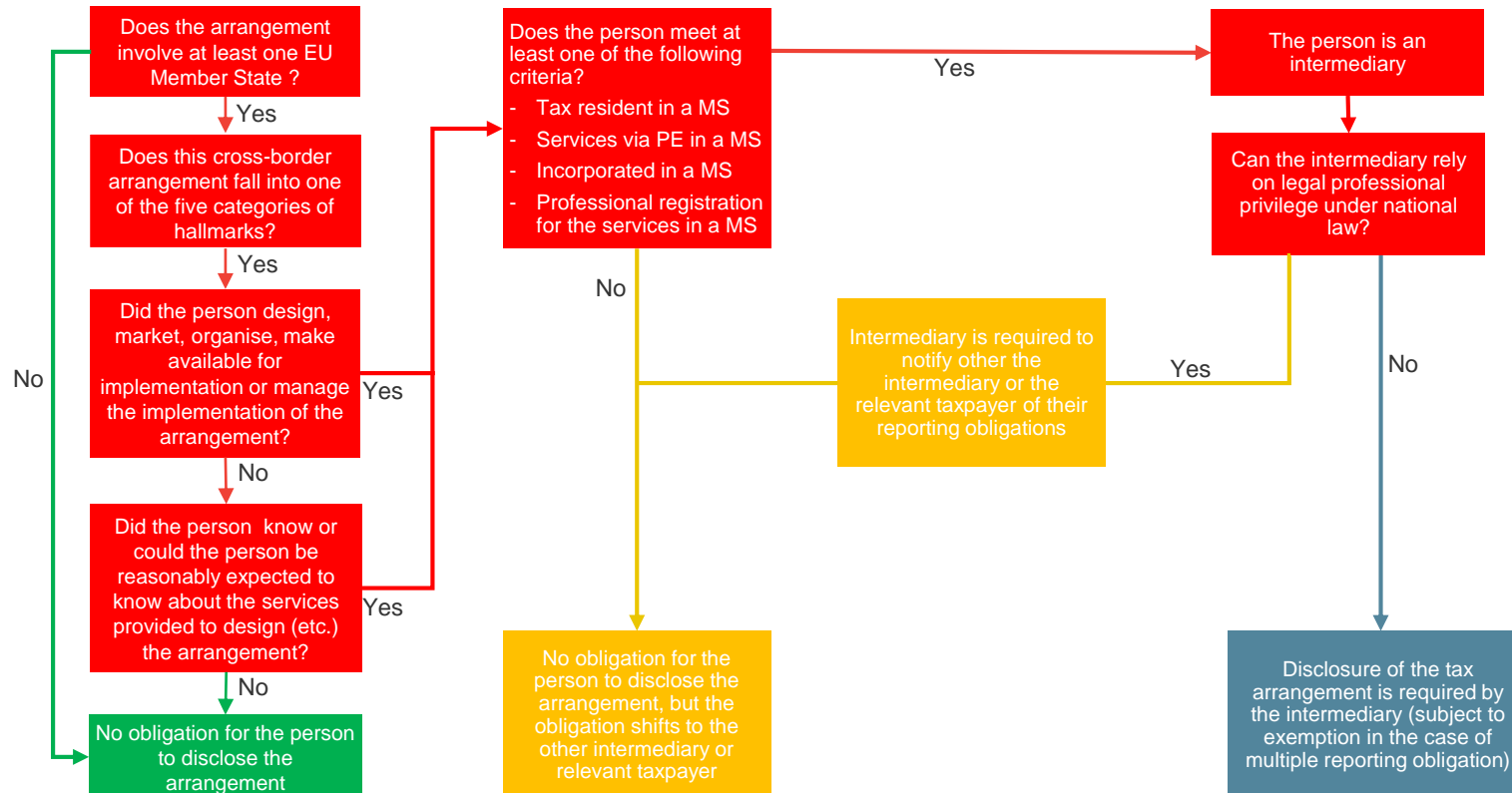
Deductible payments between associated enterprises is given a full tax exemption or benefits from a preferential tax regime in the jurisdiction where the recipient is tax resident

In transfers of assets across borders, there is a material difference in the amount treated as payable for these assets in the jurisdictions involved

What is the timeline?



Reporting obligations flowchart



Which information to communicate ?

The information to be communicated contain the following:

- a) identification of intermediaries, relevant taxpayers and where appropriate the persons that are associated enterprises to the relevant taxpayer;
- b) details of the relevant hallmarks;
- c) summary of the content of the arrangement;
- d) date of first step of implementation;
- e) details of the national provisions forming the basis of the arrangement;
- f) value of the arrangement;
- g) member States involved in the arrangement;
- h) identification of any other person in a Member State likely to be affected by the arrangement.

No tacit acceptance of the validity or tax treatment of the arrangement if the BTA does not react further.

- Any kind of taxes, except indirect taxes and social security
- Any kind of intermediary with EU nexus
- Also relevant taxpayers (second line)
- One month rule to communicate the Tax Authorities
- Full disclosure of information
- Likely harsh penalties
- Cross-border : min. two MS or one MS and third country
- Reporting mandatory despite national practices or anti-abuse rules
- Increased compliance and awareness



Ariane Brohez

Partner (Brussels)

Real Estate and Real Estate Taxation

Ariane Brohez (1978) is a member of the Real Estate Practice Group.

Ariane has a broad practice of counselling in real estate transactions and taxation. Ariane has particular experience in structuring real estate funds, real estate investments (acquisitions, disposals) and real estate financing. She assists clients in real estate transactions (portfolios, share deals, sale & lease back, (re)financing), negotiating deals from initial offer or term sheet to closing, and advising on all tax, regulatory and legal aspects. Ariane also specialises in Belgian corporate tax law and withholding taxes, incl. international tax developments and GAAR, as well as in (the compliance of domestic legislation with) European tax law and Constitutional tax law.

Ariane has been a member of the Brussels Bar (since 2001), of the International Bar Association (since 2008) and of the International Fiscal Association (since 2014).

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Jochem van der Wal

Partner (Luxembourg)

International Tax Services

Jochem van der Wal (1972), tax adviser, is a member of the International Tax Services group.

Other than general Luxembourg and international tax matters, his particular areas of expertise are (international) corporate taxes aspects, tax aspects associated to listed and alternative investment and real estate funds and Iberian peninsula markets. Jochem was previously based in the Amsterdam and London offices on an alternating basis.

Jochem is admitted to the bar of Amsterdam, and he is a member of the Dutch and Amsterdam Bar Associations, the Netherlands Association of Tax Advisers (NOB) and the International Fiscal Association (IFA).

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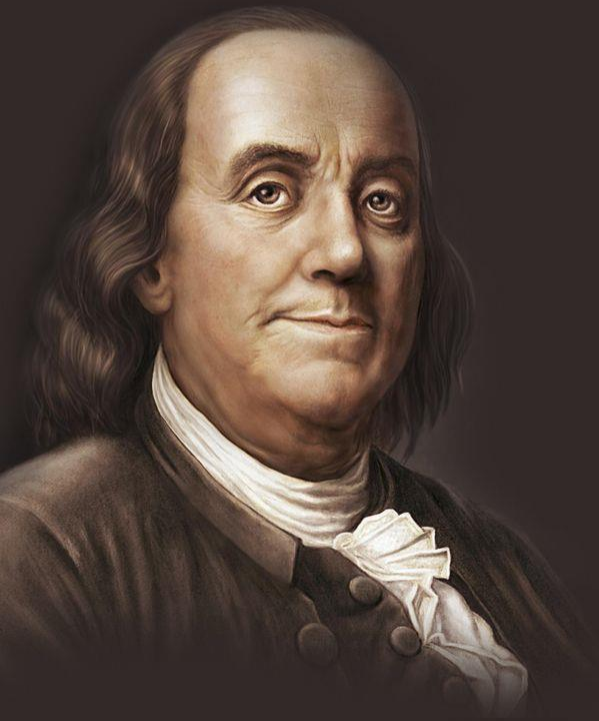
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Tax subject matter experts

Antoine Badot - Partner at KPMG



In this world
nothing is certain
but death and taxes.

Benjamin Franklin

PictureQuote.me

Anti – BEPS plan of the OECD: Final reports released on (5 October 2015)



BEPS - Background

Minimum Standards	<p>Harmful Tax Practices (5)</p> <p>Preventing Tax Treaty Abuse (6)</p> <p>Country-by-Country reporting and Transfer Pricing Documentation (13)</p> <p>Dispute Resolution (14)</p>
Revision of existing standards	<p>Avoidance of Permanent Establishment Status (7)</p> <p>Aligning Transfer Pricing Outcomes with Value Creation (8-10)</p>
Common approach / Best practices	<p>Hybrid Mismatch Arrangements (2)</p> <p>Interest Deductions (4)</p> <p>CFC Rules (3)</p> <p>Disclosure Rules (12)</p>
Multilateral instrument (15)	



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The Anti-Tax Avoidance Directive (‘ATAD 1’) *

*BEPS and...
measures*



non-BEPS related



* COUNCIL DIRECTIVE (EU) 2016/1164 of 12 July 2016

** Measure to be replaced by ATAD 2 (hybrid mismatches intra-EU and with third countries) as from 2020

Implementation of ATAD 1 and 2 - timeline



19 June 2018
Release of the bill for the
ATAD 1 transposition

1 January 2019
General application of
ATAD 1 provisions (except
exit tax)

2019
Expected release of a bill
for the transposition of
ATAD 2

1 January 2020
General application of
ATAD 2 provisions (except
reverse hybrid rules)

Application of exit taxation
rules of ATAD 1

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this...



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Tax subject matter experts

Dirk Koch - Partner at GSK

GSK STOCKMANN

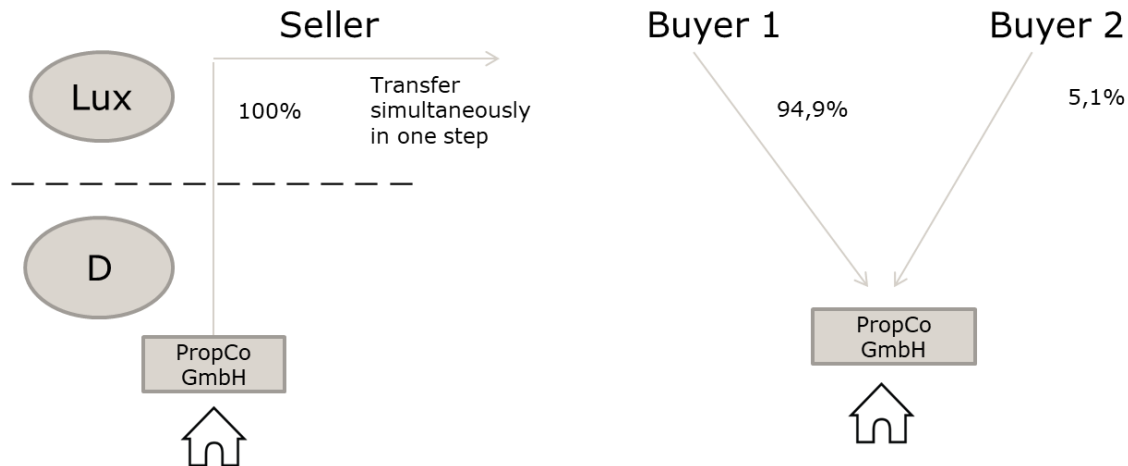
Possible future Changes of German Real Estate Transfer Tax regarding Share Deals

Dr. Dirk Koch

Tuesday, 4 December 2018

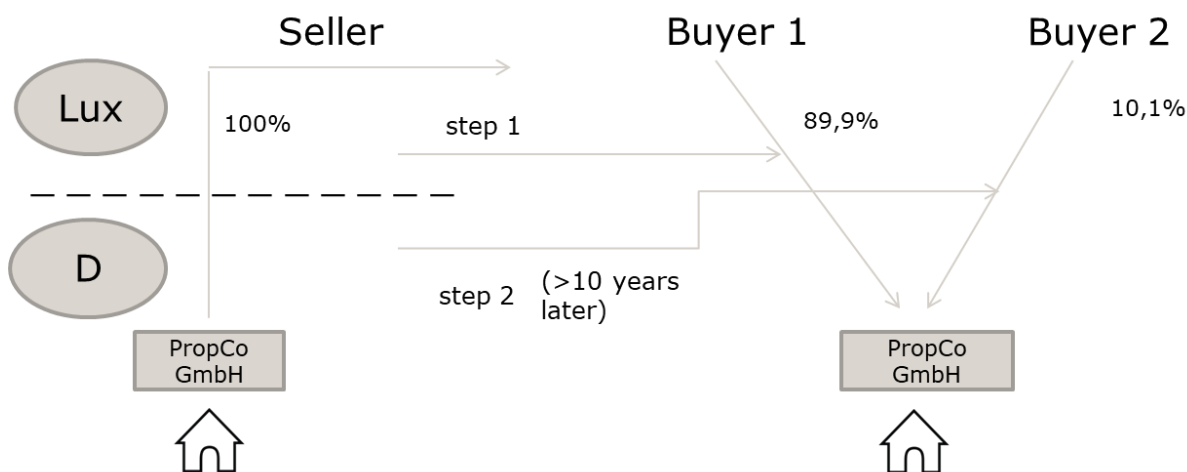
I. Introduction: Current German Real Estate Transfer Tax (RETT) Regime Regarding Share Deals

- **Partnership Rule:** RETT in the amount of 3.5% to 6.5% of the fair value is triggered if at least 95% of the interest in a partnership is transferred to new partners within 5 years.
- **Unification Rules:** RETT is triggered if at least 95% of the shares of a company owning real estate is either transferred as a whole or unified in one hand – from a civil law or from an economic perspective.
- Example for a **RETT avoidance structure for a GmbH – club deal:**




II. Possible Future Changes to the RETT Regime Regarding Share Deals

- Reduction of the RETT hurdle from 95% to 90%.
- Prolongation of the holding periods from 5 to 10 years.
- New Corporation Rule mirroring the Partnership Rule, but with the new RETT hurdle and holding period.
- Further possible changes, e.g. regarding interests and foundations (*Stiftungen*); all possible changes still under discussion.
- Example for a RETT avoidance structure for a GmbH (club deal) in the future.



III. Conclusion

- Current RETT avoidance structures will become more burdensome, but not impossible
 just a matter of price?
- Other structures to be considered as an alternative, e.g. contractual or mezzanine participations or open-ended funds.
- Recommendation: Tax efficient structuring in the specific case at hand, also taking into account other legal, economic and tax aspects like latent capital gains with respect to hidden reserves.

Lawyer Profile Dr. Dirk Koch

Profession and Position	<ul style="list-style-type: none">• Lawyer, admitted to the Bar in 2001• Certified tax adviser, admitted to the Bar in 2007• Partner under the German Partnership Act
Special Qualifications	<ul style="list-style-type: none">• Licensed specialist for Tax Law, since 2004
Practice Areas	<ul style="list-style-type: none">• Taxation, especially Corporate Taxation• Tax Structuring (M&A and Real Estate Transactions, Funds) and Restructuring• International Taxation• Value Added Tax• Succession of Entrepreneurs and Estate Planning
Education and Professional Experience	<ul style="list-style-type: none">• Universities of Munich, Paris Panthéon-Assas (Licencié en Droit, scholarship of DFHK) and Augsburg (doctorate under the aegis of Professor Dr. Thomas M.J. Möllers)• Formerly advanced assistant in the tax department of an international accounting firm, partner at other leading law firms• Board Member (Vice-President), Contributor and Head of Expert Panel III (Corporate Taxation) at DUV, Deutscher Unternehmenssteuer Verband e.V.• Mentor at the University of Mannheim• Lecturer at Nürtingen-Geislingen University
Memberships	<ul style="list-style-type: none">• DUV Deutscher Unternehmenssteuer Verband e.V.• Münchner Unternehmenssteuerforum e.V.
Languages	<ul style="list-style-type: none">• German, English, French
Publications	<ul style="list-style-type: none">• Publications on Tax Law

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Thank you!

GSK. The Difference.



Panel Discussion

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RE Investment Management



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Partner Advisory & Consulting
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Sven Andersen

Partner at FREO Group and
Chief Financial Officer



Konstance Ziegler

Tax partner at KPMG Luxembourg
Moderator of the Panel





Closing Speech

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Special Thanks to our Supporting Members



ALLEN & OVERY

alterDomus*

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Cocktail Reception

Thank you very much for coming.
Let's go to the Cocktail Reception ;-)