

# PE information brief - October 2009



## Welcome to the first PwC Luxembourg Private Equity newsletter

PricewaterhouseCoopers Luxembourg is proud to issue this first Private Equity Newsletter, PE information brief. The document is designed to deliver highlights on the current news and market developments impacting the Private Equity industry, with a particular focus on Luxembourg.

### Market report

Deal activity remains down due to the lack of debt in the market but there are signs of life. The second quarter of 2009 saw an increase in deal activity and size of deal compared to the first quarter. Ongoing liquidity has had a severe impact on fund raising where the number of funds raised in the first 6 months of 2009 declined circa 54% compared to 95 funds in the same period of 2008, but some funds are being raised. PE investors are focusing on minority investments, acquisitions of middle market companies and exit planning on existing assets.

investment platform for the Middle East and neighboring regions, with treaties recently signed with Bahrain, Qatar, the United Arab Emirates, Azerbaijan and Armenia.

### New VAT rules applicable as of January 1, 2010

The new rules of the so-called "VAT Package" contain substantial changes affecting the place of supply for cross-border services supplied to businesses/entrepreneurs and consumers. For Private Equity firms and their service providers, this means an extension of the "reverse charge rule" for cross-border services (e.g. management services) and a new obligation to report "European Sales Listing" services rendered to EU VAT registered recipients, where the recipient is liable to pay VAT in its country. Companies will be required to have knowledge of the specific rules that are applicable in the Member States of their counterparties. Companies will need to review their service flow to mitigate any additional VAT costs and to review their compliance and reporting obligations.

### Changes to the tax consequences to German investors of fund mergers under the German Investment Tax Act

Historically, mergers involving (sub) funds in the form of e.g. SICAV often triggered negative tax consequences at the level of German investors, as they would not be covered by the tax neutrality granted by the German Investment Tax Act. However, under new rules (adopted by the Upper House of the German parliament on 10 July 2009), mergers implying investment funds (e.g. FCP and SICAV type funds) can also benefit from tax neutrality at investor level, if conditions are met.



**Vincent Lebrun**  
Tax Partner  
Private Equity Industry Leader  
+352 49 48 48 2584  
vincent.lebrun@lu.pwc.com



**Valerie Tixier**  
Audit Partner  
Private Equity  
+352 49 48 48 2582  
valerie.tixier@lu.pwc.com



**Véronique Lefebvre**  
Audit Partner  
Assurance Private Equity Leader  
+352 49 48 48 2515  
veronique.lefebvre@lu.pwc.com



**Jean-François Kroonen**  
Corporate Finance Partner  
Private Equity  
+352 49 48 48 2527  
jean-francois.kroonen@lu.pwc.com



**Fiona Monsen**  
Tax Director  
Private Equity  
Tax Structuring and Repatriation Planning  
+ 352 49 48 48 2567  
fiona.monsen@lu.pwc.com

### Luxembourg is back on the OECD "white" list

The OECD has, on July 8, 2009 (and only 3 months after the famous G-20's London summit that originated the "grey list" of jurisdictions) included Luxembourg back on the "white list", recognising Luxembourg's rapid progress on updating its extensive treaty network with the agreed tax standard on exchange of information. This reinforces Luxembourg's position as a well established and internationally respected jurisdiction with stable and business friendly political environment, whilst bank secrecy nevertheless continues to exist in Luxembourg as an instrument used to protect privacy. In this respect, a draft law concerning some practical aspects on the exchange of information is currently under discussion, and is expected to be voted before year-end.

### Luxembourg develops its tax treaty network in the Middle East

Luxembourg continues to develop its tax treaty network. Some of the latest treaties signed show a clear reinforcement of Luxembourg's position as possible

### The Aberdeen case - Discriminatory EU withholding tax on dividends ruled illegal by European Court of Justice ("ECJ")

The ECJ has recently considered contrary to the EC Treaty an EU Member State levying dividend withholding taxes only on dividends paid to non-resident investment funds while exempting domestic investment funds from such taxes (regardless of the investment fund's legal structure, UCITS or non-UCITS). We understand that the opportunity for funds to reclaim EU dividend withholding taxes (identified by the PwC FoKus Group in 2004) is reinforced with the strength of this case.

### European Directive on Alternative Investment Fund Managers

On April 29, 2009 the European Commission submitted a proposal for a Directive on Alternative Investment Fund Managers ("AIFM"), aiming on creating a regulatory and supervisory framework for AIFM in the EU. Under the proposed Directive, European investment managers of non-UCITS investment funds would have to comply with a common set of rules in terms of licensing and supervision, and in return non-UCITS funds that they manage could benefit from a European passport for cross-border distribution to EU professional investors. The proposal has been sent to the European Parliament and European Council as it is still draft and subject to much debate. The Private Equity industry in general considers that the draft Directive does not take into account the specifics of the industry, and is, in several aspects, inappropriate to the alternative fund business. In this context, the EVCA has issued a response to the proposed AIFM Directive, pointing out areas that would need to be adapted in order to meet the requirements of the private equity and venture capital industry, as well as eliminating discriminatory provisions for private equity backed companies that put private equity funds

in a competitive disadvantage to other investment entities.

### Amendments to the commercial Law

A new Law, dated June 10, 2009 on cross-border mergers and on the share capital of public limited companies amends the consolidated Luxembourg Company Law in respect to the creation, the maintenance and the alteration of share capital. One of the main impacts is the possible exemption of the contribution in kind audit report, as well as additional flexibility on acquisition of own shares by public limited companies. The amendments to the commercial law also introduces the concept of partial divisions (through share capital reduction), that should be regarded as neutral from a tax perspective, and deals with the standardisation of the conditions applicable to national and cross-border mergers. Finally, the amendments will also allow, under certain circumstances, situations that may be classified as financial assistance.

### Standard Chart of Accounts

Following the Law dated December 19, 2002 ("the Accounting Law"), a standard chart of accounts ("Plan Comptable Normalisé", or "PCN") has been published on June 22, 2009. This represents a major step in the on-going modernisation of the financial reporting and of the accounting rules in Luxembourg, and is yet another step towards the Luxembourg authorities' objective of reducing administrative burdens faced by Luxembourg companies. For companies, the PCN should be effective as from the first accounting year beginning after December 31, 2010. In general, Luxembourg commercial companies should normally be required to use the PCN for the production and the filing of their annual accounts. However, some types of companies will be exempt from this requirement, such as banks, insurance and reinsurance companies, as well as standard holding companies (usually

referred to as Soparfis).

### Tax reporting now possible in English

The Luxembourg Government has always recognised the importance of international groups in the Luxembourg economy. Tax reporting obligations may now be prepared in French, German or English. The forms can be found in the Luxembourg tax administration official website<sup>1</sup>.

### PwC Luxembourg events

- PwC Luxembourg PE Forum event on October 15, 2009.
- PwC Conference on the draft Directive on Alternative Investment Fund Managers on October 28, 2009.

If you would like to read more on the various topics discussed we invite you to read the related Flash News on our internet site. In addition, please do not hesitate to contact us if you wish to discuss or require more information.

(1) <http://www.impotsdirects.public.lu/formulaires/collectivites/index.html>

PricewaterhouseCoopers Luxembourg ([www.pwc.com/lu](http://www.pwc.com/lu)) has about 1800 professionals from 49 different countries. PricewaterhouseCoopers ([www.pwc.com](http://www.pwc.com)) provides industry-focused assurance, tax and advisory services to build public trust and enhance value for its clients and their stakeholders. More than 155,000 people in 153 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

"PricewaterhouseCoopers" refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

[www.pwc.com/lu](http://www.pwc.com/lu)