

Flash News

Luxembourg tax authorities issue additional guidance on transfer pricing

The Luxembourg tax authorities issue an additional Circular clarifying the situation of entities that are mainly engaged in intra-group lending activities financed by borrowings.

8 April 2011

On 8 April 2011, the Luxembourg tax authorities issued an additional Circular (L.I.R. n°164/2bis), clarifying the application of the Circular (L.I.R. n°164/2) issued on 28 January 2011 in respect of Luxembourg entities that are mainly engaged in intra-group financing – i.e. intra-group lending activities financed by borrowings.

The additional Circular clarifies the situation of companies engaged in intra-group financing, and which obtained a confirmation from the authorities **before 28 January 2011** regarding the arm's length nature of the pricing of that activity. The additional Circular clarifies that such confirmations will no longer have effect as from **1 January 2012**.

Taxpayers that wish to benefit from a new confirmation with respect to their intra-group financing will need to comply with the requirements set out in the

28 January 2011 Circular, and file a request in this respect with the Luxembourg tax authorities.

The 28 January 2011 Circular outlined the more restricted circumstances in which, going forward, the Luxembourg tax authorities would be prepared to give advance confirmation on pricing relating to intra-group financing arrangements under which Luxembourg companies make loans to affiliates. The key specific requirements of the 28 January 2011 Circular include:

- The inclusion of a transfer pricing study (in line with OECD norms) together with the application to the tax authorities for confirmation
- The Luxembourg company having at least a minimum amount of equity genuinely at economic risk (this minimum being set at 1% of the financing being provided, or EUR 2 million if lower)
- A minimum level of operational substance in Luxembourg, including a board that has as a majority of its directors individuals whose principal professional activity is in Luxembourg.

Contacts:

Wim Piot	Partner, Tax	+352 49 48 48 5773	wim.piot@lu.pwc.com
Begga Sigurdardottir	Partner, Tax	+352 49 48 48 2541	begga.sigurdardottir@lu.pwc.com
Marc Rasch	Director, Tax	+352 49 48 48 5705	marc.rasch@lu.pwc.com

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