

Luxembourg: the first European country to implement UCITS IV!

Dated 23 December 2010

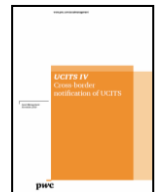
After the adoption of the UCITS IV Directive in 2009 and the related Level II measures this summer, the Luxembourg Parliament voted on 16 December 2010 a new law (the “New Law”)* that will repeal the existing Law of 20 December 2002 and which is aimed at:

- Implementing the so-called “UCITS IV” Directive, i.e. the EU Directive 2009/65/CE;
- Reinforcing the competitiveness of Luxembourg by introducing changes in the existing Luxembourg regulatory and tax frameworks applicable to UCITS and other UCIs.

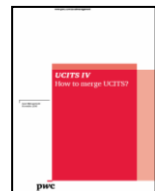
Implementation of UCITS IV

The five topics of UCITS IV have been introduced in the New Law as follows:

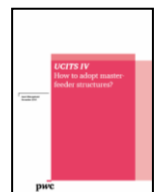
The new cross border notification of UCITS in Chapters 6 and 7: in order to distribute a Luxembourg UCITS in the other EU Member States, the UCITS has no longer to approach all regulators in the target countries but only the CSSF. The latter has only ten working days to review a standardised (in form and content) notification file and to transmit it to the host Member State, thereby triggering the immediate right to start marketing activities in that country.



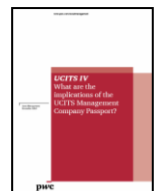
The new UCITS merger process in Chapter 8: while allowing the merger of UCITS on a cross-border basis, these new provisions will significantly modify existing rules applicable for “contributing” a Luxembourg sub-fund into another sub-fund.



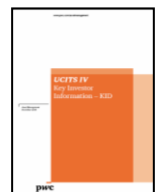
The possibility to adopt master-feeder investment strategies in Chapter 9: a UCITS (the “feeder”) is now allowed under certain conditions to invest at least 85% (and up to 100%) of its assets in another UCITS (the “master”).



The management company passport in Chapter 15: any management company of UCITS is allowed to set up and operate on a remote basis UCITS established in other Member States. New organisational and governance requirements are however in force obliging all Luxembourg management companies (even if they do not use the passport) to adapt.



The Key Investor Information Document in Chapter 19: this document will replace the existing simplified prospectus by the end of June 2012 at the latest.



All UCITS and management companies of UCITS existing before 1 July 2011 may remain subject to the 2002 Law and will then automatically fall within the scope of the New Law as from 1 July 2011.

Changes in the existing Luxembourg regulatory framework applicable to UCITS and other UCIs

The most important non-UCITS IV-related changes are the following.

As from its entry into force:

- the annual report no longer needs to be sent to registered shareholders at the same time as the convening notice to the annual shareholders meeting;
- the Articles of Incorporation no longer needs to be translated in French or German if written in English;
- under certain conditions, a sub-fund is authorised to invest in another sub-fund of the same umbrella fund.

By 1 July 2012 at the latest, other UCIs are subject to similar delegation rules than UCITS in case of delegation of the investment management functions: the investment manager must be authorised and subject to the prudential supervision of its home regulator. A cooperation mechanism must in addition be in place between this regulator and the CSSF.

Tax Changes

The New Law takes over most of the tax provisions provided by the Law of 2002 but also brings brand new rules, **applicable as from 1 January 2011**, to UCITS and non UCITS (**including SIFs !**), which solve some of the UCITS IV induced tax issues and enhance Luxembourg attractiveness:

- **Management Company Passport** and residency conflicts
The New Law brings a legal certainty by expressly stating that, where a foreign UCI is managed by a Luxembourg-based management company (or where the UCI's place of effective management is located in Luxembourg), the UCI will not be deemed to be domiciled in Luxembourg and **will therefore not be subject to any tax in Luxembourg**.
- **Non-resident investors** are no longer subject to Luxembourg capital gains tax on the disposal of shares in a Luxembourg SICAV. Non-resident investors were indeed subject (unless a double tax treaty provides otherwise) to Luxembourg income tax on capital gains arising on the short-term disposal of substantial shareholdings (i.e., disposal of a shareholding of more than 10% of the company's share capital, within 6 months of acquisition).
This new provision, combined with the withholding tax exemption for any payment made by a Luxembourg UCI (unless the EU Savings Directive applies) provides a favourable environment for non-resident investors and notably **for foreign Feeders of Luxembourg Masters**
- The New Law also provides for new exemptions from subscription tax for:
 - Exchange Traded Funds ("ETFs");
 - Extension of exemption for funds dedicated to multi-employer pension vehicles or to several employers providing pension benefits to their employees.

Needless to say, some concerns induced by UCITS IV will remain. However, Luxembourg, as at the time of UCITS III has again showed its flexibility and its reactivity, and as such, should remain one of the leading fund markets in the world

*The Conseil d'Etat has still to approve the exemption of second vote. Once done, the New Law will be published and its entering into force will be known (first day of the month following the date when law is published in Memorial). However, tax provisions of the New Law will enter into force on 1 of January.

Please visit our website for consulting PwC UCITS IV dedicated flyers and Flash News (<http://www.pwc.com/lu/en/ucits4/publications.html>) as well as PwC e-learning UCITS IV (<http://www.pwcacademy.lu/>).

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