

April 2011

Tax Alert

Luxembourg



Tax treatment of companies carrying out intra-group financing activities in Luxembourg

On the 8 April 2011, Luxembourg tax authorities issued an administrative Circular (Circulaire LIR n°164/2bis, hereafter called the "April" Circular) aiming to providing additional guidance and clarification with respect to companies carrying out intra-group financing activities in Luxembourg.

A previous Circular (Circulaire LIR n°164/2 issued on 28 January 2011, the "January" Circular) had already provided for documentation requirements as well as guidelines to be followed by taxation offices for issuing binding tax clearances to Luxembourg companies engaged in intra-group financing operations.

As such tax clearances are interpretations of the applicable tax legislation, they are generally only valid as long as the tax laws or administrative positions remain unchanged.

The April Circular provides for a grand-fathering period until the 31 December 2011, for companies to regularize their situation and to comply with the transfer pricing documentation and other requirements of the January Circular. Companies which will have adapted their situation and do comply with the conditions of the January Circular may file a new tax clearance on the remuneration derived from their intra-group financing activities.

We recommend all companies to contact their tax advisors at Ernst & Young in order to analyze the possible impact of the April Circular on their domestic financing operations and notably to apply for a new tax clearance in relation to financing activities carried out in Luxembourg.

Where required, we help our clients also to evaluate the next actions to be undertaken in order to comply with the requirements of the January Circular, such as adapting their organizational and economic substance in Luxembourg and supporting the arm's length character of the remuneration derived from their intra-group financing activities.

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