

Luxembourg Issues Further Guidance on New Transfer Pricing Regime for Conduit Financing

On April 8, 2011 the Luxembourg tax authorities have issued further guidance on existing binding rulings on conduit financing with regard to the recently installed transfer pricing regime.

Transfer Pricing Regime for Conduit Financing

Circular LIR 164/2 (“LIR 164/2”) issued on January 28, 2011 (see our Legal Update “Tax (r)evolution in Luxembourg conduit financing”) brought about a small revolution to implementing financing structures in Luxembourg. Pursuant to LIR 164/2 a binding ruling with regard to conduit financing will, inter alia, only be issued if

- the conduit has sufficient substance in Luxembourg;
- the equity at risk is at least 1 percent of the assumed risk or 2 million Euro;
- the remuneration agreed upon for the financing is at arm’s length.

Further, the transfer pricing consideration must be documented and filed with the application for a binding ruling.

Clarification of Existing Rulings

LIR 164/2, however, did not answer the question whether existing rulings which have been given in the past remain effective. On April 8, 2011 the Luxembourg tax authorities issued further guidance in this respect pursuant to which the Luxembourg tax authorities are only bound by existing rulings until December 31, 2011. From January 1, 2012 such rulings will be invalid and new rulings will have to be obtained, which will only be given if the new rules stipulated in LIR 164/2 are observed.

As Luxembourg is very popular for conduit financing structures, it is to be expected that the Luxembourg tax authorities will be “swamped” with applications, therefore, it is advisable to act quickly and to take all necessary steps to implement new rulings on existing financing structures before the end of 2011.

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