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Transposition of the new OECD Pillar 2 rules into Luxembourg tax law and its consequences on Luxembourg investment funds

We would like to draw your attention to the new OECD Pillar 2 rules recently transposed into Luxembourg tax law (the "Pillar 2 Law"), which may have an impact on the taxation of your structure in Luxembourg and on the Luxembourg reporting obligations required by this law.

<u>Background</u>

On 22 December 2023 Luxembourg transposed the Council Directive (EU) 2022/2523 of 14 December 2022 into domestic law. The Pillar 2 Law is designed to ensure that multinational groups ("MNE") and large-scale domestic groups (together referred to as "Group(s)") that have business activities in Luxembourg are taxed at an effective tax rate of 15% assessed on a jurisdiction-by-jurisdiction basis.

According to Pillar 2 Law, a Group is either a multinational enterprise that includes at least one entity or permanent establishment that is not located in the country of the Ultimate Parent Entity (or UPE) or a national Group made up exclusively of "Constituent Entities" located in Luxembourg.

An "Ultimate Parent Entity" or UPE is broadly defined by Pillar 2 Law as an entity that is required (or would have been required in accordance with an acceptable financial accounting standard) to fully consolidate another entity in its consolidated financial statements without being owned by an entity under the same conditions. Constituent Entities are any entities included in the consolidated financial statements of the UPE.

The Pillar 2 Law applies only to Groups whose turnover has reached at least EUR 750 million: namely when the Group consolidated financial statements equal or exceed the threshold of EUR 750 million turnover at the level of the UPE including the revenues of the excluded entities in at least two of the four fiscal years preceding the tested fiscal year.

"Excluded entities" are entities excluded from the scope of Pillar 2 Law. These include inter alia investment funds when they are a Luxembourg UPE and some of their affiliates if held at least 95% or 85% of their value.

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However, if investment funds are not excluded from the scope of Pillar 2 Law and the 750 million threshold is reached, Groups must determine in each jurisdiction in which they operate (through their Constituent Entities) their effective tax rate. If their effective tax rate falls below the minimum tax rate of 15%, they must pay an additional tax known as "Top-up Tax".

In practice Luxembourg investment funds will therefore have to comply with the tax compliance obligations set out in the Pillar 2 Law. Concretely if a Luxembourg investment fund falls within the scope of the Pillar 2 Law, it will be necessary to determine whether it can be qualified as a constituent entity according to the Pillar 2 Law. If this is the case, the Luxembourg investment fund may have to be registered with the Luxembourg tax authorities and may even be required to provide an information return (i.e., the Globe Information Return or GIR). In the event of failure to register with or inform the Luxembourg tax authorities, a fine may be due.

How we can support You

If you wish us to analyze whether your Luxembourg investment fund structure falls within the scope of the Pillar 2 Law, we would be grateful if you could inform us accordingly and provide us with the following information:

- Confirm that the consolidated financial accounts of the parent's company of the Luxembourg investment shows an annual turnover of at least EUR 750 million for the two of the four fiscal years immediately preceding the 2024 fiscal year.
- Confirm that the Luxembourg investment fund is consolidated or not with its parent company.

If you need any help on this matter as well, please feel free to contact us. Please do not hesitate to contact us, for any questions you may have.