

Luxembourg Newsflash

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SECURITISATION COMPANIES AND ATAD 1: RED CARD FOR LUXEMBOURG?

On 14th July, the EU Commission blew the whistle and initiated an infringement procedure against Luxembourg, by reason of a deemed insufficient implementation of Directive UE 2016/1164 ("ATAD 1").

In compliance with the aforementioned Directive (to be transposed by 31st December 2018), Member States had to make sure that no interest deduction in excess of 30% of the taxpayer's EBITDA (or 3 M° €), would be allowed under their domestic law, as from 1st January 2019.

The Grand-duchy transposed the Directive into national law through the enactment of the law of 21st December 2018. However, the said law extensively exempts specific securitisation companies¹, among other financial undertakings, from such limitation. *A contrario*, other securitisation companies had to be considered as falling "within the scope" of the limitation, although such view was not unanimously accepted among professionals.

As early as 14th May 2020, the Commission served a formal summons to Luxembourg, followed by a formal opinion dated 2nd December 2021 whereby the Grand-duchy was given a two-month period to amend its legislation in order to remove securitisation vehicles from the list of exempted financial undertakings, and include them within the scope of the interest deductibility limitation.

Lacking a satisfactory reaction, the EU Commission has just decided to refer the matter to the Court of Justice of the European Union (CJEU).

If endorsed by CJEU, this could potentially affect the tax position of a substantial number of Luxembourg securitisation vehicles that have failed to undergo conversion process into securitisation funds, which are not targeted by ATAD 1. Therefore, vigilant monitoring is advised.



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¹ Securitisation Companies covered by Regulation EU 2017/2042 of 12th December 2017.