



Luxembourg Tax Update

Luxembourg, 10.02.2010

Luxembourg banking secrecy

Background

◆ Codification of Luxembourg banking secrecy

- Article 41 of the law of 5 April 1993
- Article 458 of the Luxembourg criminal law
- § 178bis of the Luxembourg General Tax Law

◆ Announcement on 13 March 2009

- The banking secrecy is maintained as an instrument for protecting private life
- BUT intention to improve the transparency for tax purposes (exchange of information with other states in compliance with latest OECD principles)

◆ Distinctions

- Administrative assistance vs judicial assistance
 - Exchange of information on request vs automatic exchange of information
- => Exchange of information on request, i.e. exchange of information between the tax administrations in precise cases and with clear proof of suspicion of fraud**

Luxembourg banking secrecy

Practical consequences

- ◆ 24 double tax treaties or protocols to existing double tax treaties with exchange of information clause.
- ◆ Draft law on 1st October 2009 (n° 6072)
 - Approbation of 20 newly concluded double tax treaties and additional protocols to existing treaties, and
 - Definition of the domestic procedural framework implementing the exchange of information foreseen under the said agreements
 - Authorities of the applicant State to demonstrate the foreseeable relevance of the requested information
 - Specific information to be provided
 - Competent authority: the tax authority which is competent for the assessment of a given tax under existing law (ACD, AED, etc)
 - Tax authority obliged to examine the request
 - Notification to the person believed to be in possession of the requested information
 - Holder obliged to provide the information (fine of up to € 250'000)
 - Legal remedies: accelerated procedure before Court + appeal (suspensive effective in both cases)

Luxembourg banking secrecy

Outlook

- ◆ OECD article 26 exchange of information on demand will become part of reality in private banking
- ◆ Pressure for automatic exchange of information will continue
- ◆ Level playing field is a must but has its price
- ◆ Different scenarios possible
 - Worse case scenario: automatic exchange of information without any exception
 - Alternative scenario: adherence to a withholding tax system (probably be hard to obtain a consensus on that basis)
 - Good compromise: automatic exchange of information with options
 - Possibility to opt for tax certificate procedure, or
 - Application of national flat rate withholding tax systems in the country of source (flat rate tax withheld and paid to country of residence represents final tax liability)

EU Savings Directive

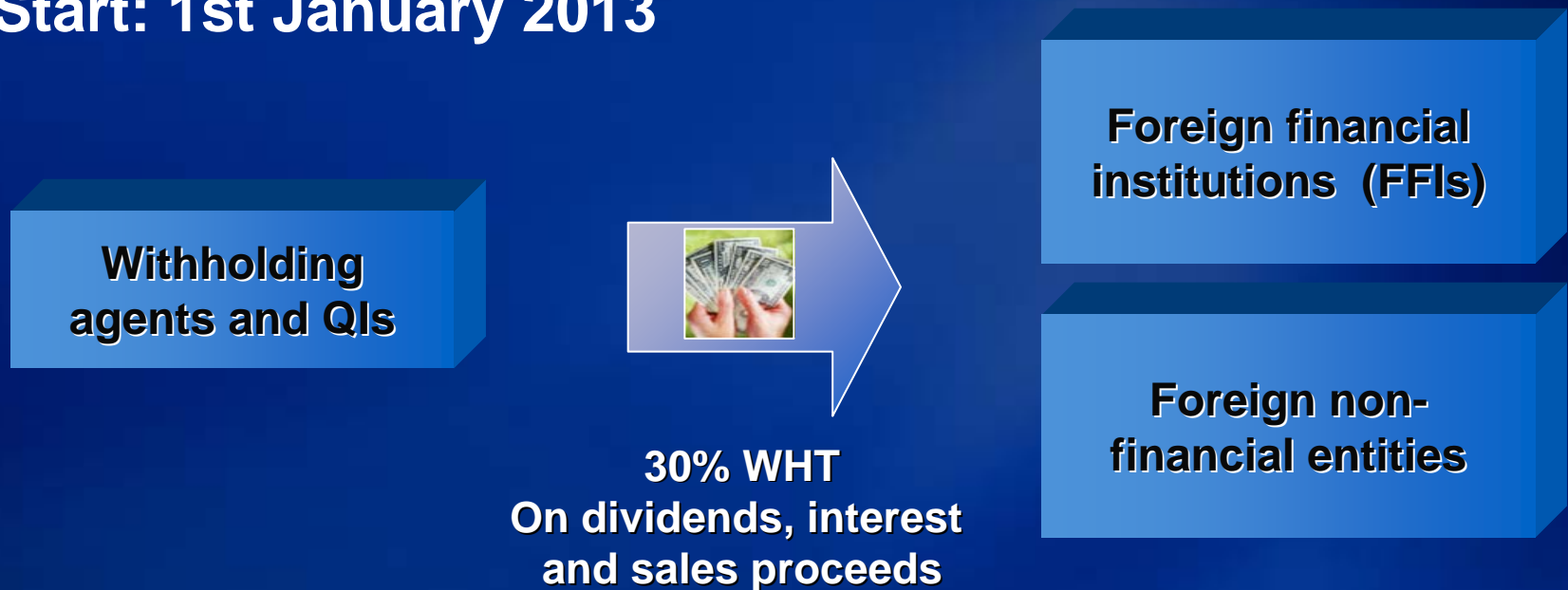
Update

- ◆ **New compromise text dated 25 November 2009**
- ◆ **Extension of scope to**
 - SICAV Part II investment funds,
 - certain structured products and
 - life insurance contracts
- ◆ **Look-through certain non-EU companies**
- ◆ **Earliest start on 1st January 2013, however grandfathering would end on 1st July 2010**
 - TIS calculation for SICAV Part II
 - Structured products
 - Life insurance contracts

US Qualified Intermediary regime

Foreign Account Tax Compliance Act Of 2009

- ◆ Legislation to detect and dissuade Americans from using foreign bank accounts to evade US income taxes.
- ◆ Start: 1st January 2013



Unless certain disclosure criteria are met

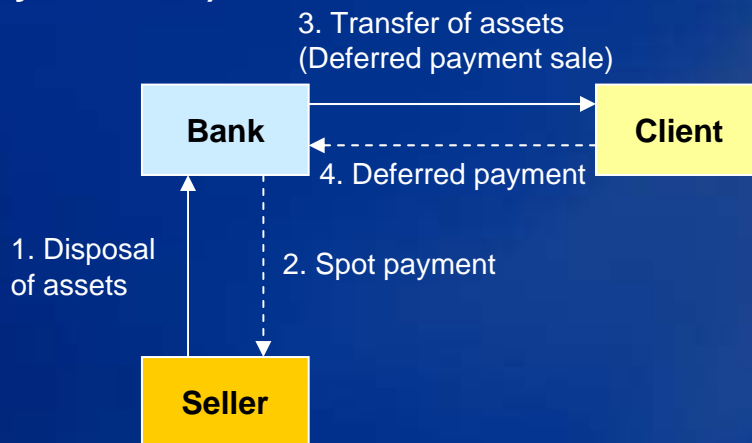
A new tax circular on Islamic finance

Key points of the Circular

- General overview of major Islamic finance principles & instruments (e.g. *musharaka*, *mudaraba*, *ijara*, *istina*)
- Sets the framework for the Luxembourg tax treatment of *murabaha* and *sukuk* to all companies but for UCIs

1. Murabaha (deferred payment sale)

Background



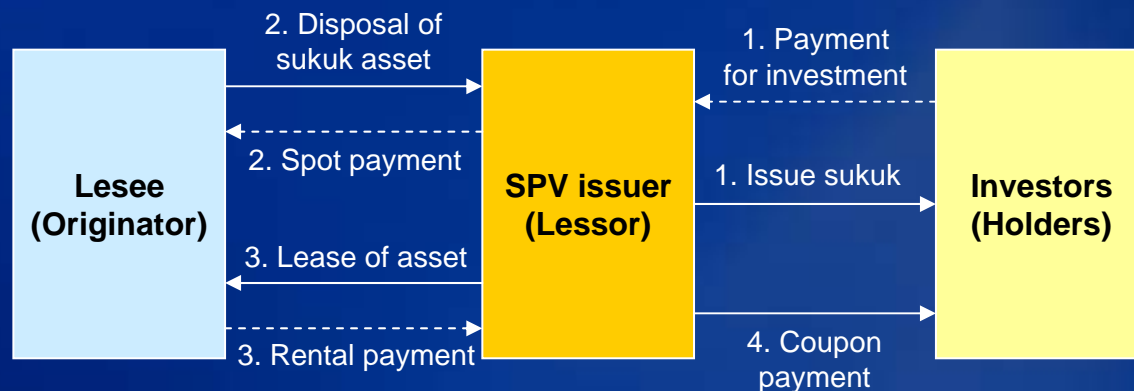
Luxembourg tax treatment

- Circular deals with the tax treatment of the financial intermediary in 'murabaha to purchase order' transactions
- Beneficial tax treatment of that part of the profit that is linked to the grant of a payment deferral (excluding commission for intermediation services)
- Confirmation that the linear spread of that profit over the deferral period in the commercial accounts is accepted, subject to conditions.

A new tax circular on Islamic finance

2. Sukuk (asset-backed securities)

Background



- Possible structuring via SOPARFI or SV

Luxembourg tax treatment

- Confirms the classification of *sukuk* as debt for Luxembourg tax purposes
- At the level of the paying entity: yield payments are treated as deductible interest expenses
- At the level of the recipient: yield payments under the *sukuk* qualify as interest within the meaning of Art. 97 (1) No. 3 LIR and assimilated to the corresponding payments under bonds in conventional finance

VAT Package 2010

New general rules

◆ Place of supply for cross-border services:

- “B2B” services: country of the recipient
- “B2C” services: country of the supplier (main rule unchanged)

◆ Main exceptions (non-exhaustive list):

- Services related to immovable property
- Restaurant and catering services
- Passenger transport services
- Short term hiring of means of transport
- Cultural, artistic, sporting, scientific services
- Supply of services by intermediaries
- Transportation of goods
- Work on movable goods
- Ancillary transport services

“B2B” & “B2C”

“B2C” only

VAT Package 2010

New general rules

- ◆ Introduction of European Sales Listings for services (“ESLs”)
- ◆ Notion of “taxable person”
- ◆ “8th Directive” reclaim procedure
- ◆ Other modifications with respect to administrative procedures and procedure for the contestation of tax assessments

VAT Package 2010

Key action points

◆ 2009

- Adaptation of IT system
- Verification of the validity of customers' ID VAT numbers

◆ 2010 (very beginning of the year)

- Ensure that IT system provides for:
 - Correct VAT treatment of transactions
 - Adequate information to complete VAT returns and ESLs
- Templates of invoices

 **Obligation to issue invoices (cross-border situations)**

→ **Possibility to adjust rapidly any discordance**




Double Tax Treaties / Exchange of Information Clause

- ◆ **Currently 57 double tax treaties in force**
- ◆ **Treaties entered into force (1.1.2010)**
 - Azerbaijan, Georgia, India, Moldova, United Arab Emirates
- ◆ **19 tax treaties pending**
 - *approved*: Argentina (air traffic), Ukraine
 - *Signed (in 2009)*: Albania, Armenia, Bahrain, Kazakhstan, Kuwait, Liechtenstein, Monaco, Qatar
 - *initialed*: Barbados, Cyprus, Kirghizstan, Macedonia
 - *negotiations*: Lebanon, Pakistan, Serbia & Montenegro, Syria, UK (renegotiation)
- ◆ **Additional protocols to existing treaties (exchange of info):**
 - Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Japan, Mexico, Netherlands, Norway, Spain, Switzerland, Turkey, UK, US, (+ treaties with EOI: Armenia, Bahrain, Barbados, India [most-favored nation treatment], Liechtenstein, Monaco, Qatar, San Marino)

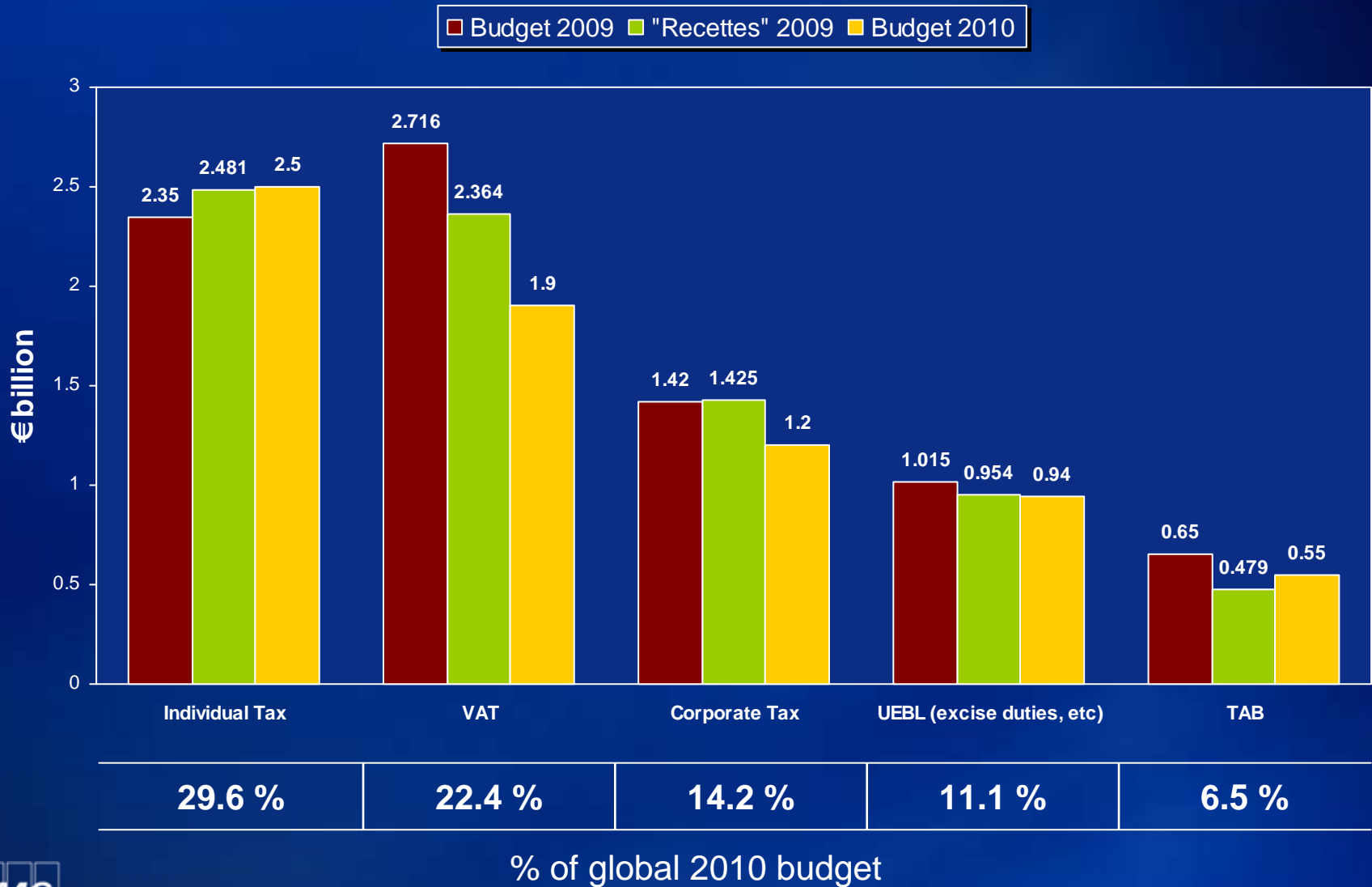
List of Agreements concluded by the Belgo-Luxembourg Economic Union (UEBL)

Country	Country	Country
Albania	Estonia	Philippines
Algeria	Gabon	Pakistan
Argentina	Georgia	Paraguay
Armenia	Guatemala	Peru
Azerbaijan	Hong Kong	Poland
Bangladesh	Hungary	Romania
Belarus	India	Rwanda
Benin	Indonesia	Saudi Arabia
Bolivia	Kazakhstan	Serbia & Montenegro
Bosnia & Herzegovina	Korea	Singapore
Botswana	Kuwait	Slovenia
Brazil	Latvia	South Africa
Bulgaria	Lebanon	Sri Lanka
Burkina Faso	Liberia	Sudan
Burundi	Lithuania	Thailand
Cameroon	Lybia	Tunisia
Chile	Macedonia	Turkey
China	Madagascar	Uganda
Comoros	Malaysia	Ukraine
Congo	Malta	United Arab Emirates
Costa Rica	Mauritania	Uruguay
Côte d'Ivoire	Mauritius	Uzbekistan
Croatia	Morocco	Venezuela
Cuba	Mexico	Vietnam
Cyprus	Moldova	Yemen
Czech Republic	Mongolia	Zambia
Egypt	Mozambique	
El Salvador	Nicaragua	

Legend:

-  DTT concluded with Luxembourg
-  DTT in progress with Luxembourg
-  No DTT concluded with Luxembourg

2009 Budget vs. "Recettes" as at 31.12.2009





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