



Association of British and Irish Accountants
in Luxembourg

2017 Professional Practice Update

“Investment Fund Industry”

1 March 2017, Luxembourg

Agenda

- 08:30 – 09:00** *Registration & breakfast*
- 09:00 – 09:05** **Chairperson's opening remarks**
Jason Rea, Chairperson, ABIAL
- 09:05 – 09:30** **State of the Luxembourg Investment Fund Industry**
Anouk Agnès, ALFI
- 09:30 – 10:00** **Fund distribution evolution**
Said Fihri, KPMG
- 10:00 – 10:30** **Legal & regulatory update**
Jérôme Wigny, Avocat, Elvinger Hoss Prussen
- 10:30 – 11:00** *Coffee Break*

Agenda

11:00 – 11:50 *Panel discussion incl. Q&A*

Brexit – practical implications and impact on fund industry

Moderator: Michael Ferguson, EY

*Panel: Johan Terblanche, Dechert
Johan Schreuder, Investec
Revel Wood, FundRock
Sandrine Leclercq, Deloitte*

11:50 – 12:20 **Tax Update**
Keith O'Donnell, ATOZ

12:20 – 12:30 **Chairperson's concluding remarks**
Jason Rea, Chairperson, ABIAL

12:30 – 13:30 *Buffet Lunch*

Tax Update

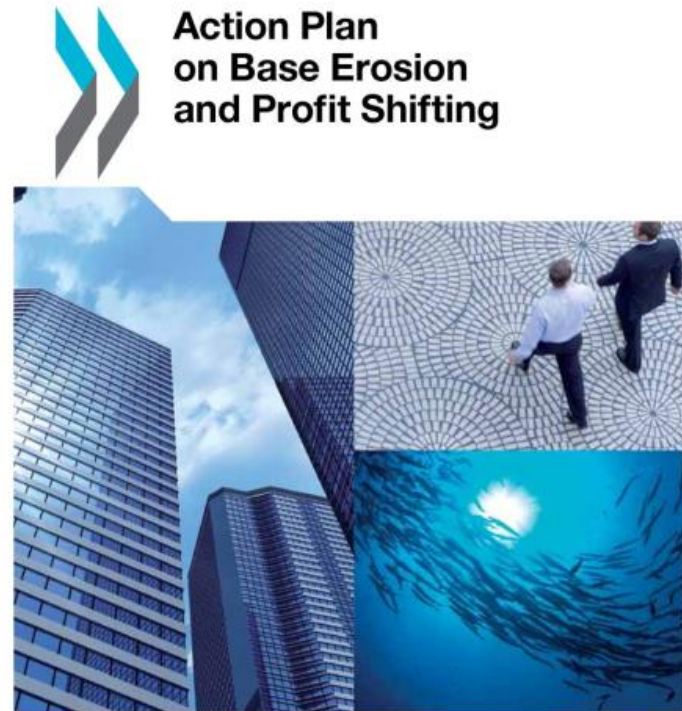
Keith O'Donnell, ATOZ

KEY TAX DEVELOPMENTS AFFECTING THE INVESTMENT FUND INDUSTRY

- 1 BEPS
- 2 TRANSFER PRICING
- 3 VAT
- 4 TAX COMPLIANCE
- 5 RAIF TAX REGIME
- 6 SECURITY LEVEL TAXATION
- 7 INVESTOR LEVEL TAXATION
- 8 OTHER

BEPS - DEFINITION

- “Tax planning strategies that exploit gaps and mismatches in tax rules to make profits ‘disappear’ for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low resulting in little or no overall corporate tax being paid”.
- Global drive against corporate tax avoidance by the G7, OECD and the EU
- The BEPS project combines a strong political commitment with breakneck speed, complex institutional issues, politics and law.



BEPS - ACTION BY ACTION

Action 1

Address the tax challenges of the **digital economy**

Action 5

Counter harmful tax practices more effectively, taking into account **transparency** and **substance**

Action 6

Prevent **treaty abuse**

Action 7

Prevent the artificial avoidance of **PE status**

Action 2

Neutralize the effects of hybrid mismatch arrangements

Action 3

Strengthen **CFC rules**

Action 4

Limit base erosion via **interest deductions** and other **financial payments**

Actions 8, 9 & 10

Assure that transfer pricing outcomes are in line with value creation:

- **Action 8: Intangibles;**
- **Action 9: Risks and capital;**
- **Action 10: High-risk transactions.**

Action 11

Establish methodologies to **collect and analyze data on BEPS** and the actions to address it

Action 12

Require taxpayers to disclose their **aggressive tax planning arrangements**

Action 14

Make **dispute resolution mechanisms** more effective

Action 15

Develop a **multilateral instrument**

Action 13

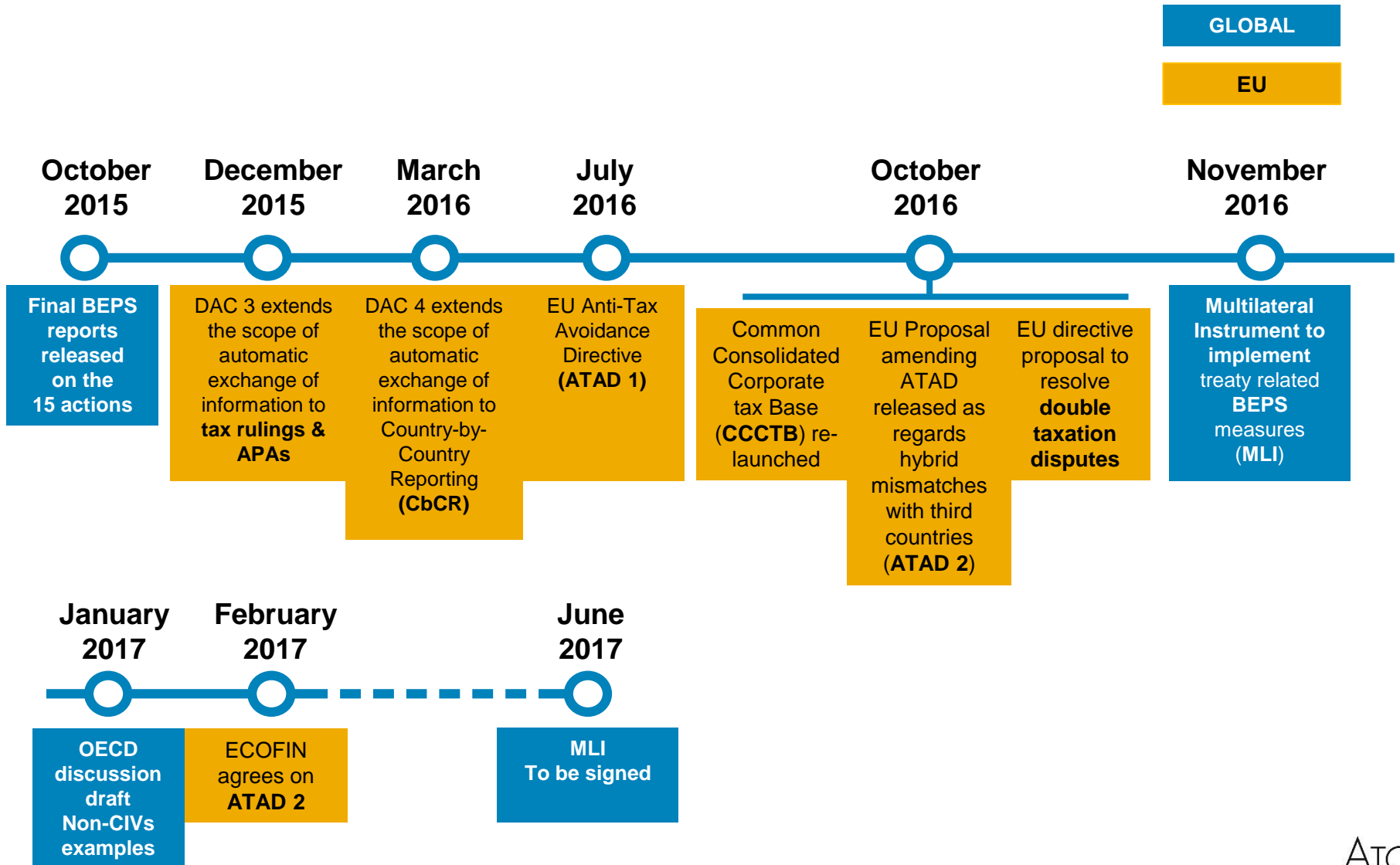
Re-examine **transfer pricing documentation**

Level of concern:

- **Primary concern**
- **Secondary concern - UCITS**
- **Secondary concern - AIFs**
- **Secondary concern - ManCos**

- The investment fund industry is not the primary target of the BEPS actions, but it does suffer collateral damage

BEPS - RECENT DATES IN THE TIMELINE



TRANSFER PRICING UPDATE

New Art. 56bis Income Tax Law

- Application of the arm's length principle under Luxembourg tax law
- Replicates parts of the content of Chapter I of the OECD Transfer Pricing Guidelines
- Guidance fairly generic – Flexibility remains

New Circular for intra-group financing activities (Circular 56/1- 56bis)

- Determination of the arm's length remuneration of Luxembourg financing companies
- Follows the introduction of the new article 56bis ITL
- Cancels and replaces former circular issued in 2011
- Is applicable since 1 January 2017
- APAs released under the former regime no longer valid
- New TP regime immune to challenges from the EU Commission or foreign tax authorities
- Another step towards more substantial TP documentation requirements in Luxembourg.
- Will not necessarily change anything about the outcome of the TP analysis

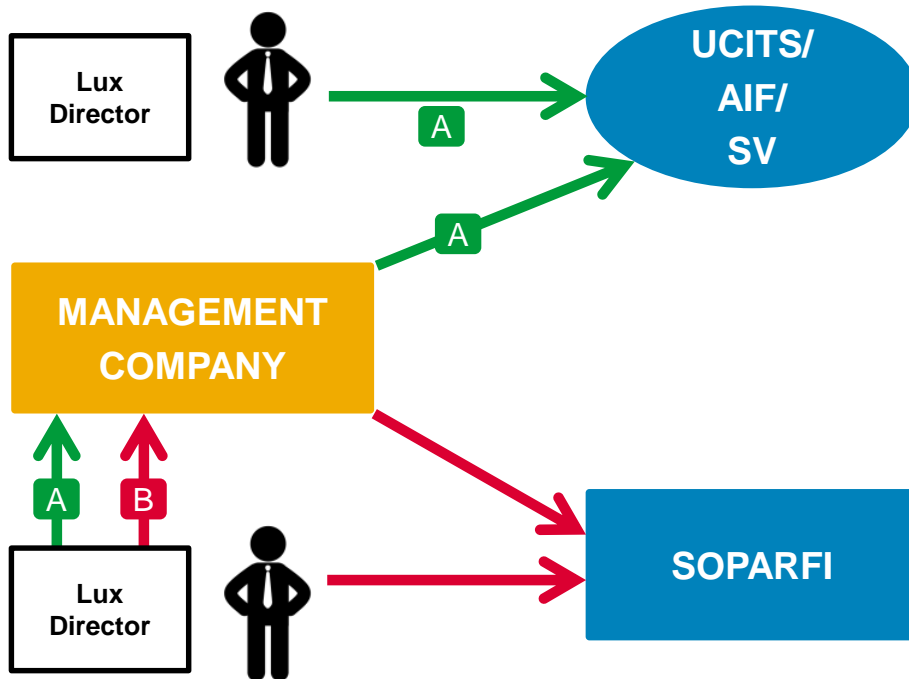
RELEVANCE

Applies to
PE/PERE/
Infrastructure
Funds

with
Luxembourg
SPVs

VAT UPDATE

VAT on directors' fees



ACTION

1. Ensure clear categorisation of all fees
2. Clarify responsibilities for VAT costs (ManCo/Individual/Fund?)

A Services related to fund management

B Services not related to fund management



TAX COMPLIANCE UPDATE

Electronic filing of subscription tax returns

- Mandatory electronic filing of subscription tax returns for UCIs (law of 2010), SIFs and FIARs as from 1st January 2018
- Electronic filing will become operational as from 1 April 2017

RAIF TAX REGIME

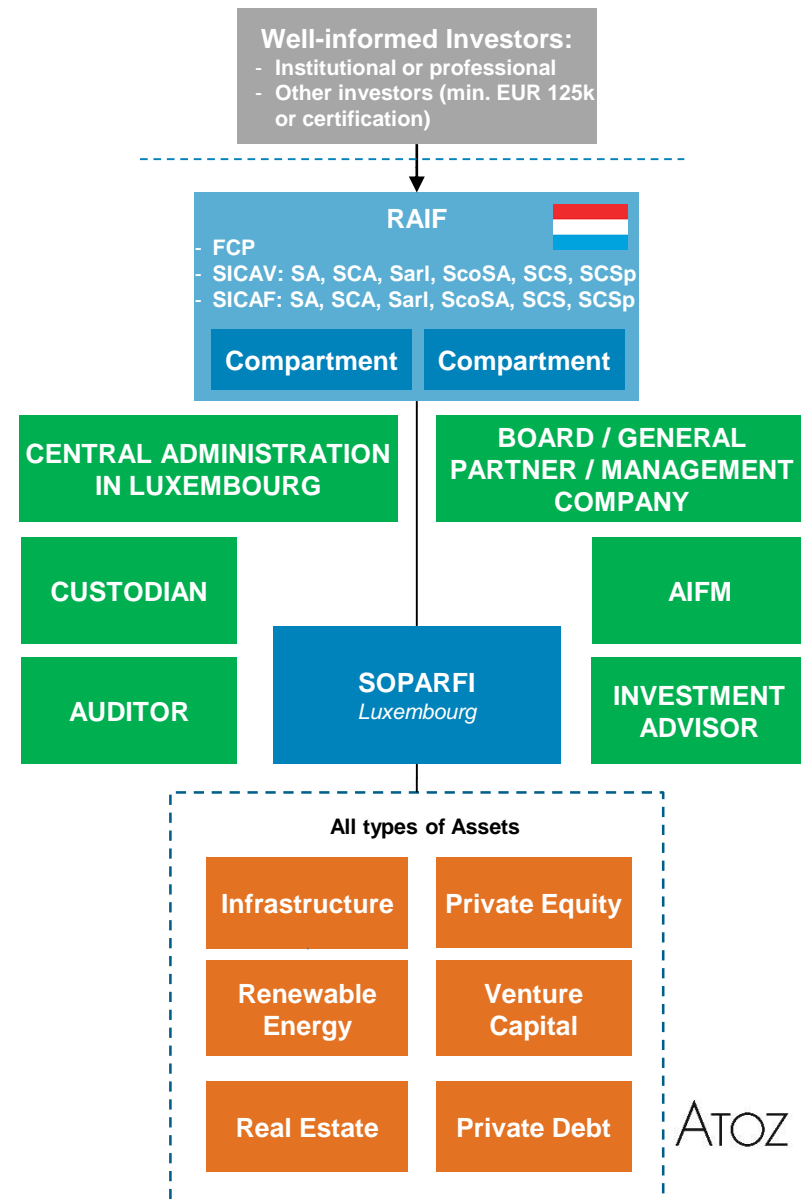
- Tax regime depends on investment strategy:

- SIF-like regime: exempt from CIT, MBT, WHT; only subject to 0.01% subscription tax on NAV, with some exemptions applicable under certain conditions



OR

(provided the RAIF only invests in risk capital)

- SICAR-like regime: subject to CIT, MBT but income deriving from transferable securities is exempt. Dividend distributions are exempt from WHT. RAIFs are exempt from NWT up to a minimum amount.
- VAT exemption of management services
- Access to double tax treaties? Residence certificates?



SECURITY LEVEL TAXATION

INDIA	<ul style="list-style-type: none">- Minimum Alternate Tax- Indirect transfer via funds		Solved Solved
KOREA	<ul style="list-style-type: none">- Litigation		Ongoing

INVESTOR LEVEL TAXATION

Germany - New Investment Tax Act

- Abolition of tax reporting
- New lump sum taxation
- Partial tax exemptions

OTHER

- Reform of Luxembourg Taxation of Funds to improve Double Tax Treaty access?
- EU Commission focus on Double Tax Treaties / Withholding Tax relief
- Financial Transaction Tax (FTT) – still not dead

SPEAKER



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About Keith

Keith O'Donnell has over 20 years of experience as a tax specialist, both as an international Partner and in senior management roles in global professional firms.

In 2004, Keith was among the founding Partners of ATOZ Tax Advisers, where he currently acts as Managing Partner.

Keith advises global groups on the design and implementation of tax strategies, with emphasis on pan-European PERE funds.

Keith heads global real estate tax at Taxand, the global network of independent tax firms of which ATOZ is a founding member.

Instrumental in shaping legislative change in coordination with industry groups, Keith participates in various advisory bodies, and acts as chair of the ALFI DTT commission.

A member of the Rotary Club –Luxembourg Schuman, Keith is also treasurer of the Executive Club Luxembourg.