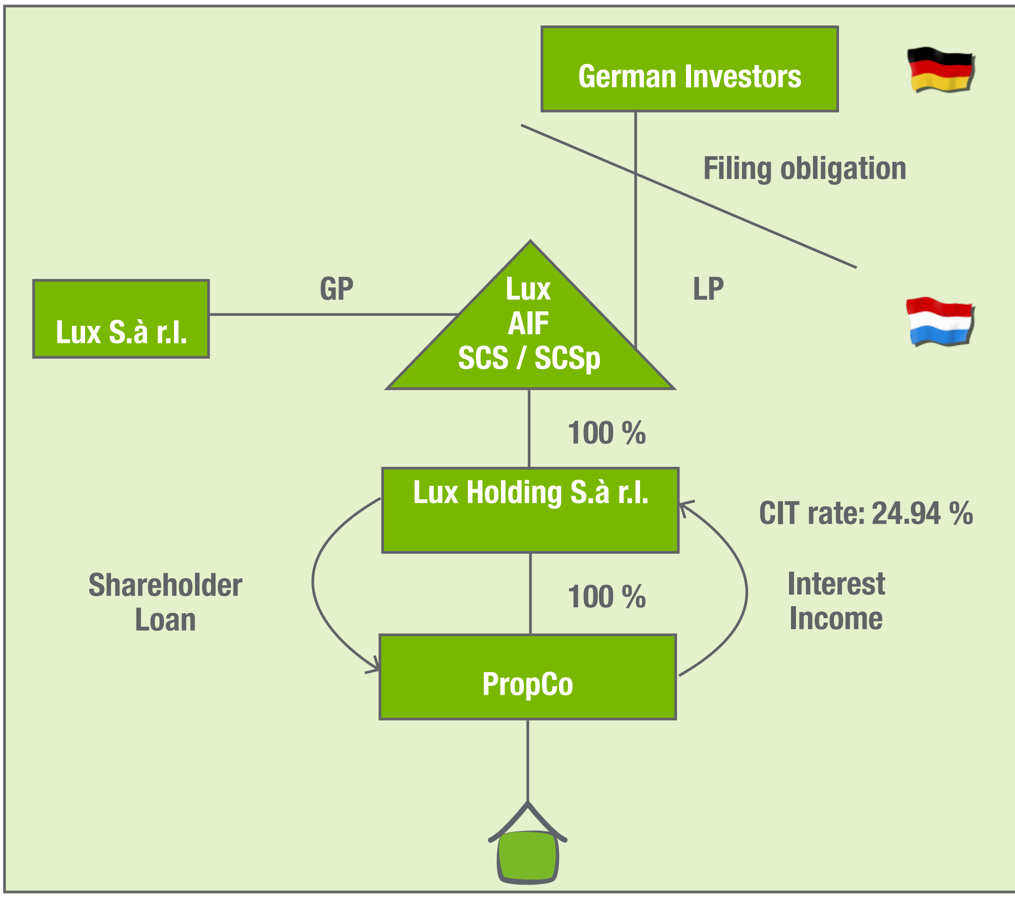
be informed:

Will the reduction of the Luxembourg corporate income tax rate end up in a German controlled foreign company taxation?

March 12, 2019

On 5 March 2019 the Luxembourg government filed the new finance bill n° 7450 with the Luxembourg parliament. One of the most important corporate tax measures concern the reduction of the maximum corporate income tax rate. Applicable to tax year 2019, the aggregate rate of corporate income tax, municipal business tax in the city of Luxembourg and the contribution to the unemployment fund would be reduced from the current 26.01 percent to 24.94 percent. The Parliament is expected to vote on and approve this law before the end of April 2019.

As a result, as of tax year 2019, Luxembourg corporate holding companies could qualify as low-taxed entities within the meaning of the German controlled foreign company rules as the aggregate income tax rate is below 25 percent. As most of these holding companies also receive passive income in form of interest income, German investors in such Luxembourg corporate holding companies will have to file German controlled foreign company returns as of 2019 onwards. The filing is even required in such cases where it can be proved that the Luxembourg corporate holding company has a real economic activity (substance test) (cf. Schmidt in Bödecker/Ernst/Hartmann, Investmentsteuergesetz, § 19, No. 33), even though resulting in no inclusion of passive income in intra EU scenarios.



At the same time in Germany: The German legislator intends to amend the German controlled foreign company rules to adopt the requirements of Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices (ATAD I) into German law. Amongst others, it is highly likely, that in the course of these amendments the threshold for a low taxation will be reduced from 25 percent to a lower rate. It is furthermore expected that such amendments should also become retroactively effective as of the beginning of fiscal year 2019. If so enacted, the Luxembourg corporate holding companies would then not qualify as low-taxed foreign companies. Nonetheless, a draft wording of the amended German controlled foreign company rules is not yet available.

Thus, fund sponsors and investors have to closely monitor their investment structures which make use of regular taxed Luxembourg corporate holding companies receiving interest income. German investors with a direct or an indirect interest in such Luxembourg corporate holding companies might end up in a filing obligation for these companies. At least, as long as the German controlled foreign company rules are not amended.

We would appreciate assisting you in identifying affected entities in your investment structures.

be in touch: Any questions? Please do not hesitate to contact us!

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