



Lux leaks & The new Luxembourg tax ruling practice

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史特博律师事务所

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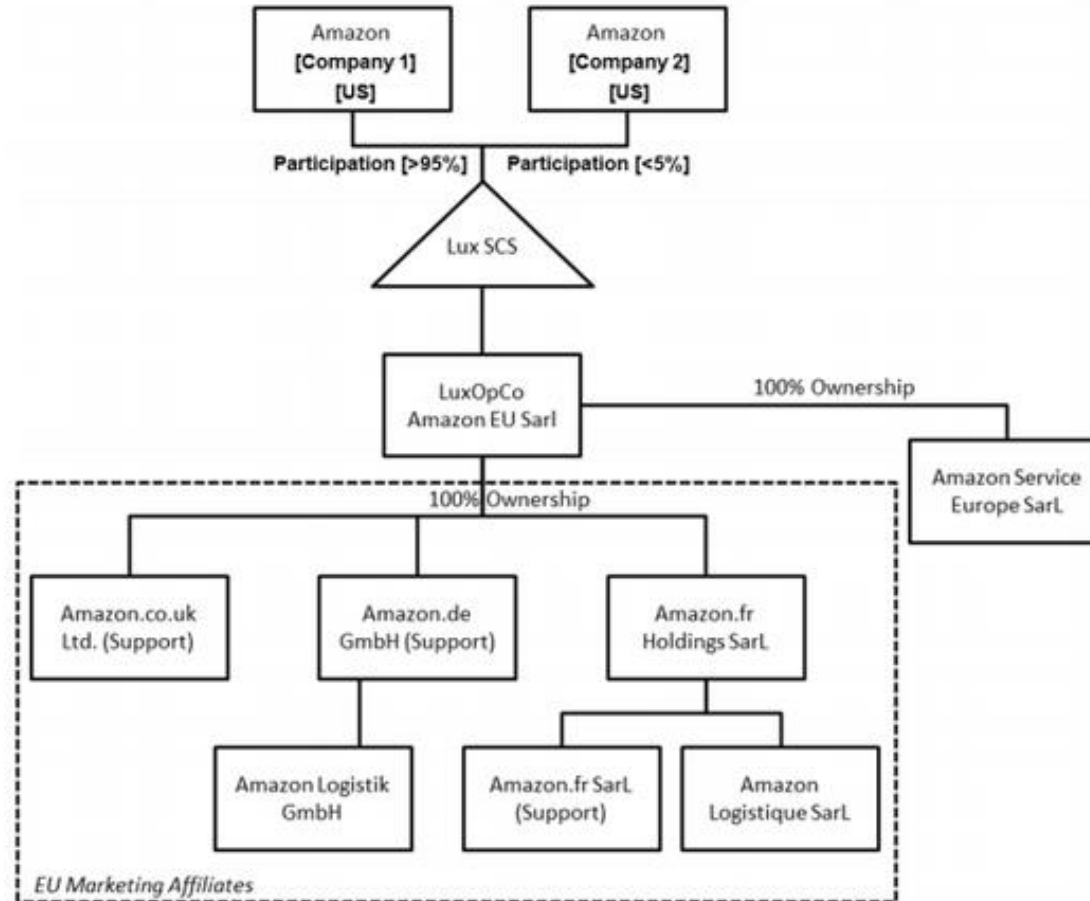


Lux leaks – what ?

- Coordinated press articles by *International Consortium of Investigative Journalists*
- Disclosure of confidential tax rulings dating from 2002-2010
- Tax rulings advised upon by PwC
- 548 rulings relating to some 340 MNCs
- 2 coordinated sets of leaks and articles
- Political motives ?
- Immediate consequences (investigations by EU and by some MS)

Lux leaks – example

Figure 1 – Envisaged legal structure of the group described in the ruling request

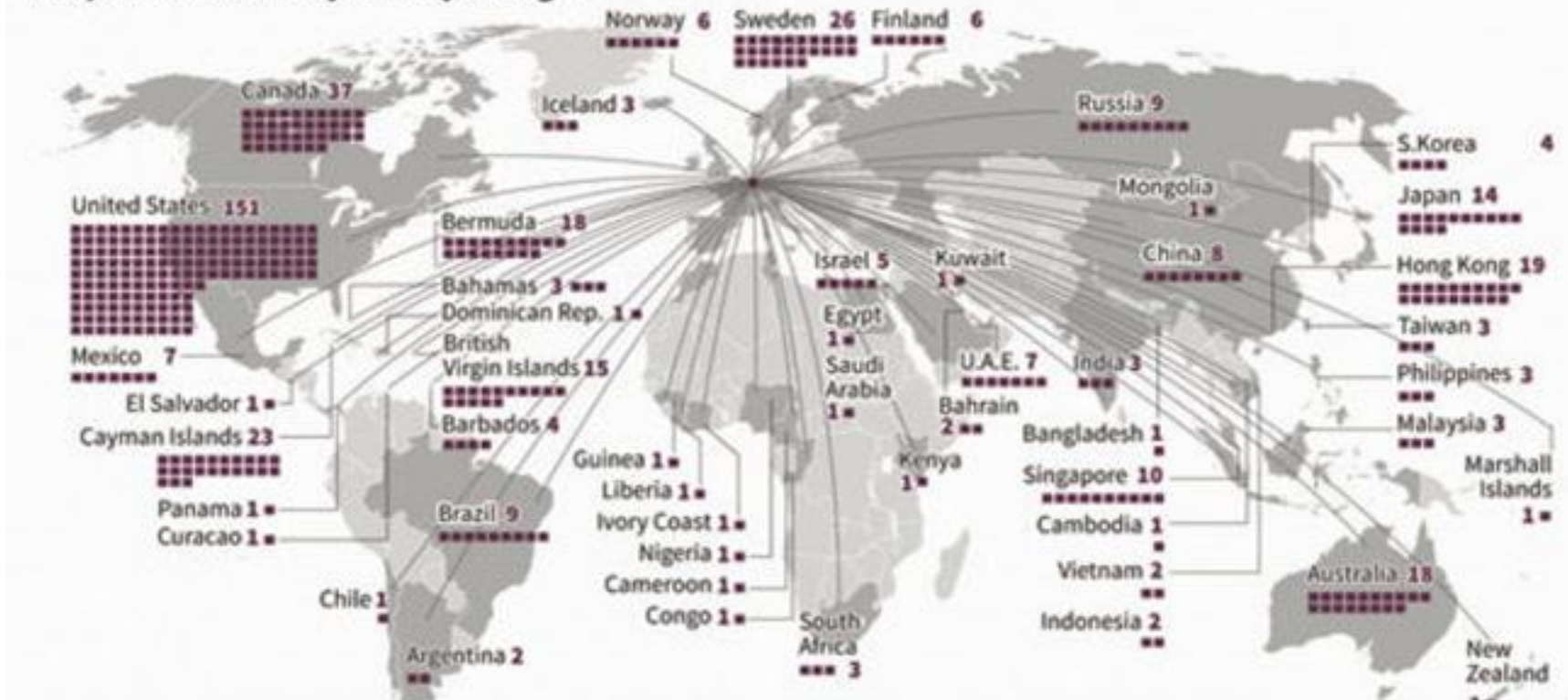


Lux leaks – press reporting

Luxembourg at the heart of a massive, international tax evasion scheme

Hundreds of multinationals and major companies have brokered secret deals with Luxembourg to avoid paying billions of dollars in taxes, research by the International Consortium of Investigative Journalism has revealed

Companies involved by country of origin



Lux leaks – press reporting



Wende nach der Midlife-Crisis: Mit 44 fängt der Aufschwung an > Wissen

Süddeutsche Zeitung

MÜNCHNER NEUESTE NACHRICHTEN AUS POLITIK, KULTUR, WIRTSCHAFT UND SPORT

Luxemburg – ein Land im Zwielficht

POLITIKEN

Hemmelige skatteaftaler afslører: Luxembourg snyder resten af EU

523

THE IRISH TIMES

Glanbia's €1bn Luxembourg move to cut its Irish tax bill

ECB threat to cut off banki funds reveal



Tages-Anzeiger

Luxemburg gab Milliardenrabatte für Grosskonzerno

Recherches Blockiert de USA

Le Monde

Luxembourg: révélations sur les milliards évaporés des mult

Le Monde révèle, avec de médias étrangers, les accords secrets d'optimisation fiscale entre la pratique luxembourgeoise et des tax rulings

deVerdieping Trouw



FINANCIAL REVIEW

Global tax schemes exposed

Weak signal: Japan's S&P divide risks rating downgrade

AGOP triumph: Obama swamped by success of disunion

Power gardeners: Abbott's top row muddied by row

Future Fund: Australian companies in leaked PwC deals

Luxembourg 'leaks' tickle ATO probe

IKEA's design for big profits and little tax

L'Espresso

4.76b

Switzerland: U.S. America's tax haven

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LE SOIR

Comment le Luxembourg dribble le fisc belge

Luxembourg LEAKS

6 sociétés belges impliquées

UNE ENQUÊTE INTERNATIONALE

LES SECRETS DU LUX EMBOURG DÉV

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Lux leaks – content

- Various kinds of rulings (various kinds of taxation covered, various levels of “aggressiveness”)
- No allegations that rulings were illegal under Lux law
- But queries and challenges based on arguments of:
 - transfer pricing
 - state aid
 - morality



Lux leaks – challenges

- Transfer pricing
 - beneficial treatment of company in absence of real economic activity?
 - departure from internationally accepted rules e.g. arm's-length standard?
- State aid
 - EU prohibits MS to confer advantages on a selective basis to companies
 - In tax matters, state aid = *tax regimes that leave a certain margin of discretion to the tax authorities to the extent that they deviate from the general tax system*
 - But, how to establish that a company received a special advantage when
 - tax rulings can be obtained by anyone (and were obtained by many)
 - tax rulings apply the law to the specific facts and circumstances of applicant
 - transfer pricing guidelines and framework are mostly soft law ?



Lux leaks – assessment (1)

- Breach of confidentiality → criminal investigation
- Reminder of inconvenient truisms:
 - international tax planning is not straightforward
 - regulatory competition among States
- No allegations that rulings were illegal under Lux law

“tax rulings are not a distorting instrument as such”
(EU Commission)
- Rulings exist in vast majority of countries around the world
- Luxembourg remains a jurisdiction of choice

Lux leaks – assessment (2)

- Political fall-out
- More leaks coming?
- Increased risk of audit in other jurisdictions – and actual investigations
- State aid remedies are ill-suited to deal with tax and regulatory competition
- Sustainability of ruling practice (esp. transfer pricing) ?





Tax rulings prior to Lux leaks

- Fast
- Confidential
- No statutory nor institutionalised process
- The legendary Marius Kohl



Lux Tax Rulings – New legislation

- Grand Ducal Decree of 19 December 2014 “for the future of Luxembourg” (*Zukunftspack*)
- Formalisation of advance tax agreement (ruling) practice
- Bill prepared in broader context of enhanced transparency
- Entry into force on 1 January 2015
- (p.m.) other measures:
 - Change in transfer pricing legislation (introduction of arm’s length principle)
 - Increase of VAT rates 15% → 17%
 - Temporary 0,5% income tax for individuals



Lux Tax Rulings – New legislation – principles

- Tax ruling cannot by itself provide for an exemption or moderation of taxes due
 - *mere confirmation of correct application of tax laws*
- Decision will be valid for maximum of 5 years
- Decision binding on tax administration, except in the usual cases (i.e., false or incomplete facts, change of facts, or change of domestic, European or international laws)



Lux Tax Rulings – New legislation – process

- Introduction in writing
- Duly motivated
- Content:
 - Identification of applicant;
 - Detailed description of operation c.q. considered operation(s);
 - Detailed analysis of tax issues with motivated tax position;
 - Confirmation that facts and analysis are complete and true.

Lux Tax Rulings – New legislation – process

- In case of queries relating to corporate income tax due by corporations:
 - Submission of ruling request to (new) *commission des décisions anticipées* (Ruling Commission)
 - Purpose of commission is to assist tax office in uniform execution and implementation of tax laws → uniform treatment of tax payers
- Tax rulings will be published
 - anonymously
 - in summary form
 - in annual report of Luxembourg Revenue
- Fee ranging from EUR 3,000 to EUR 10,000
 - Depending on complexity or request and amount of work involved
 - Payable as from receipt of the request – and prior to decision
 - Non-refundable if request is withdrawn or declined
 - Grandfathering for pending ruling requests introduced prior to 1 January 2015



Lux Tax Rulings – New legislation – assessment

- Professionalisation of tax ruling procedure
- Interim period: quid (ca. 1,000) pending rulings?
- Expected timing to obtain a ruling: 2-3 months (delay)
- Publication of all or selected rulings ?
- Confidentiality of rulings → exchange of information ?
- Key takeaways:
 - Regulatory certainty
 - Ensure solidity of transfer pricing arrangements
 - Better substantiated rulings
 - Luxembourg remains a jurisdiction of choice

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Jan has been the head of our Hong Kong office since its opening back in 2012. He provides expert advice to Chinese clients on their outbound investments into Europe, as well as on all legal aspects of doing business in the Benelux.

A Belgian qualified lawyer with a truly international focus, Jan provides swift, pragmatic and tailored advice on cross-border transactions. Such attributes are applied right across the breadth of his specialisms including foreign direct investment, M&A, private equity, corporate finance, international transaction structuring and financial services regulation.

Jan is a frequent speaker on M&A and on China inbound and outbound investments from and into the Benelux. He is a member of the Board of Directors of the Belgium-Luxembourg Chamber of Commerce (BLCC) in Hong Kong, and also of the Belgian Chinese Chamber of Commerce (BCECC) in Brussels.

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