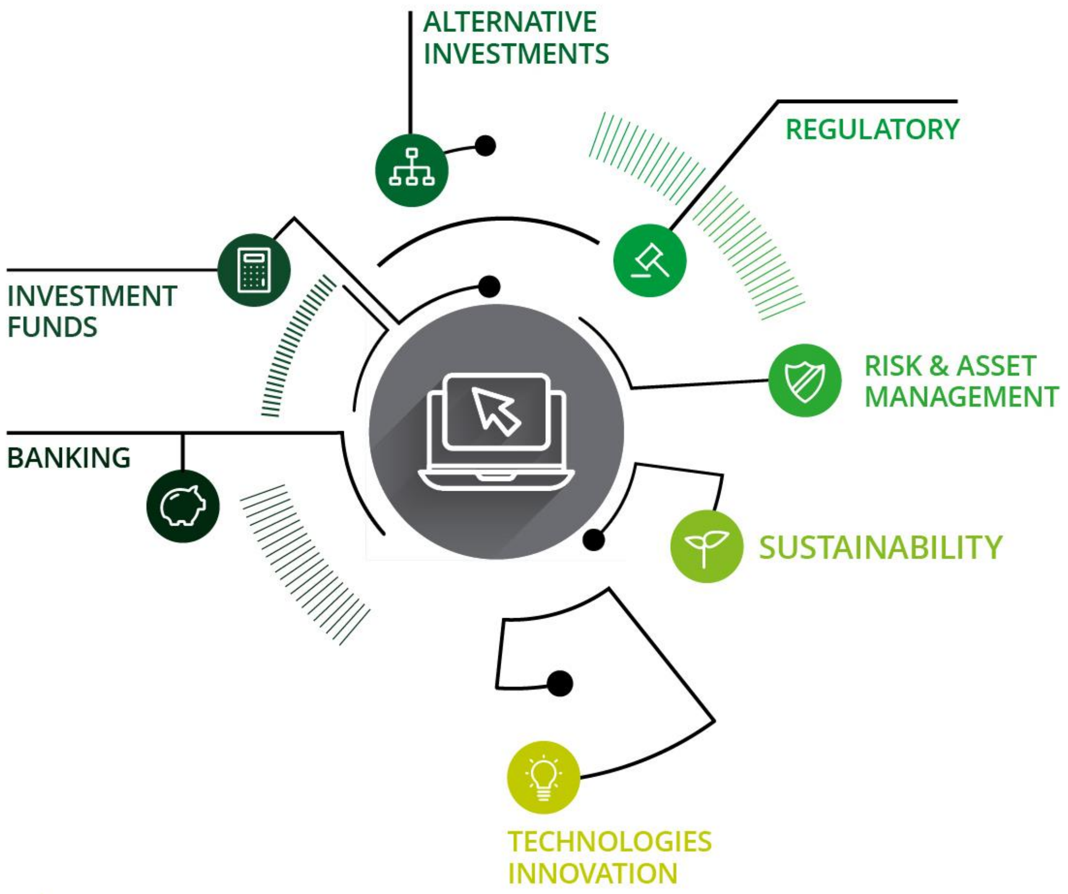
Deloitte.



Investment Funds | Fund Tax update on latest trends

Link'n Learn – 28 May 2025

Getting Started

Here with you today

Wim Eynatten
Partner
Business Tax
Deloitte Belgium
weynatten@deloitte.com

Pablo Casabe
Senior Manager
Cross-Border Tax
Deloitte Luxembourg
pcasabe@deloitte.lu

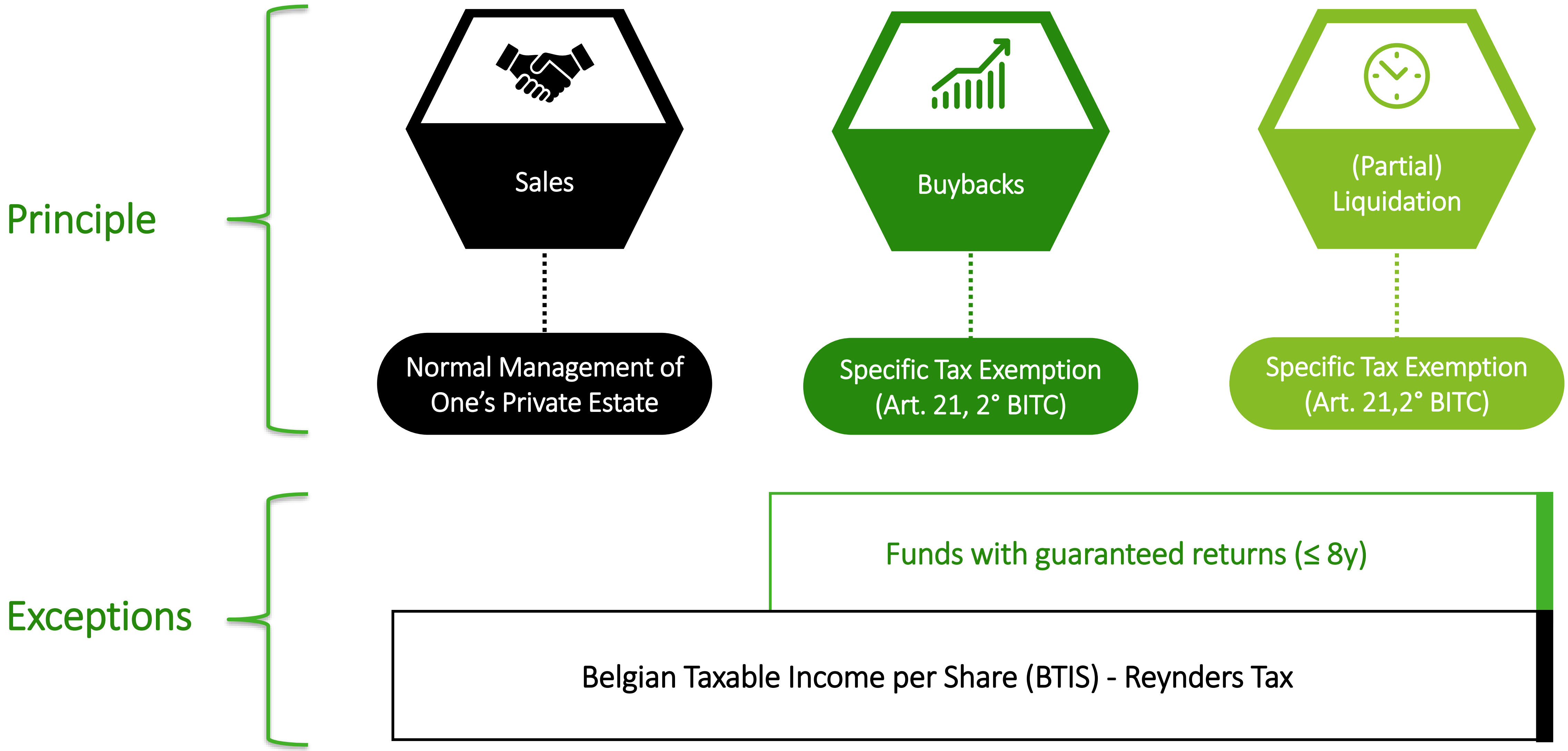
Agenda

1. Update on Belgian Government tax reform and impact on Belgian TIS
2. Luxembourg Subscription Tax – Hot topics

Update on Belgian Government tax reform

Impact on Belgian TIS

Exit of BE Individual Investors



The "Exit" of Belgian Individual Investors

Principle

Sales

Normal Management of One's Private Estate

Exceptions

New

Solidarity Contribution

Speculative Gain
(33% taxation as miscellaneous income)

Belgian Taxable Income per Share (BTIS) - Reynders Tax

Solidarity Contribution vs. BTIS

	Solidarity Contribution	BTIS
Type?	Capital Gain Tax (**CGT**)	**Tax fiction** which requalifies a proceeds (sale, buyback or liquidation) as a **movable income** subject to WHT
Who?	Belgian individuals as well as legal entities subject to legal entities tax	Belgian individuals only
Scope?	All “financial assets” (including crypto-assets)	Shares in “capitalization funds” which meet the Asset Test (≥ 10% in “debt-claims”)
Rate?	Rate of 10% (< 20% shareholding)	(WHT) Rate of 30%
Tax base?	Taxable basis : the full proceeds minus *de minimis* (nominal) thresholds and minus capital losses during the same year on the same type of assets	Taxable basis : the Taxable Income per Share (**TIS**)
Levied by?	Belgian paying agents are the primary debtors – no secondary liability mechanisms	Belgian paying agents are the primary debtors – to be declared by taxpayer in case no WHT
When?	Grandfathering of “historical” gains (prior to the entry into force of the CGT – 1 January 2026)	No “grandfathering mechanism”, but the former threshold of the Asset Test (≥ 25%) still applies for shares or units acquired before 1 January 2018.

Solidarity Contribution : What do we know so far?

Principle

Nominal threshold	Shareholding %	Tax Rate
EUR 0 - 10.000	N/A	0%
≥ EUR 10.000	< 20%	10%

Example : (new) gain of EUR 15,000 on shares held in Luxembourg ETF, the **Belgian CGT** will amount to **EUR 500**, i.e. [(15,000 – 10,000)*10%]

Exception : reduced scale for significant shareholdings (≥ 20%)

Nominal threshold	Shareholding %	Tax Rate
EUR 0 – 1,000,000	≥ 20%	0%
EUR 1,000,000 – 2,500,000	≥ 20%	1.25%
EUR 2,500,000 – 5,000,000	≥ 20%	2.5%
EUR 5,000,000 – 10,000,000	≥ 20%	5%
≥ EUR 10,000,000	≥ 20%	10%

Solidarity Contribution : additional elements in draft texts of new legislation

Draft legislation still subject to political negotiation and change

- **Exemption for financial assets held for more then 10 years**

- **Abolition of Article 19bis BITC (BTIS) with transitional exit rules**
- The shares and participation rights that fall within the scope of Article 19bis BITC are deemed to have been alienated on 31 December 2025, resulting in the Reynders tax. As a result, the stock of Article 19bis income will be taxed on 31 December 2025 at the applicable withholding tax rate of 15% (or must subsequently be declared in the personal income tax return as taxable income at 15%).
- The financial intermediaries who must withhold withholding tax will have until 30 June 2026, by way of exception to the standard period of 15 days, to pay the withholding tax (and to submit the withholding tax return).
- The shares and participation rights that have not actually been alienated will fall under the new capital gains tax regime from 1 January 2026.
- This deemed alienation only applies for the application of Article 19bis and not to any other taxes such as the TOB.

It should be noted that the above two elements were not part of the Arizona Government Agreement and that there is no political agreement on these two elements yet.

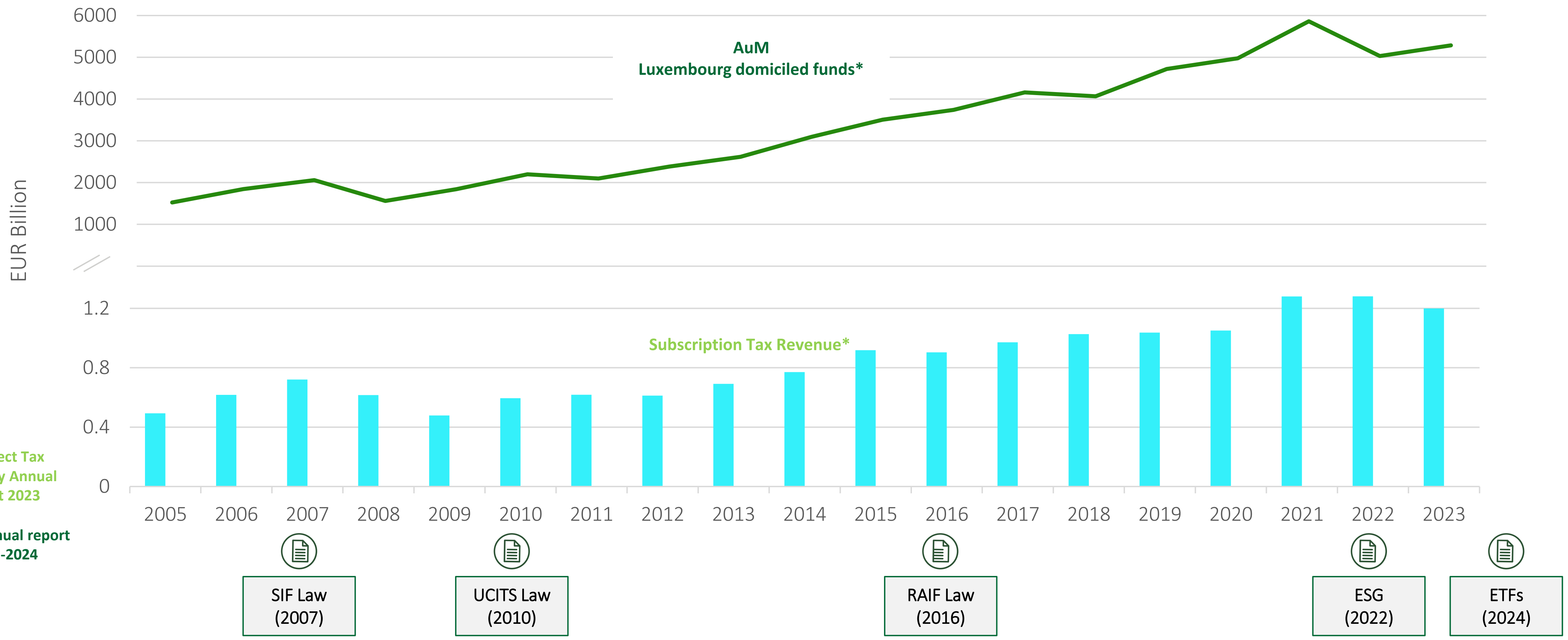
Luxembourg Subscription Tax

Hot topics

Let's make a step back, first

Few numbers

While there are regular calls to abolish the subscription tax, it remains an important source of revenues for the Luxembourg government with +EUR 1.2b per year and explains the higher degree of scrutiny from the Luxembourg tax authorities.



* Indirect Tax Authority Annual Report 2023

*ALFI Annual report 2023-2024

Not only a tax matter…

AML Tax

Failure to comply with Subscription Tax obligations may also trigger a red flag with respect to AML Tax legislation, which may lead to a CSSF investigation.
During late 2022, the CSSF published a thematic review on AML Tax including five Luxembourg IFMs, which detected weaknesses connected with Subscription Tax.

CSSF Circulars

- Circular 17/650: List of indicators to assist the professionals in relation to suspicious transactions connected with AML Tax
- Circular 20/744: It complements the first circular and provide indicators which are specific to the fund industry, **including one connected with Subscription Tax**

CSSF Review findings

- During its thematic review, the CSSF "***noted weaknesses with regard to delegated subscription tax calculation and filing***".
- Potential AML tax sanctions: administrative fines of up to EUR 1,000,000, the potential withdrawal of the authorization to operate and a public statement of the breach.

Published on 8 November 2022

cssf

Communiqué

AML/CFT controls applied in terms of preventing tax offences

Thematic review November and December 2021

In this context the CSSF's "UCI On-site Inspection" department carried out in November and December 2021 a thematic review in relation to the AML/CFT controls applied in terms of preventing tax offences, as further described by Circular CSSF 17/650, as amended by Circular CSSF 20/744. The thematic review targeted different types and sizes of market participants[1] (hereafter the IFMs) and included five Luxembourg IFMs. Further details on the focus areas of the thematic review are described below.

Back to basics

Main Features

What is at stake?

The Luxembourg Subscription Tax is levied on net assets of qualifying Luxembourg funds.
Exemption / reductions are available under certain conditions.

Scope

- Levied notably on the net assets of the following Luxembourg special vehicles:
  - Undertakings for Collective Investment ("**UCIs**")
  - Specialized Investment Funds ("**SIFs**")
  - Qualifying Reserved Alternative Investment Funds ("**RAIFs**")
- Under the competence of Indirect Luxembourg tax authority - Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement, des domaines et de la TVA*)

Rates

- **UCIs** are subject to a general rate of 0.05% on their net assets. This rate can be reduced to under certain conditions and several categories of exemptions are also provided for under the conditions laid down in the UCI Law.
- **SIFs** and qualifying **RAIFs** are subject to a general rate of 0.01% on their net assets. In addition, under certain conditions, they can benefit from exemptions.

Recent tax audits

Main Features

What is at stake?

In recent months, a noticeable rise in Subscription Tax audits initiated by the Luxembourg competent tax authority (AED) has been observed. These audits, are notably aimed at monitoring the correct application of the so-called "Fund of Fund" ("FoF") exemption and NAV calculations

What documentation is requested by the Luxembourg Tax Authority during a Subscription Tax audit?

- The AED may request an extensive range of documents and information within a limited timeframe, assessing thoroughly your policies, controls, procedures, and IT systems related to your due diligence and reporting obligations, such as:
  - Written **procedures, and formalized control framework** to comply with Subscription Tax;
  - Detailed description of the relevant funds, and their **portfolio of investments**;
  - Details regarding the **NAV calculations** used to prepare the Subscription Tax returns;
  - Technical description of the **IT system used** for Subscription tax compliance;
  - The internal and/or external **control process** put in place to identify and address the risks of non-compliance regarding Subscription Tax obligations;
  - Other measures put in place such as **staff training**, **data storage**, etc.
  - In addition, the AED may also conduct a **sample testing** of filed returns and **interviews** with your teams to assess the compliance of Subscription Tax obligations.

Recent tax audits

Main Features

What is at stake?

In recent months, a noticeable rise in Subscription Tax audits initiated by the Luxembourg competent tax authority (AED) has been observed. These audits, are notably aimed at monitoring the correct application of the so-called "Fund of Fund" ("FoF") exemption and NAV calculations

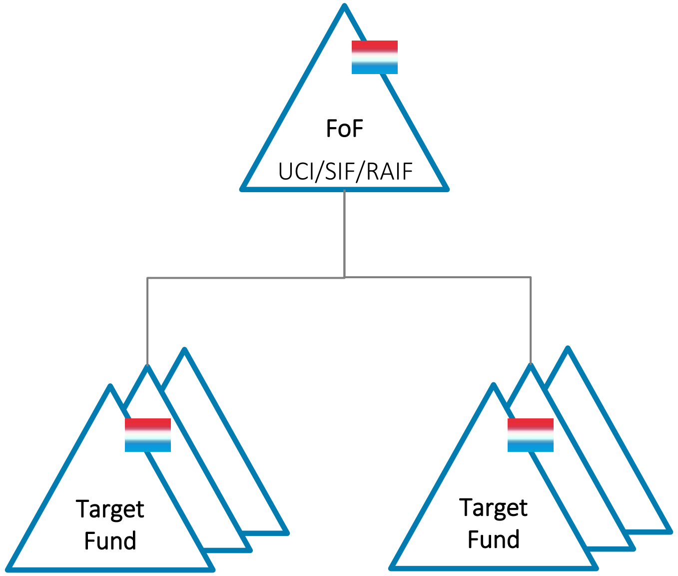
	Audit phase	Post-Audit phase
Objective	Review of Subscription Tax compliance and governance framework	Checking if detected weaknesses had been addressed
Activities observed	**6 - 9 WEEKS** Reception of letter from the AED → Sample testing of tax returns filed → Interviews → Review of procedures	**3 - 5 MONTHS** Letter from the AED with an agenda → Review of open points
Requested information	• Written procedures, and formalized control framework to comply with Subscription Tax; • Detailed description of the relevant funds, and their portfolio of investments; • Details regarding the NAV calculations used to prepare the Subscription Tax returns; • Technical description of the IT system used for Subscription tax compliance; • The internal and/or external control process put in place to identify and address the risks of non-compliance regarding Subscription Tax obligations; • Other measures put in place such as staff training, data storage.	• Review of updated written procedures and control framework; • Calculation methodology – NAV reporting – rates – exemptions.

Fund of Fund Exemption

Overview

FoF

Provided that certain conditions are met, a Fund of Fund (FoF) can benefit from a full exemption from Subscription Tax when investing in other FoFs



How does the FoF exemption work ?

- Recent investigations/audits launched by the Luxembourg tax authority (tax exemption for **FoFs**):

  ✓ When a Lux fund of funds ("**FoF**") invests in another Lux fund ("**TF**") subject to Subscription tax, such participation should not be taxed again ("**FoF exemption**"). The purpose of this rule is to **prevent economic double taxation** (i.e., the Subscription Tax is levied twice on the same assets).

  ✓ The FoF exemption is only applicable provided that the underlying fund (i.e., the TF) was subject to Subscription Tax on the relevant assets. Under such conditions, the FoF is allowed **to exclude from the taxable basis the portion of the NAV** attributable to investments made in TFs that were subject to Subscription Tax. In contrast, if the TF was not subject to Subscription Tax, the FoF exemption **shall not be applicable** and the FoF shall pay the Subscription Tax on the NAV represented by the investments held in such TF.

Fund of Fund Exemption
Applicable legislation

The rules

Provided that certain conditions are met, a FoF can benefit from a full Subscription Tax emption when investing in other FoFs

- Article 175 of the Law of 17 December 2010 relating to undertakings for collective investment (the “**UCI Law**” – similar provisions are contained in the **SIF Law** and the **RAIF Law**) provides that:

  “Are exempt from the subscription tax: (a) the value of the assets represented by units held in other UCIs, provided such units have already been subject to the subscription tax provided for in Article 174 or in Article 68 of 104 the Law of 13 February 2007 on specialized investment funds [the “**SIF Law**”] *or in Article 46 of the Law of 23 July 2016 on reserved alternative investment funds* [the “**RAIF Law**”]*”.*

- The competent Luxembourg Tax Authority issued the **Circular N° 818 of 26 July 2023**, which clarifies that:

  “Concerning the so-called “fund of funds” exemption regime, it is emphasized that undertakings such as UCIs, SIFs or RAIFs, in which the UCI invests, must pay the subscription tax on the value of the assets represented by shares held by the UCI so that the so-called “fund of funds” exemption regime can apply”. (similar provisions are contained in the Circular 818 regarding SIFs and RAIFs which are FoF).

Fund of Fund Exemption

The challenge of applying the exemption in practice

Investments in TFs <u>subject</u> to Subscription Tax

- Luxembourg UCIs, SIFs and RAIFs that do not qualify for an exemption and, consequently, are subject to Subscription Tax

<u>FoF exemption shall apply</u>

Investments in TFs <u>not subject</u> to Subscription Tax

- Non-Luxembourg TFs
- Luxembourg TFs including:
  - Vehicles without regulated fund form
  - investment companies in risk capital (“**SICARs**”)
  - RAIFs that have as exclusive object the investment in assets representing risk capital
  - UCIs, SIFs and RAIFs not exempt from Subscription Tax , which includes:
    - UCIs qualifying as **listed Index Funds**
    - UCIs, SIFs and RAIFs qualifying as **short-term Money Market Funds**
    - UCIs, SIFs and RAIFs qualifying for the **FoF exemption**
    - UCIs, SIFs and RAIFs qualifying as European Long Term Investment Funds (“**ELTIFs**”)
    - UCIs, SIFs and RAIFs that invest in **Microfinance Institutions**
    - UCIs reserved to investors in the context of pan-European Personal Pension Products (“**PEPPs**”)
    - UCIs, SIFs and RAIFs reserved for **institutions for occupational retirement provision** and employee’s retirement benefits plans

<u>FoF exemption shall not apply</u>

Fund of Fund Exemption

Declaration in the tax return

The Subscription Tax return expressly refers to all the categories of TFs **included** and **excluded** from the FoF exemption

a) Fund of funds (eligible Luxembourg target funds investments paying the subscription tax)

The value of all assets representing the shares in other undertakings for collective investment provided these shares have already been subjected to subscription tax as provided for by the present article or by article 174 of the amended Law of 17 December 2010 on undertakings for collective investment, or by article 68 of the amended Law of 13 February 2007 on specialised investment funds.

Do you want to declare one or several exempt asset(s)?

- (x) Yes ✓
- ( ) No

Avis important : Régime d'exonération « fonds de fonds » : investissements dans des fonds cibles luxembourgeois ayant déjà payé la taxe d'abonnement

Fonds cibles éligibles : Pour bénéficier de l'exonération de l'article 46, paragraphe 2, (a), le fonds cible luxembourgeois d'un fonds de fonds doit payer la taxe d'abonnement (il ne peut pas être exonéré sous les régimes d'exonérations de la taxe d'abonnement (b) à (e)). L'article 46, paragraphe 2, (a) de la loi concernant les FIS prévoit que la valeur des avoirs représentée par des parts détenues dans d'autres fonds d'investissement ou organismes de placement collectif peut être exonérée pour autant que ces parts ont déjà été soumises à la taxe d'abonnement. Il peut donc s'agir d'un fonds cible de type OPC, FIS ou FIAR. La taxe d'abonnement doit avoir été payée au moins une fois sur le montant investi, que ce soit au taux de 0,05%, 0,04%, 0,03%, 0,02% ou 0,01%.

Fonds cibles non-éligibles : Un investissement d'un fonds de fonds dans une SICAR ou dans un fonds d'investissement soumis aux impôts directs ne peut jamais bénéficier de l'exonération de l'article 46, paragraphe 2, (a). Les fonds d'investissement de type « SICAR » ainsi que certains fonds d'investissement non régulés sont soumis aux impôts directs et ne paient pas de taxe d'abonnement. En conséquence, un investissement d'un fonds de fonds dans une SICAR ou un autre fonds d'investissement soumis aux impôts directs ne peut jamais être exonéré de la taxe d'abonnement en application de l'article 46, paragraphe 2, (a).

- [x] * J'ai pris note de la présente notice d'information.

To add a new exempt asset, please click on the "Next step" button.

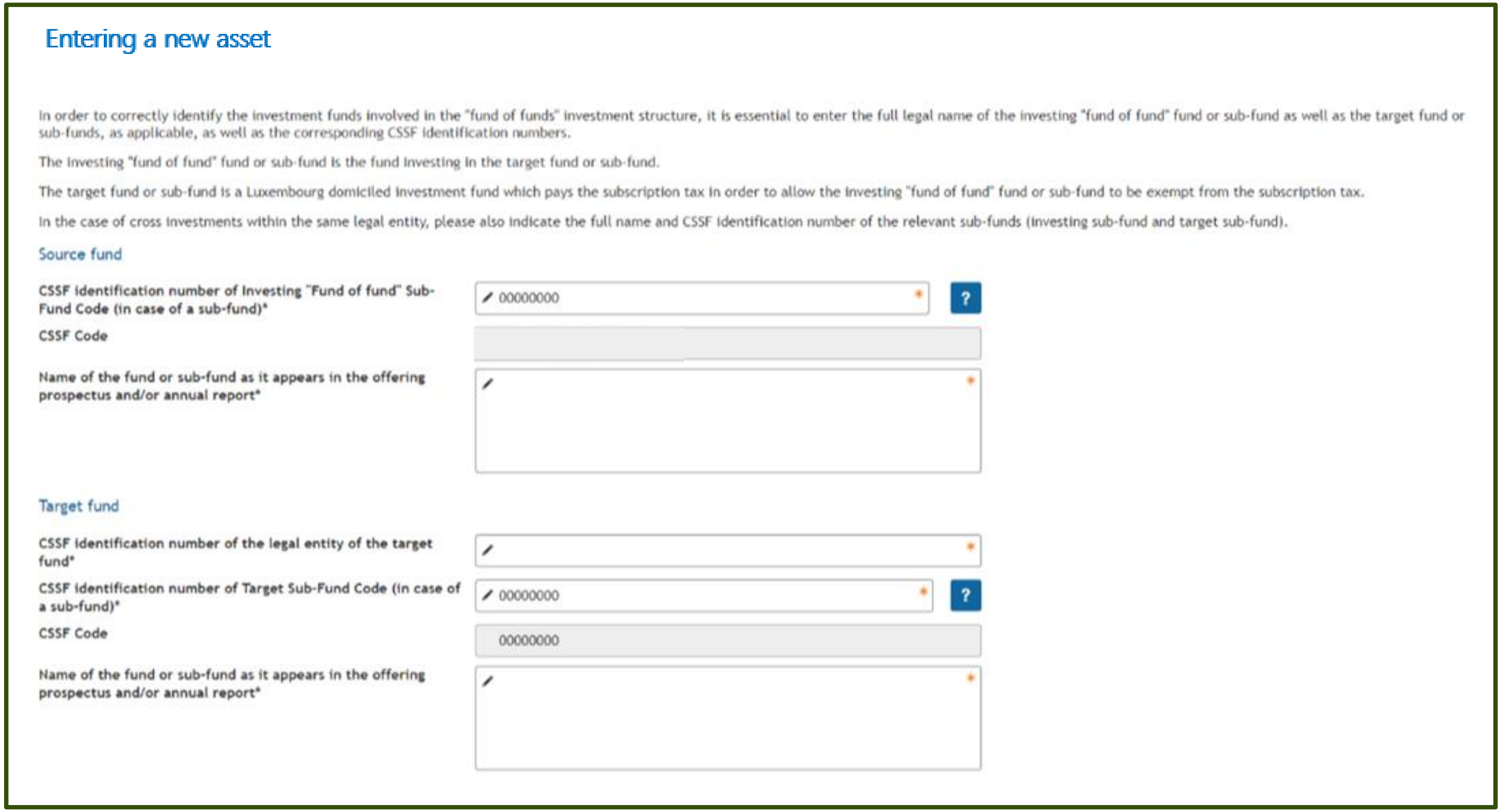
Montant total calculé (€)

TOTAL 0,00

Fund of Fund Exemption

New tax returns

- On 15 July 2024, the AED has published **updated online forms** for submitting Subscription Tax returns.
- Notably, the new online forms now require to declare and **individualize** the legal name and CSSF number of each target fund giving rise to the application of the "Fund of Fund" exemption.
- However, the use of the new forms will only become mandatory **as from August 2026**.



Entering a new asset

In order to correctly identify the investment funds involved in the "fund of funds" investment structure, it is essential to enter the full legal name of the investing "fund of fund" fund or sub-fund as well as the target fund or sub-funds, as applicable, as well as the corresponding CSSF identification numbers.

The investing "fund of fund" fund or sub-fund is the fund investing in the target fund or sub-fund.

The target fund or sub-fund is a Luxembourg domiciled investment fund which pays the subscription tax in order to allow the investing "fund of fund" fund or sub-fund to be exempt from the subscription tax.

In the case of cross investments within the same legal entity, please also indicate the full name and CSSF identification number of the relevant sub-funds (investing sub-fund and target sub-fund).

Source fund

CSSF identification number of investing "Fund of fund" Sub-Fund Code (in case of a sub-fund)* 00000000 ?

CSSF Code

Name of the fund or sub-fund as it appears in the offering prospectus and/or annual report*

Target fund

CSSF identification number of the legal entity of the target fund*

CSSF identification number of Target Sub-Fund Code (in case of a sub-fund)* 00000000 ?

CSSF Code 00000000

Name of the fund or sub-fund as it appears in the offering prospectus and/or annual report*

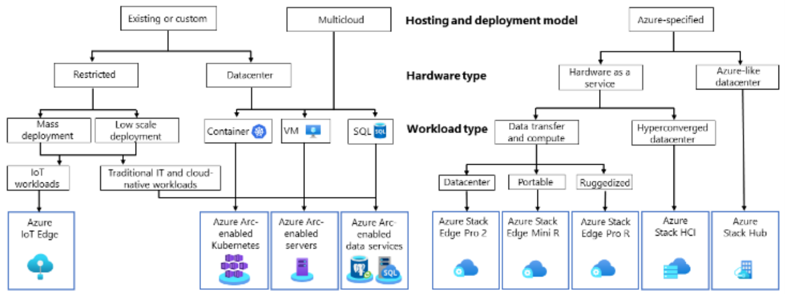
Fund of Fund Exemption

Our recommended approach

How to proceed?

<u>Design</u> of an adequate classification procedure

<u>Review</u> of existing classification procedure to ensure effectiveness



- ✓ The **most prudent approach** to monitor the correct application of the FoF exemption is to implement a classification procedure that allows to check whether the relevant TF falls under the scope of any of the scenarios under which it would not be subject to Subscription Tax (which would, in turn, disallow the application of the FoF exemption).
- ✓ Only when it has been confirmed with adequate and up to date information that **the TF does not fall under neither of the exempt / out of scope categories**, it would be prudent to consider that the FoF exemption should apply to a particular case.
- ✓ Our recommendation is to **review of their classification procedure** implementing this approach.

Fund of Fund Exemption

Classification procedure

Points of attention

Based on our prior experience reviewing a FoF classification process, we have identified a few areas of focus that deserve special attention

Prospectus

The Prospectus of each TF is the most reliable source for the FoF classification process and should be relied on whenever possible

External databases

External databases (e.g., Bloomberg, WM Daten) should be carefully used as their terms are not always aligned with Lux law

Completeness

The procedure should cover all relevant categories of TFs (even if not frequently invested in)

Defensive documentation

The FoF procedure should be formalized and documented, including relevant steps and clear attribution of responsibilities

Effective FoF classification procedure

Next Link’n Learn webinar

Date: ***04/06/2025***

Topic: Risk & Asset management | Principles for sound Liquidity Risk Management and Supervision