

EU securitisation vehicles to be in scope of ATAD 1 interest limitation rules

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A new bill of law has been filed before the Luxembourg Parliament, with a view to amend the scope of existing interest limitation rules with regard to securitisation vehicles.

Currently, EU securitisation vehicles (securitisation special purpose entities or **SSPEs**) as defined in Article 2(2) of the Securitisation Regulation [1] benefit from the exemption from the interest limitation rules; meaning that they do not need to cap their net borrowing expenses to either 30% of their EBITDA or EUR3,000,000 (whichever is higher).

Upon the adoption of the proposed amendment, which is foreseen to apply to financial years commencing after 1 January 2023, above entities would no longer figure as part of the list of "financial undertakings" to which the benefit applies (and which was established in article 168bis of the Luxembourg income tax law by transposing articles 2 and 4 of ATAD 1 [2] into Luxembourg law).

This development comes a result of a reasoned opinion, addressed to Luxembourg by the EU Commission, in which it stated that it considers the list of financial undertakings within the meaning of ATAD 1 as a static one, which therefore cannot be extended to regulated entities other than those already featured therein.

[1] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation

[2] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market

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