



Mr. Luc Frieden  
Formateur of the New Government of  
the Grand Duchy of Luxembourg  
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Luxembourg, 18 October 2023

**Subject: Tax measures required to maintain the competitiveness of the Luxembourg Capital Markets.**

Dear Mr. Frieden,

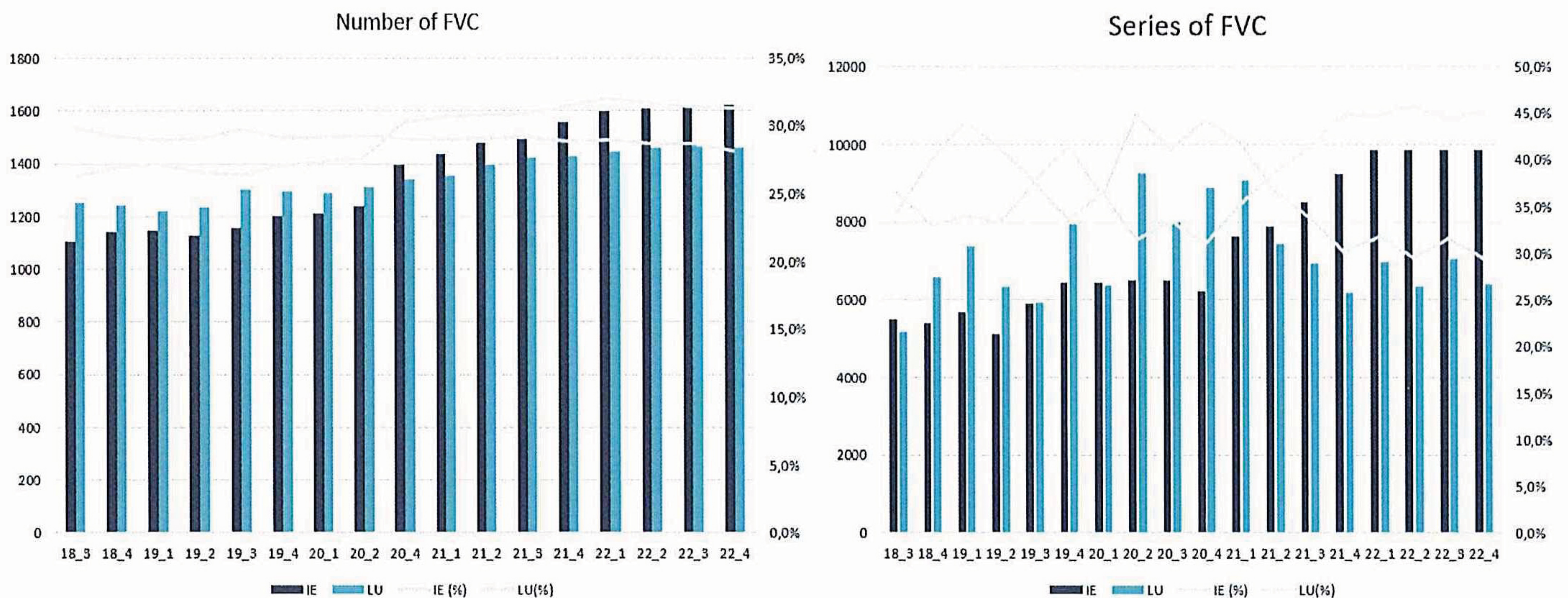
On behalf of the Luxembourg Capital Markets Association (LuxCMA), we would like to congratulate you on your recent nomination as “formateur” of the new government of the Grand Duchy of Luxembourg.

Created on 1 March 2019, the LuxCMA is a not-for-profit association (a.s.b.l.) which represents the common interests of all stakeholders of the primary capital markets industry of Luxembourg, promoting its capital markets and fostering innovation in the industry. The LuxCMA today comprises 55 members, composed by banks, law firms and services providers.

In this context, we allow ourselves to bring to your attention a particular aspect of the Luxembourg corporate income tax law that represents a threat to the continued competitiveness of the Luxembourg capital markets, in which transactions by securitisation companies play a crucial role.

Since the introduction of the Luxembourg securitisation law in 2004, Luxembourg has been a leading centre for securitisation and structured finance vehicles. However, after years of being in the lead, Luxembourg lost this position to Ireland in 2020 (see charts below). The timing of Luxembourg losing its position in the ranking coincides with the introduction of Interest Limitation Rules (ILR) in Luxembourg and their application to Securitisation Vehicles (SVs).

The ILR were introduced in Luxembourg as part of the implementation of the Anti-Tax Avoidance Directive<sup>1</sup> and limit the deduction of interest expenses.



The aim of securitisation is the pooling of various assets bearing risks, the acquisition of which is typically financed by the issuance of debt securities to third parties. An SV thus links investors, that contribute cash in exchange for the issuance of debt securities, with owners of illiquid assets, that transfer those assets in exchange for the cash received from the investors. Luxembourg is not the only jurisdiction in the EU with a securitisation regime<sup>2</sup>, and in all these jurisdictions SVs are intended to be tax neutral.

The OECD Base Erosion and Profit Shifting (BEPS) project is aimed at preventing multinational enterprises from exploiting gaps and mismatches between different countries' tax systems. By their very nature as pooling vehicles for third party investors, SVs cannot give rise to base erosion and profit shifting.

Luxembourg SVs are however subject to and, in certain situations, affected by the ILR that aims to combat base erosion and profit shifting realised through excessive interest payments. This seriously compromises the tax neutrality sought by the legislator upon introduction of the securitisation regime into Luxembourg Law and distinguishes Luxembourg negatively from other EU securitisation regimes. The uncertainties and risks resulting from the application of the ILR have already resulted in Luxembourg losing its leading position in the EU securitisation market. The recent amendments to the Luxembourg Securitisation Law, which as such would make Luxembourg an even more

<sup>1</sup> 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.

<sup>2</sup> Other jurisdictions include Ireland, the Netherlands, Malta, Italy, Portugal and Spain. In addition, the UK has an attractive securitisation regime.



attractive location for some types of securitisation, do not seem to counterbalance the uncertainty created by the application of the ILR.

In contrast, other EU countries (e.g., Ireland, the Netherlands, Spain or Italy) exclude their SVs from their ILR or apply the rules in such a way that they do not materially affect the majority of their SVs (e.g., Portugal).

Inspired by the rules of other EU countries, we had a discussion with the Ministry of Finance in January 2022, and in March 2022 we have shared suggestions with the Ministry of Finance on how to amend the current rules to secure tax neutrality for Luxembourg SVs. We had a follow-up meeting with representatives of the Ministry of Finance in March 2023 to discuss these suggestions. In our view such changes are crucial and should be urgently implemented to allow Luxembourg to regain its leading position and to remain competitive.

We would be happy to discuss these suggestions (or any other topic related to the competitiveness of the Luxembourg capital market) with you and thank you in advance for your attention.

In the meantime, please accept the assurance of our highest consideration.

Yours sincerely,

For LuxCMA

A handwritten signature in blue ink, appearing to read "Julie Becker", is positioned above the printed name.

Julie Becker  
Chair of the LuxCMA Board