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A tax-neutral jurisdiction

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ANDERSEN TAX MANAGING DIRECTOR MICHAEL PROBST SAYS THAT OVER THE PAST QUARTER-CENTURY, CROSS-BORDER TAX PLANNING IN LUXEMBOURG HAS CHANGED FUNDAMENTALLY, FROM THE SIMPLE USE OF BANKING AND PROFESSIONAL SECRECY TO DEVISING TAX-EFFICIENT BUT COMPLIANT STRUCTURES FOR ALTERNATIVE FUNDS AND FAMILY OFFICES.

How is cross-border tax planning evolving?

The rules and culture governing the domiciliation of companies have changed fundamentally over the past 25 years, along with the entire environment in which cross-border tax planning takes place. While Luxembourg's domiciliation regime differs in important ways from those in other European countries, the Grand-Duchy has imposed clear rules with which companies must comply in order to be registered and considered a resident entity. This has been a major development over the past two decades, but the law is now increasingly updated and the environment has seen major evolutions, such as the OECD's Base Erosion and Profit Shifting initiative and the EU's Directive on Administrative Co-operation in the field of taxation (DAC6), which are now part of the daily reality for cross-border tax planning. A company can no longer use a cross-border structure to realise a tax profit as easily as 25 or even 10 years ago. DAC6 has brought new administrative burdens, requiring a new approach to cross-border tax planning. While the legal background has become more complex, the economic rationale remains central to bringing new business to Luxembourg. That includes tax benefits, but no longer consisting of reducing or delaying tax liabilities, but rather avoiding additional tax costs. The country's reinvention as a tax-neutral jurisdiction represents a significant shift from the past, when strategies focused on deductions and exemptions on different sides of the border. This was highly skilled and complex tax work, but it has been made redundant by the new rules implemented over the past couple of years.

Has this impacted the way you serve your clients?

This has affected both the way we serve our clients and, significantly, the type of clients we serve. From 25 years ago, when undeclared money was a substantial if unspoken component of the private banking business, the whole landscape has changed; today everyone with a bank account in Luxembourg is declaring the income in their home country, and all institutions and service providers in the Grand-Duchy, not just banks but lawyers, accountants and tax advisors, are obliged to report undeclared assets. When I started my career 30 years ago, clients were institutions, promoters of investment funds and especially private clients of all kinds, for whom accountants worked hard to prevent them from paying tax. The principle has not changed – tax advisers are still trying to help clients pay less tax – but the methods are different, because today nothing is hidden. As a result, many of banks' less wealthy private clients have turned their backs on Luxembourg. By contrast the number of high net worth clients has increased, with a significant impact on the type of services they require. We are seeking increasing amounts of family office business, and compared with 25 years ago the fund market is growing fastest among alternative managers, investing in assets such as real estate, private equity and completely new asset classes. With its ability to bring together real estate investment experts and investors, Luxembourg still represents a centre of excellence offering a well-developed legal environment and a hub of high-quality service providers, from advice on setting up structures to administering them. In the past, the use of the banking and

professional secrecy was an easy task, and it did not require significant tax knowledge. But today the tax expertise required to establish structures in Luxembourg (and worldwide) has increased significantly, because of the demand for structures and solutions that offer a tax neutrality, as opposed to banking secrecy to protect investors' identities, as well as to provide asset protection. That requires a high degree of confidence in the service providers that are responsible for handling the clients' money. To a certain extent the legal developments have reduced the number of entities incorporated in Luxembourg for corporate and institutional clients, which in the past might have used more single asset companies, to be prepared for possible exits based on different tax strategies, since today the one or the other of those entities would be considered abusive. It has become important to create companies as per the economic requirements of the client.

What areas will drive business over the coming months and years?

There are still three key business areas, led by the fund industry and everything connected to it, and principally the alternative investment market, which has the greatest potential on an ongoing basis. The second is family office services, including different types of small ventures such as club deals, carried out without a fund. We already have a large number of family offices in Luxembourg in part because it is the only country in Europe if not in the world with legislation regulating single and multi-family offices, and this will be a big



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card to play in the future. The third key business area is big institutions looking for a cross-border solution. For instance, if institutions in France and Germany, are looking to co-operate, they will not like to have a joint venture in either country because it would give the one or the other partner more control over the joint venture entity, so Luxembourg offers neutral ground. This type of scenario will also remain a market for everybody, whether for securitisation, investments or joint ventures.