TAX MANAGEMENT
PORTFOLIOS™

FOREIGN INCOME

Business Operations in Luxembourg

by

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Luxembourg

Based on earlier editions written by
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FOREIGN INCOME

Business Operations in Luxembourg

PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Luxembourg*, No. 7220, contains the basic information to enable foreign businesses to determine the best method of conducting their operations in Luxembourg from both the tax and the general legal points of view. It analyses in detail the statutory and procedural framework of Luxembourg income taxation as applied to individuals, business companies, holding and finance companies and funds.

The analysis includes a summary of many of the considerations relevant to establishing a business in Luxembourg. In addition to providing a detailed explanation of the Luxembourg system of income taxation, particularly the participation exemption available in Luxembourg, the Portfolio also discusses important business tax, net wealth tax, personal income tax and value added tax issues.

Although Luxembourg is far from being a tax haven (especially for individual taxpayers), the country has a liberal fiscal policy insofar as the avoidance of double taxation and withholding taxes, the possibility of obtaining advance rulings and the activities of investment funds and special purpose companies are concerned.

Among the Worksheets are model articles of incorporation for commonly used business entities in Luxembourg.

Persons wishing to engage in transactions involving Luxembourg or using Luxembourg entities are advised to use this Portfolio to obtain a general understanding of the Luxembourg tax law and tax system and should always seek professional advice before engaging in a transaction.

This Portfolio may be cited as Moons, 7220 T.M., *Business Operations in Luxembourg*.

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DETAILED ANALYSIS

I. Luxembourg — General Background

A. The Country

The Grand Duchy of Luxembourg is a land-locked country located in Europe, bordering Belgium, Germany and France. Its surface area is 2,586 km^2. The official languages of the country are German, French and, since 1984, Luxembourgish.

The capital city, also named Luxembourg (City), houses the national governmental institutions as well as several institutions of the European Union, such as the Court of Justice of the European Union (CJEU) and the European Investment Bank.

There are 12 administrative cantons and 105 communes in Luxembourg. Twelve of the communes have city status, the largest being Luxembourg City. The second largest canton, with a population almost equal to that of the capital city, is Esch-sur-Alzette, a city located at the French border.

The Grand Duchy is divided into two geographical regions: Oesling (the North) and Gutland (the South). The current population of Luxembourg is 678,493. Luxembourg's GDP is US$93.197 billion (2024).

B. Political/Governmental Organization

The Grand Duchy of Luxembourg is a constitutional monarchy with a hereditary head of state, the Grand Duke. The Constitution was proclaimed in 1868[1] and has been modified several times since. Sovereignty is vested in the people, who elect, by universal direct vote, a Chamber of Deputies, consisting of 60 members, at intervals of five years. The Chamber can initiate and amend legislation. All matters are decided by a majority vote. The ruler exercises executive power through a ministerial council (government) that is composed of members backed by a parliamentary majority. This ministerial council is the governing body responsible to the Chamber of Deputies.

One of the most remarkable characteristics of the Grand Duchy of Luxembourg is its political and economic stability. The traditional Western European democratic political parties — the Christian Democrats, the Socialists, and the Liberals — have dominated the political scene since 1868. The current parliament is composed of the Christian Social People's Party (21 members), the Democratic Party (14 members), the Luxembourg Socialist Workers' Party (12 members), the Green (*Déi Gréng*) Party (4 members), the Alternative Democratic Reform Party (5 members), the Left (2 members) and the Piraten (2 members), with the government being composed of the Christian Social People's Party and the Democratic Party.

C. Tax Authorities

1. Three Luxembourg Tax Authorities

There are three different tax authorities in Luxembourg:

(i) The Luxembourg Inland Revenue (*Administration des contributions directes*);

(ii) The Registration Duties, Estates and Value Added Tax (VAT) Authority (*Administration de l'enregistrement, des domaines et de la TVA*); and

(iii) The Customs and Excise Agency (*Administration des douanes et accises*).

[1] Constitution du Grand-Duché de Luxembourg, dated October 17, 1868, as amended.

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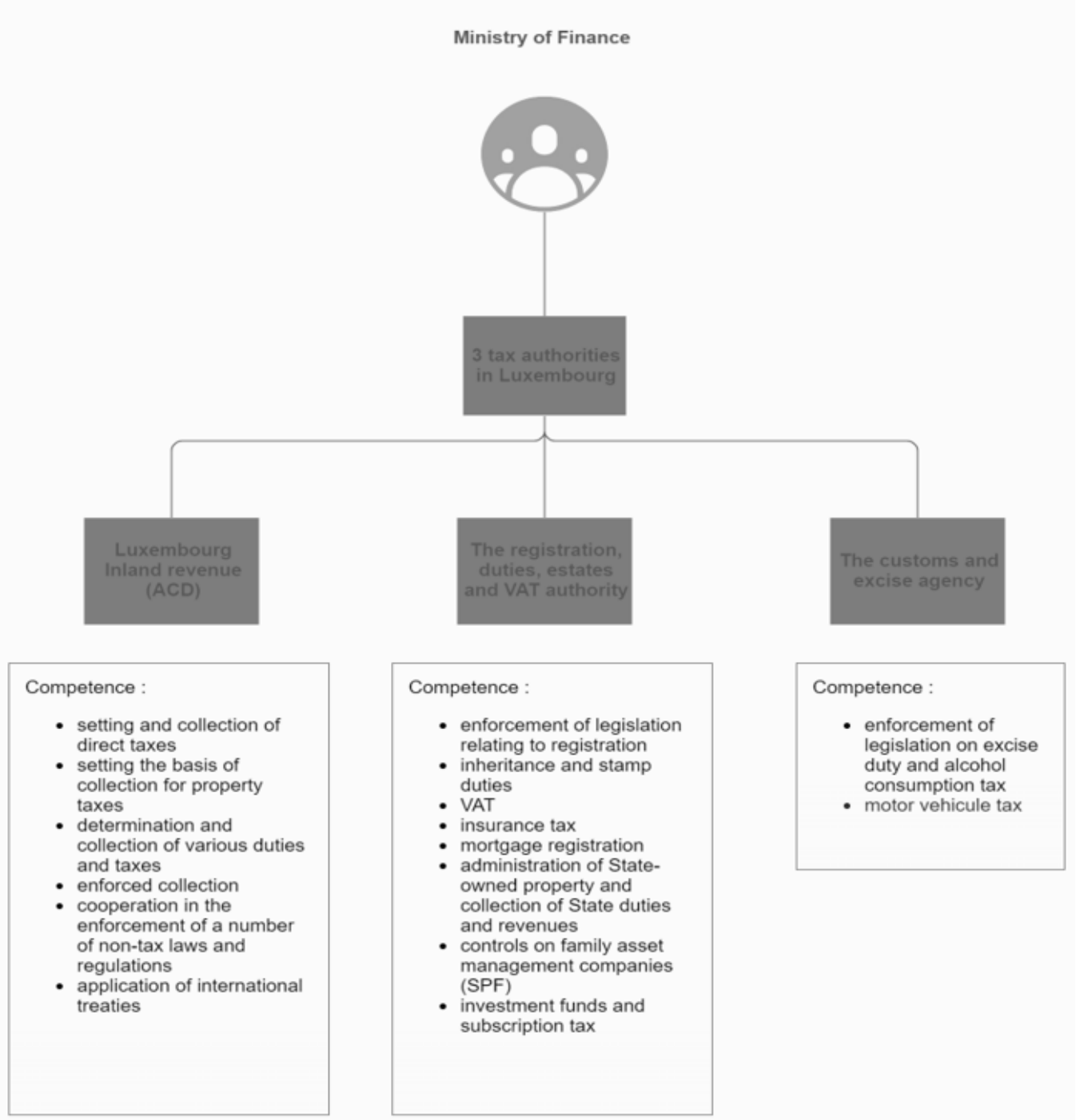

2. Administrative Procedure for Tax Disputes

In the first instance, a taxpayer that wishes to object to an assessment issued by the tax authorities has to file an (administrative) objection with the relevant tax authority within three months following the receipt of the tax assessment.

In the event of a negative decision following such an administrative appeal, the taxpayer has the right to file a judicial claim within the three months following the date of the (negative) administrative decision. If the tax authorities do not respond within six months (or sometimes longer), the taxpayer has the right to file a judicial claim before the Administrative Tribunal (the tribunal of first instance in administrative matters). There is currently no statutory deadline within which the taxpayer has to file such a claim in the absence of a response from the tax authorities.

If the taxpayer (or the tax administration) is not satisfied with the Administrative Tribunal's decision, the decision can be appealed within 40 days.

The Luxembourg Administrative Court (the court of appeal for administrative matters) acts as the second and final instance in tax matters, and its decisions cannot be appealed further.

In the case of tax matters that have a constitutional dimension, the Luxembourg Constitutional Court acts as the authoritative instance, and the administrative instances (i.e., the Lux-

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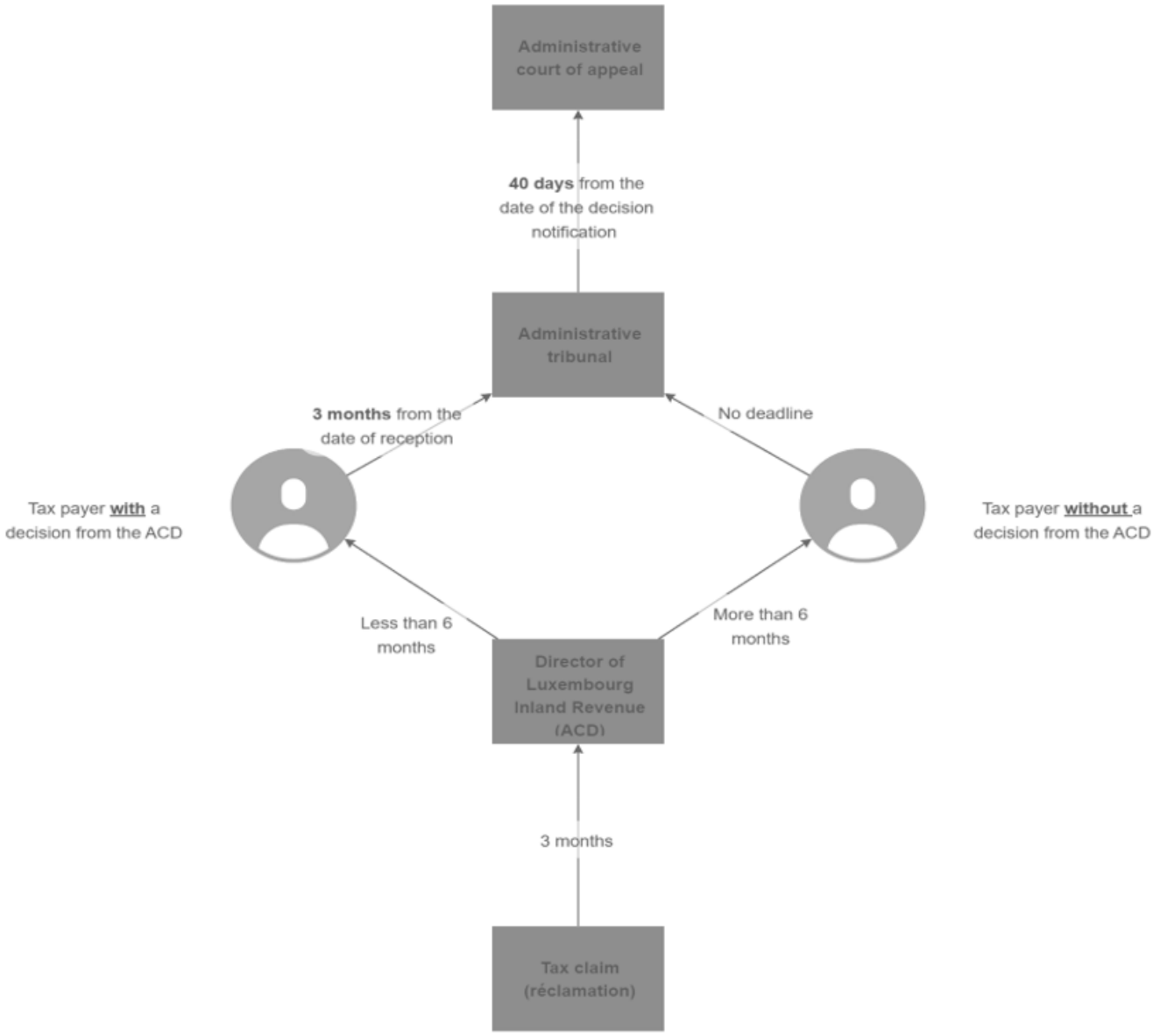
embourg Administrative Tribunal and the Luxembourg Administrative Court) may refer questions on constitutionality to the Luxembourg Constitutional Court.



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II. Operating a Business in Luxembourg

A. Foreign Investment Regulations

1. Opportunities

a. Government Policy

The Luxembourg government actively encourages foreign investment and there are no restrictions on foreign ownership, except if determined to impact security or public order.[2]

b. Possible Business Structures

Foreign corporate investors generally choose to operate through a limited liability corporation (*société anonyme* or SA) or a private limited liability corporation (*société à responsabilité limitée* or S.à r.l.), whereas fund investors often invest through limited partnerships, notably special limited partnership without legal personality (*société en commandite spéciale* or SCSp). Nonresident companies can also operate through permanent establishments (PEs).

c. Investment Incentives

The government offers numerous incentives (both tax and non-tax-related). The incentives available are discussed in detail in X.D.11. below.

d. Labor

The labor force has a reputation for being hardworking and skilled. Expansion in the financial sector has resulted in recruitment from many countries, most notably the neighboring countries of Belgium, France and Germany.

e. Finance

Financing for projects in Luxembourg is available from the numerous local banks, many of which are part of the large international institutions, the *Société Nationale de Credit et d'Investissement* (state lending organization) and international markets.

f. Financial Sector

The success of Luxembourg City as a financial center is the result of the presence of a number of elements, including:

(i) An international banking center;

(ii) A competitive tax system;

(iii) A competitive legal and fund regime;

(iv) A recognized stock exchange;

(v) Professional expertise;

(vi) Multilingual personnel; and

(vii) The development of tailor-made special fiscal and legal regimes.

[2] See II.A.3.c., below.

g. Special Purpose Companies and Regimes

There are several special fiscal regimes in Luxembourg offering specific tax and other advantages. These regimes are:

(i) Holding and finance companies (*Soparfis*);

(ii) Investment funds;[3]

(iii) Specialized Investment Funds (SIFs) and Reserved Alternative Investment Funds (RAIFs);

(iv) Pension funds;

(v) Banks;[4]

(vi) Securitization companies and funds;[5]

(vii) Venture capital/private equity holding companies,[6] i.e., the *société d'Investissement en capital à risque* (SICAR);

(viii) Insurance and reinsurance companies;[7]

(ix) Private wealth management companies, i.e., the *société de gestion de patrimoine familial* (SPF);[8]

(x) Shipping companies;[9] and

(xi) Venture capital certificates (now abolished).[10]

The relevant regimes are discussed in IV., below.

2. Incentives

a. Tax Incentives

(1) Tax Holiday

New enterprises and new business-related service companies that contribute to the development and expansion of the Luxembourg economy may be entitled to a "tax holiday" for a specified period of time.[11]

Exemption from income tax and local taxes can be granted on up to 25% of the profit of a new business that is considered especially important to improving the structure or regional balance of the economy, provided the business's activities do not compete with those of existing companies. Such an exemption can be obtained only for the first eight years of the new business's operations. The eight-year tax holiday also applies to new manufacturing processes. Financial services companies do not qualify for this exemption.

[3] Law of December 17, 2010, on investment companies (*organismes de placement collectif*), as amended by the Law of July 21, 2021, which transposes EU Directive 2019/1160.

[4] Law of April 5, 1993, on the financial sector, as amended.

[5] Law of March 22, 2004, on securitization vehicles.

[6] Law of June 15, 2004, as amended, on venture capital companies.

[7] Law of December 7, 2015, as amended, on the insurance sector.

[8] Law of May 11, 2007, as amended, on private wealth management companies.

[9] Law of November 9, 1990, as amended, creating a public maritime register for Luxembourg.

[10] Law of December 19, 2020, Art. 20, abrogating the Law of December 22, 1993.

[11] Law (*Loi cadre industrielle*) of July 27, 1993, as amended, to encourage: (i) economic expansion and development; and (ii) improvement of the general structure and regional balance of the economy, Art. 11.

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The exemption can be granted only by the competent Ministers of Economy and of Finance together, after a special commission composed of deputies of several Ministers has given its advice on the request filed by the taxpayer. The extent of benefits granted depends essentially on the volume of new investments and on the number of new jobs created. The contract may include other tax incentives referred to in this section.

Furthermore, taxpayers that create new businesses or introduce new manufacturing that are recognized to be especially apt to contribute to regional development, or a better geographical distribution of economic activity, can benefit from an exemption of income tax and municipal business tax for a period of 10 years. The exemption is limited to 25% of the profits resulting from the activity.[12]

Companies benefiting from these tax holidays can also still take advantage of Luxembourg's double taxation agreements.

(2) Tax Credits for Investment

Taxpayers are allowed — on request — to claim two different tax credits for certain investments in, and expenses incurred in relation to, a business carried on in Luxembourg and intended to stay in Luxembourg permanently.[13] For these purposes, investments must be physically used within the European Economic Area (EEA). This territorial requirement does not, however, apply to "space objects," which are defined as "any object launched or intended to be launched in outer space, the constituent part of such an object as well as its launcher and the parts of the latter."

The tax credits are deductible against the income tax due for the relevant tax year.[14] To the extent the tax credits exceed the total amount of income tax due, the excess can be carried forward for a period of 10 years, during which the excess can be set off against the income tax due during any of those years.[15]

The two types of investment tax credits are: (i) as of 2024, an investment tax credit for investments in, and operating expenses incurred in relation to, digital transformation or ecological and energy transition; and (ii) a general investment tax credit.

The investment tax credit for investment in, and operating expenses incurred in relation to, digital transformation or ecological and energy transition is designed to stimulate both substantial innovations in production or distribution processes through the implementation and use of digital technology, and substantial changes in the production or consumption of energy or the use of resources that reduce the environmental impact. The rate of the tax credit is 18% of the acquisition price of qualifying investments and of qualifying operational expenses, except for investments in amortizable assets, for which the tax credit is 6% of the assets' acquisition price. For further details, see VI.B.7.b.(1), below.

A longstanding general investment tax credit is available for investment in the assets listed below. As of 2024, the rate of the tax credit is 12%, up from 8% and 2% respectively, in previous years.[16]

The general investment tax credit can be obtained via a request for investments in:

(i) Tangible depreciable assets, other than buildings, livestock, and mineral and fossil deposits);

(ii) Sanitary and central heating installations in hotels;[17]

(iii) Buildings used for social activities;[18]

(iv) Assets eligible for special depreciation rules (which are assets designed to assist in, among other things, the protection of the environment, and the realization of energy savings);[19] and

(v) Software purchased from unrelated parties, other than software for which the investment tax credit for digital transformation or ecological and energy transition is claimed.

The following assets are, however, excluded from the general investment tax credit:

(i) Assets that are depreciable over less than three years;

(ii) Assets acquired via the wholesale integration of an undertaking or an independent part of an undertaking, and secondhand assets acquired in a different manner, except, subject to certain conditions, assets invested within three years from the date of establishment of a new enterprise, with the aggregate acquisition costs capped at 250,000 euros;[20] and

(iii) Automobiles, other than automobiles that are used exclusively for the commercial transportation of persons or goods, or form part of the net assets of a car leasing enterprise, and certain other specified vehicles.

For further details regarding the general investment tax credit, see VI.B.7.b.(2), below.

Before fiscal year 2024, in addition to the general investment tax credit, a complementary investment tax credit was available for investments in certain assets at a rate of 13% (see VI.B.7.b.(3), below).

(3) Tax Credit for Hiring Unemployed Workers

Taxpayers may also be entitled (at their request) to a tax credit for hiring unemployed persons.[21] To qualify for the credit, the job must be for at least 16 hours per week. Both temporary and indefinite employment contracts may be taken into account for purposes of determining the credit. Temporary contracts, however, must be for a minimum duration of 18 months.[22] The monthly tax credit amounts to 10% of the total deductible gross wage paid for each qualifying person. The tax credit may last for up to 12 months per person hired.[23] In the event an employment is terminated, the tax allowance will no

[12] Law of December 22, 2000, on the economic development of certain regions of the country, Art. 7.

[13] Income Tax Law (LIR), Art. 152 *bis* (1).

[14] LIR, Art. 152 *bis* (8)(1).

[15] LIR, Art. 152 *bis* (8).

[16] LIR, Art. 152 *bis* (7).

[17] RGD of October 29, 1987 provides further clarification.

[18] As defined in RGD of July 30, 1960.

[19] I.e., assets referred to in LIR, Art. 32 *bis*.

[20] LIR, Art. 152 *bis* (7a).

[21] Law of December 24, 1996 (*Bonification d'impôt en cas d'embauchage de chômeurs*).

[22] Law of December 24, 1996, Art. 4, as amended by the Law of July 31, 2006.

[23] Law of December 24, 1996, Art. 5., as amended by Law of April 8, 2018.

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longer be available as of the month of termination. The 10% tax credit is creditable against the Luxembourg corporate income tax. It is not creditable against any withholding taxes. To the extent the 10% tax credit exceeds the amount of corporate income tax due, the excess may be carried forward for 10 years[24] and set off against the Luxembourg corporate income tax due for any of those years.

(4) Tax Losses

Tax losses[25] generated as from January 1, 2017, can be carried forward for a 17-year period, using a "first-in, first-out" method. Tax losses incurred until December 31, 2016, can be carried forward without any limitation. The carryback of losses is not allowed.

(5) Depreciation

The declining-balance method[26] may be used to depreciate tangible assets, except buildings, if the owner of the assets concerned is also the user of the assets. Depreciation may thus be accelerated during the early years of ownership of an asset. It is possible to switch from the accelerated depreciation method to the straight-line depreciation method.

From January 1, 2017, the linear depreciation of an asset for a given financial year can, upon request, be deferred until the financial year in which the useful economic life of the asset comes to an end at the latest. This optional deferral may be advantageous to use with investment tax credits or other credits that are about to expire because their carry forward period is about to expire or instead to credit the corporate income tax liability against the net wealth tax liability. See V.D., below.

(6) Income from Intellectual Property

For income and gains from eligible intellectual property, a partial income tax exemption is available. Such intellectual property is exempt from net wealth tax. The income and gains qualifying for the 80% income tax exemption equal the Net Eligible Income (subject to certain specific adjustments) from Eligible Assets multiplied by a specific ratio. The ratio equals the Eligible Costs (with an uplift of 30% but capped at the Total Costs) over the Total Costs. This ratio implements the modified nexus approach, meaning that only research & development (R&D) activities having a nexus with a Luxembourg taxpayer benefit from the IP tax regime. See IV.I.1., below.

b. Non-tax Incentives

(1) In General

An industrial framework law[27] provides for certain grants to promote economic development and diversification, and the improvement of the general structure and regional balance of the economy (the Industrial Framework Law).

Furthermore, the small and medium-sized enterprise framework law[28] (the "SME Framework Law") establishes a general framework for support schemes for all sectors that fall within the scope of the General Directorate for Small and Medium-Sized Enterprises (*Direction Générale des Classes moyennes*). Small and medium-sized enterprises are companies with:

(i) Fewer than 250 employees; and

(ii) An annual turnover of no more than 50 million euros or a balance sheet that does not exceed 43 million euros annually.

Luxinnovation, the National Agency for Innovation and Research, founded in 1984, provides guidance with respect to the complexities of the provisions regarding nontax incentives.

(2) The Industrial Framework Law

Public support measures for the financing of development projects by industrial companies may take the form (in addition to the previously mentioned tax measures) of subsidies,[29] loans at favorable interest rates,[30] government guarantees,[31] and promotional support.[32] Furthermore, in this context, the government may acquire industrial sites and buildings.[33] The mentioned schemes may be applied separately or even cumulatively, except for the granting of subsidies and favorable interest rates.

A capital subsidy calculated as a percentage of the volume of investments,[34] generally up to a maximum of 15%, may be granted for investments in development or modernization work made by small and middle-sized enterprises. A special public sector financial institution, the *Société Nationale de Crédit et d'Investissement* (SNCI),[35] offers:

(i) Equipment loans; and

(ii) Medium and long-term loans to companies in the industrial sector to finance development projects.

The SNCI is itself financed by government loans. It may issue bonds that are guaranteed by the government. The beneficiaries of the medium and long-term loans may include industrial firms and service providers with a key impact on economic development that have their own funds of at least 25,000 euros. Eligible investments include professional equipment, depreciable intangible assets and land and buildings. The maximum level of support is 10 million euros, and the loans can finance up to 50% of the investment. The interest rate is the "prime rate SNCI" in force at the time the loan contract is signed (currently: 2.5% for a medium-term loan and 3% for a long-term loan). The duration of the loans is fixed on a case-by-case basis and can be up to 10 years. The eligible beneficiaries of equipment loans are small and medium-sized enterprises with skilled personnel carrying on handicraft or commercial, industrial and/or liberal professional activities. Investments eligible for equipment loans also include depreciable intangible assets, professional equipment, and land and buildings. Equipment loans have a fixed interest rate lower than the market rate

[24] Law of December 24, 1996, Art. 6.
[25] LIR, Arts. 109 and 114 and GewStG, Art. 9 *bis*.
[26] LIR, Art. 32(3) to (5).
[27] *Loi cadre industrielle* of July 27, 1993, as amended.
[28] *Loi cadre des classes moyennes* of June 30, 2004, as amended.
[29] *Loi cadre industrielle* of July 27, 1993, as amended, Art. 8.
[30] *Loi cadre industrielle* of July 27, 1993, as amended, Art. 9.
[31] *Loi cadre industrielle* of July 27, 1993, as amended, Art. 12.
[32] *Loi cadre industrielle* of July 27, 1993, as amended, Art. 10.
[33] *Loi cadre industrielle* of July 27, 1993, as amended, Art. 13.
[34] *Loi cadre industrielle* of July 27, 1993, as amended, Arts. 8 and 4.
[35] Law of August 2, 1977, as amended.

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(currently 2.5%) and may finance up to 60% of the eligible investment, subject to a maximum of 2.5 million euros. The duration of equipment loans, which depends on the type of investment, has a maximum of 10 years or, exceptionally, 15 years.

The *Société Luxembourgeoise de Capital-Développement pour les PME SA* (CD-PME) is a public limited liability company created by the SNCI, together with five commercial, Luxembourg-based banks. The objective of the CD-PME is to grant participating loans and, exceptionally, to take participating interests in Luxembourg-based small and medium-sized companies active in the industry, crafts or service sectors that are implementing innovative projects that generate new jobs, with the aim of reinforcing their equity base. The costs directly linked to the innovative projects are eligible for financing. The interest rate depends on the level of risk incurred by the project. The amount of financing granted by the CD-PME may not exceed 50% of the financing need for the project, up to a maximum of 300,000 euros. The duration of a loan may, in principle, not exceed 10 years.

A government guarantee[36] may be given for up to 50% of a qualifying loan.

A capital subsidy, fixed on a case-by-case basis, may be granted for costs[37] relating to management, organization and promotional surveys and/or costs relating to the regrouping and merger of companies in the context of the reorganization of a sector of the economy.

The government and municipalities may acquire, develop, and make available industrial land to manufacturing companies.[38] In addition, the government and communes may undertake to construct industrial buildings in order to sell or rent them to such companies.

(3) The Small and Medium-Sized Enterprise Framework Law

Public, nontax support measures for the financing of development projects undertaken by commercial and skilled-handicraft companies may take, pursuant to the Small and Medium-Sized Enterprise (SME) Framework Law, the form of subsidies or loans at favorable rates. The General Directorate for Small and Medium-Sized Enterprises offers two types of investment schemes for companies from these sectors to finance development projects:

(i) A general investment support scheme for SMEs, also called the "SME Scheme"; and

(ii) An initial investment support scheme for setting up or taking over a company,[39] also called the "Initial Investment Scheme," which provides for an increase of the support granted under the SME Scheme.[40]

The SME Scheme aims to support investments in tangible and intangible assets by SMEs, in conformity with the government policy of qualitative growth and sustainable development. Eligible investments are investments in tangible and intangible assets as well as promotional activities and services of a special and exceptional nature provided by external consultants. The support may take the form of a capital subsidy if the investment project is financed by the company's own funds or an interest rate subsidy if it is financed through a bank loan. The capital subsidy may amount to up to 10% of the eligible investment for middle-sized enterprises and up to 20% for small enterprises. SMEs are companies with fewer than 250 employees that have an annual turnover of no more than 50 million euros (or a balance sheet of no more than 43 million euros). The distinction between small and medium-sized enterprises is that small enterprises are companies with fewer than 50 employees that have an annual turnover of no more than 10 million euros. SMEs can benefit from financial aid for the cost of services provided by external consultants. The gross amount of the financial aid may not exceed 50% of the expenses up to a maximum amount of 200 euros.[41]

The Initial Investment Scheme aims to encourage persons with the appropriate professional qualities to set up or take over a company as a first business endeavor, with a view to revitalizing entrepreneurship and safeguarding the long-term future of the SME sector. The eligible investments are the same as those covered by the SME scheme. The support takes the form of a 10% increase in the support granted for tangible and intangible assets, subject to a maximum of 200,000 euros over a three-year period.

The Luxembourg government promotes foreign trade and international economic and financial relations with practical help and financial encouragement. These aids are administered by the Ministry of Economy and Foreign Trade as well as the *Comité pour la promotion des exportations luxembourgeoises* (COPEL) and the *Office du Ducroire*. The COPEL may give legal and tax advice. The *Office du Ducroire*, a public sector establishment constituted in 1961 under the authority of the Ministry of Finance, mainly provides export insurance by covering commercial and political risk, insures local investment and gives professional advice on the credit-worthiness of customers.[42]

(4) The Research, Development and Innovation Act

The Research, Development and Innovation Act of June 5, 2009, which has been replaced by the Law of May 17, 2017, aims at:[43]

(i) Promoting research, development and innovation;

(ii) Extending the mission of Luxinnovation GIE, the Luxembourg Agency for the promotion of innovation and research; and

(iii) Creating a dedicated Fund for the promotion of research, development and innovation.

Incentives may take the form of capital subsidies or interest reductions (reduced interest rate on the financing). The dispositions include, inter alia, financial support of R&D projects

[36] *Loi cadre industrielle* of July 27, 1993, Art. 12.
[37] *Loi cadre industrielle* of July 27, 1993, Art. 10.
[38] *Loi cadre industrielle* of July 27, 1993, Art. 13.
[39] *Loi cadre des classes moyennes* of June 30, 2004, Art. 3.
[40] *Loi cadre des classes moyennes* of June 30, 2004, Art. 2.
[41] *Loi cadre des classes moyennes* of June 30, 2004, as amended by the Law of May 28, 2009.
[42] Law governing the *Office du Ducroire* of December 4, 2019, Art. 5.
[43] *Loi du 17 mai 2017 ayant pour objet le renouvellement des régimes d'aides à la recherche, au développement et à l'innovation; et les missions de l'Agence nationale pour la promotion de l'innovation et de la recherche* of May 17, 2017.

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calculated on the eligible costs linked to the project, technical feasibility studies, process innovation, and innovation clusters. The *de minimis* aids for certain enterprises that did not qualify for a specific incentive scheme have been abolished by the Law of May 17, 2017.

Furthermore, they cannot cumulate with aid granted under the Industrial Framework Law, or the SME Framework Law.

3. Restrictions

a. In General

In principle, there are no restrictions on foreign ownership or investment in Luxembourg, except where foreign investment is determined to affect security or public order (see II.A.3.c., below). The policy of the government is to diversify industries and to encourage resident and foreign investors. There are no restrictions on currency movements.

b. Repatriation of Funds and Profits

There is no restriction on the repatriation of funds and profits after taxation, except that in the case of repatriation of profits, share premium or share premium equivalent reserves, the distributing company must have freely distributable reserves. Dividends are subject to withholding tax,[44] the standard rate of which is 15%.[45] This rate may be reduced (or an exemption provided), where applicable, under the terms of a double taxation agreement, the EU Parent-Subsidiary Directive, or the domestic participation exemption (see IV.A.3.a., below). The repatriation of the profits of a PE is not subject to withholding tax.

c. Screening of Foreign Direct Investments

The EU Regulation establishing a framework for the screening of Foreign Direct Investments (FDIs) (the "FDI Regulation") likely to affect security or public order within Member States applies from October 11, 2019.[46] An FDI is defined as the acquisition by an investor of a significant influence over a company, part of a company or a group of companies established in Luxembourg. Member states may draw up their own screening rules to prevent FDIs with the potential to present a risk to security or public order.

The FDI Regulation provides a list of factors that all EU Member States and the Commission must take into account in determining whether an FDI is likely to affect security or public order:

(i) The foreign investor is directly or indirectly controlled by the government, state bodies or armed forces of a third country, including via its ownership structure or significant funding;

(ii) The foreign investor has already been involved in activities affecting security or public order in a Member State; or

(iii) There is a serious risk that the foreign investor engages in illegal or criminal activities.

In addition, the FDI Regulation aims to increase cooperation among EU Member States and with the Commission, *inter alia*, by imposing a notification requirement in the case of FDIs undergoing screening and an annual reporting requirement for FDIs made in the relevant Member State.

Luxembourg implemented the FDI Regulation through the FDI Law.[47] The Luxembourg FDI regime applies with effect from September 1, 2023.

Under the Luxembourg FDI regime, investments made by investors located outside the EU/EEA, which enable a foreign investor to exercise control, directly or indirectly, of a Luxembourg entity, trigger a notification requirement. For these purposes, control is defined as having, or controlling, the majority of the voting rights of shareholders or partners in an entity, or having the right to appoint the majority of the members of the board of directors or the supervisory board while also being a shareholder or partner, or simply attaining at least 25% of the voting rights.

The law provides for a three-step procedure:

(i) A notification to the Minister of Economy: notice must be given of any FDI project before it is realized and must include specified information. A later Decree may provide for a form to be used by the investors for the notification and the documents to be attached to the form.

(ii) A pre-assessment procedure: the Minister of Economy determines whether an FDI is likely to affect security and public order within 30 working days from the notification (this deadline may be extended for up to 30 additional days). In case the Ministry makes a request for additional information, the deadline is suspended until the requested information has been provided. In the absence of a response from the Minister, the investment is deemed not likely to prejudice security and public order.

(iii) An authorization/prohibition procedure: the Minister of Economy has three months within which to inform the investor of its decision. The absence of notification after three months constitutes an implicit authorization.

If there is a breach of the procedural rules, the law provides for sanctions of five to ten years of imprisonment and/or a fine up to the lowest of:

(i) Twice the amount of the investment;

(ii) 10% of the company's annual turnover excluding tax; or

(iii) 5,000,000 euros.

B. Currency and Exchange Controls

1. National Currency

The national currency of Luxembourg monetary is the euro.

The monetary policy of Luxembourg is determined by the European Central Bank and implemented at the national level

[44] LIR, Art. 146.

[45] LIR, Art. 148.

[46] Regulation (EU) 2019/452 of the European Parliament and of the Council of March 19, 2019, establishing a framework for the screening of foreign direct investments into the Union.

[47] Law of July 14, 2023.

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by the Central Bank of Luxembourg (*Banque Centrale du Luxembourg*),[48] which is a member of the Eurosystem.

2. Exchange Regulations

Luxembourg currently has no exchange regulations.

C. Trade and Commerce Regulation

1. Imports and Exports

a. Licenses and Quotas

Luxembourg is an extremely open market. Imports and exports of many goods do not require any authorization. As a member of the European Union (EU), Luxembourg must comply with EU legislation. Licenses are required and quotas are fixed, above all for trade with countries that are not members of the EU. Trade with certain countries has to comply with the Wassenaar Arrangement provisions.

b. Custom Duties and Other Taxes

As a member of the EU, Luxembourg is subject to the customs regulations of the EU. Tariffs are abolished within the EU. Customs duties are levied only on goods imported into Luxembourg from countries that are not members of the EU. Import duties are calculated at various rates on customs values, and exemptions are available. Excise duties are levied on certain goods, such as spirits, tobacco, and mineral oil products. Special anti-dumping duties for some goods imported from third countries may be applied in conformity with EU regulations.

Goods imported from EU countries as well as goods imported from non-EU countries are subject to value-added tax (VAT) to allow fair competition. VAT exemptions may be applicable to some good imports.

c. Documentation

Formalities in trade between Member States of the EU have been reduced to a minimum since January 1, 1993.

2. General Regulation of Business

a. Business License

In principle, a license to trade is required for all kinds of business. The mere holding of participations in other companies, however, is not subject to a business license, as such activity is not considered to be a business for these purposes. The same applies to intragroup in- and on-lending. The Ministry of the Economy is responsible for issuing general business licenses. It mainly requires an appropriate level of education and/or experience for the manager(s) of the business. However, specific educational qualifications/experience are no longer required for a license for commercial activities following an amendment dated July 11, 2018, to the Law of September 2, 2011. Entities envisaging conducting a regulated (financial) activity will need to obtain a license from the Ministry of the Treasury and the Budget.

b. Monopolies and Mergers

The Luxembourg competition law,[49] which is based on EU legislation, prohibits concerted practices and the abuse of a dominant position. However, agreements between undertakings, decisions of associations of undertakings and concerted practices are exempted from this prohibition if they contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit, and they do not:

(i) Impose on the undertaking concerned restrictions that are not indispensable to the attainment of these objectives; and

(ii) Afford such undertakings the possibility of eliminating competition with respect to a substantial part of the products in question.

Any individual or legal entity can file a complaint with the *Conseil de la Concurrence* (competition authority) in the case of an infringement of the Luxembourg antitrust legislation or of Articles 101 and 102 of the Treaty on the Functioning of the European Union.[50] After the investigations of the competition authority have been completed, the final decision with regard to an alleged infringement will be taken by the *Conseil de la Concurrence* (which decision can be reviewed by the administrative courts).

c. Restrictive Trade Practices, Unfair Competition and Comparative Advertising

Luxembourg law prohibits practices that misinform consumers and are detrimental to the interests of consumers or constitute acts of unfair competition toward competitors.[51] Thus, for example, incorrect denotations as to the nature and quality of a product are not allowed. Comparative advertising is permitted, subject to the limitations set forth in the relevant legislation.

Seasonal sales are allowed only two times a year, for a maximum period of one month each and must be held within specific regulated periods.

d. Price Controls

The selling price and, in particular, the retail price of each product must, as a matter of principle, be shown in euros and inclusive of VAT.[52] In general, prices are set according to costs and according to the rules of supply and demand. The prices of certain products, however, may be fixed by Grand-Ducal Regulation or, in certain economic sectors, by the Ministry of the Economy pursuant to an agreement with the relevant enterprises.[53] Exceptionally, fixed prices or fixed profit margins are set

[48] Law of December 23, 1998, on monetary status and the Luxembourg central bank.

[49] Law of November 30, 2022, concerning competition, as amended.

[50] Formerly, Articles 81 and 82 of the Treaty Establishing the European Community.

[51] Law of December 23, 2016, on sales and on misleading and comparative advertising, and the Consumer Code.

[52] Consumer Code (Art. L. 112-3), available at *Code de la consommation — Legilux*.

[53] Law of November 30, 2022, concerning competition, as amended.

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in certain cases, notably in the case of medicine,[54] motor fuel and heating fuel.[55] Infringements of the relevant Grand-Ducal Regulations adopted with respect to the prices of certain goods or services can be investigated and sanctioned by the competition authority. Since March 1, 2020, public transport has been free of charge.[56]

e. Securities Regulations

The Luxembourg Stock Exchange (LuxSE), established in 1927, is a major listing center of international bonds, equities and investment funds. Over the years, Luxembourg has become a renowned financial center, with an innovative and favorable legal and tax framework. As a result, the LuxSE has become an attractive international marketplace. Since the admission to official stock exchange listing of the first mutual fund (FCP EURUNION) in 1959 and of the Eurobond AUTOSTRADE (5.5%, 1963–78, US$15 million) in 1963, the volume of securities listed on the LuxSE has enjoyed uninterrupted growth.

According to publicly available information and figures provided by the LuxSE, in 2014, the markets operated by the LuxSE had around 40,000 quotation lines of securities (of which more than 26,000 are debt securities and approximately 6,500 are Undertakings for Collective Investments (UCIs)) in 54 currencies from over 3,000 issuers in more than 100 countries. The LuxSE ranks first in terms of listed international bonds in Europe.

The LuxSE operates two markets:

(i) A regulated market within the meaning of Directive 2004/39/EC (MiFID) (the "Regulated Market"); and

(ii) The exchange regulated market called the Euro MTF market, set up in 2005 as a multilateral trading facility within the meaning of MiFID.

The Regulated Market falls within the scope of various European Directives (notably Directive 2003/71/EC, as amended (the "Prospectus Directive") and Directive 2004/109/EC, as amended (the "Transparency Directive")). It offers the possibility for issuers to benefit from the European Passport, which on the basis of an already approved Prospectus Directive-compliant prospectus, allows them to apply for the admission to listing and trading of these securities on the regulated market of another Member State of the European Union.

The Euro MTF provides an alternative market to the European regulated markets and lies outside of the scope of the Prospectus Directive and the Transparency Directive. Issuers with securities admitted to trading on the Euro MTF are bound by less costly and stringent requirements; however, they may not benefit from the European Passport. As opposed to issuers with securities listed on the Regulated Market, financial statements of issuers with securities listed on the Euro MTF may be prepared using generally accepted accounting standards other than IFRS.

LuxSE regulates both the Regulated Market and the Euro MTF. A request for admission to the trading of securities on one of the markets operated by the LuxSE is deemed to be simultaneously an application to the Official List of the LuxSE. While an application for the listing on the Regulated Market will require the prior approval by the *Commission de Surveillance du Secteur Financier* (CSSF), the Luxembourg supervisory commission of the financial sector, of a prospectus drawn up in accordance with Regulation (EC) No. 809/2004, as amended (the "Prospectus Regulation"), an application for a listing on the Euro MTF will require the prior approval by the LuxSE of a prospectus drawn up in accordance with the Rules and Regulations of the LuxSE (the "Rules").

Issuers with securities listed on either the Regulated Market or the Euro MTF are subject to ongoing and periodic disclosure and reporting obligations. These obligations are generally more stringent and costly in case of securities listed on the Regulated Market. Those obligations mainly derive from the Transparency Law of January 11, 2008, the Market Abuse Law of May 9, 2006, and the Rules in the case of securities listed on the Regulated Market, or solely from the Rules in case of securities listed on the Euro MTF.

3. Intellectual Property Rights

a. Patents

Inventor's and owner's rights in any new invention likely to generate industrial applications may be protected in accordance with the Luxembourg law on patents. Luxembourg is also a signatory to the various international agreements on patents, including the Paris Convention of 1883 on the protection of industrial property rights, as amended, the Washington Patent Cooperation Treaty of June 19, 1970, as amended, and the European Patent Convention signed in Munich on October 5, 1973, as amended.

b. Trademarks, Designs and Patterns

Since 1962, there has been a common system for registering and protecting trademarks in Belgium, Luxembourg, and the Netherlands. A convention between the Benelux States providing for a uniform law for trademarks, designs and patterns was signed on February 25, 2005, and entered into force on September 1, 2006. Under the Benelux convention, denominations, designs, imprints, seals, letters, ciphers, product and packaging shapes, and any other distinctive sign that can be represented graphically to designate any goods or services, can be used as a trademark. A Benelux trademark will be liable to revocation if it is not used, without any legitimate reason, for an uninterrupted period of five years. Furthermore, designs and patterns can be protected under the Benelux convention if they are new and exhibit individual characteristics. Requests for registering a trademark, design or pattern are addressed to the common Benelux Office for Intellectual Property, established in The Hague.[57]

It is also possible to register an i-DEPOT in order to obtain official proof of who developed a concept of a product, service or process on a specific date. The i-DEPOT serves as legal proof and provides a date stamp.

[54] Grand-Ducal Reg. of December 1, 2011, determining the criteria, conditions and procedure concerning the price setting of medicine for human use, as amended.

[55] 2025 prices available at Guichet.lu — Luxembourg.

[56] https://luxembourg.public.lu/en/living/mobility/public-transport.html.

[57] Law of May 16, 2006, approving the *Convention Benelux en matière de Propriété Intellectuelle*, signed on February 25, 2005.

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As the Benelux countries are signatories to the Madrid Arrangement for the International Registration of Trademarks of 1891, as amended, and to the Hague Agreement for the International Registration of Designs and Patterns of 1925, as amended, an international registration request can also be made with the Benelux Office for Intellectual Property as concerns the Madrid Arrangement, and directly with the World Intellectual Property Organisation (WIPO) as concerns the Hague Agreement.

c. Industrial Know-How

A 2019 law[58] deals with the protection of business know-how and trade secrets. Depending on the circumstances, the unauthorized use of technical know-how of a competitor could also be sanctioned under the Consumer Code or on the basis of criminal law provisions.[59]

d. Copyrights

The Law of April 18, 2001, on copyright and databases, as amended,[60] protects original literary and artistic works of all kinds, including photographs, databases and computer programs. Ideas, concepts, functioning methods or mere information cannot, as such, be protected. Copyright subsists during the author's lifetime and for 70 years after the author's death. There is an exception to copyright protection to allow under certain conditions the use of copyrighted data to train AI systems.[61]

D. Immigration Regulations

1. In General

A foreigner wishing to enter the territory of Luxembourg must produce a valid passport supported by a visa, if required (or a national identity card if he/she is a citizen of an EU Member State). A foreigner wishing to stay more than three months in Luxembourg must either apply for a residence permit or formally declare their residency depending on whether they are EU or non-EU citizens. Foreigners wishing to stay less than three months in Luxembourg must inform the local authority of the municipality in which they intend to stay of their arrival. Registration in the register kept by hotels, as prescribed by law, is sufficient for visitors staying no longer than three months who do not exercise any professional activity.

Conditions for residency are different for EU citizens and non-EU citizens. EU citizens are only required to declare their residency in Luxembourg and receive an acknowledgment of residency. Non-EU citizens must apply for a residence permit.

Citizens of the European Economic Area (EEA), i.e., Norway, Iceland and Liechtenstein and citizens of the Swiss Confederation are treated as EU citizens. British citizens who are beneficiaries of the Withdrawal Agreement signed between the United Kingdom and the European Union benefit from specific residence rights and treatment similar to that granted to EU citizens.

2. EU Citizens and Citizens with Equivalent Rights

A citizen of an EU Member State or citizens treated as EU citizens must have a passport or a national identity card to enter Luxembourg.

If such an individual intends to stay for more than three months in Luxembourg, he/she must satisfy the conditions set out by the law and formally declare his/her residency in Luxembourg to receive an acknowledgment of residency (*attestation d'enregistrement*).

The declaration of residency is made to the municipality in which the individual intends to reside. After five years of uninterrupted residence in Luxembourg, the individual is entitled to receive an acknowledgment of permanent residency (*attestation de séjour permanent*).

3. Non-EU Citizens

To enter Luxembourg, a foreigner who is neither a citizen of a state that is an EU Member State nor a citizen with equivalent or similar residency rights must produce a valid passport supported by a visa, if required.

An individual taking up residence for more than three months must apply to the Ministry of Foreign Affairs for a residence permit (*autorisation de séjour*). The foreign national must also notify the municipal administration within three days after his or her arrival to register and provide appropriate documentation.

4. Work Permits

Citizens of EU Member States or citizens with equivalent or similar residency rights do not need a work permit to be employed in Luxembourg.

When new Member States join the EU, it is common to have transitional arrangements in place for a specified duration. This has been the case for Bulgarian, Romanian and Croatian citizens, who now enjoy full access to the Luxembourg market. Since the United Kingdom's departure from the European Union on January 31, 2020, transitional measures have been implemented for British citizens in view of the Brexit deal agreed between the United Kingdom and the EU.

Following the end of these transitional measures on December 31, 2020, British citizens are now treated as third-country nationals and require a work and residence permit in Luxembourg, unless they have residency rights as a beneficiary of the Withdrawal Agreement signed between the United Kingdom and the European Union.

Exceptional measures are currently in place granting a specific temporary protection status valid until March 4, 2026 to individuals who were resident in Ukraine before February 24, 2022 and who fled the war in Ukraine arriving in Luxembourg after or shortly before February 24, 2022.

[58] Law of June 26, 2019, on protection of know-how and trade secrets.

[59] Criminal Code, Art. 309.

[60] EU Directive 2001/29/EC of May 22, 2001, has been implemented by the law of April 18, 2004, amending the law of April 18, 2001, on copyright and databases.

[61] Directive 2019/790 of April 17, 2019 has been implemented by Law of April 1, 2022, amending the law of April 18, 2001, on copyright and databases.

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Individuals benefiting from this temporary protection status in Luxembourg are not required to apply for a work permit and can freely work in Luxembourg in the same way as citizens of EU Member States for as long as their temporary protection certificate is valid.[62]

A citizen of any other state must hold a residence permit with a right to undertake paid work, before exercising any remunerated activity. In all cases, the Board of Employment must be informed of the vacant post before a worker is employed. Indeed, the employer must prove to the Board of Employment that they have tried, unsuccessfully, to locate an EU national to fill the open position. The Board of Employment can even submit its own candidates from the local unemployment roster for consideration for the position. Highly qualified and seconded workers are subject to a less burdensome procedure.[63]

Residence permits with a right to undertake paid work may be issued for one year for a specific sector and profession, renewable for a maximum duration of three years for any profession and any sector.

Highly qualified workers receive a renewable European Blue Card permit which is valid for four years or for the duration of the employment contract plus three months, if shorter. The European Blue Card enables the highly qualified worker, who has legally lived for at least 18 months in the member state that issued this card, to work in a second member state. Such highly qualified worker is entitled to obtain a new European Blue Card in this second member state.

A possibility for investors to obtain a residence permit of three years (renewable) was introduced by the Law of March 8, 2017. Applicants are required to proceed with one of the following investments:

(i) 500,000 euros in an existing Luxembourg company performing a commercial, industrial or craft activity, maintaining such investment and the employment levels for at least five years;

(ii) 500,000 euros to create such a company and at least five jobs within three years following the incorporation date;

(iii) 3 million euros in an existing or new Luxembourg investment structure with appropriate substance; or

(iv) 20 million euros deposit at a Luxembourg bank, in cash or securities, for at least five years. Real estate investments are excluded from these provisions.

E. Labor Relations

1. General Aspects

a. Social Climate

Major labor conflicts involving labor unions are rare in Luxembourg.

The principal tasks of labor unions, which are organized on a voluntary basis, consist of negotiating collective bargaining agreements and in assisting their members in individual problems with their employers. In the past, and even during periods of economic recession, the main unions have always acted with responsibility and with a view to public welfare. The result of this moderate policy is that there has been no major detrimental strike since 1921 and that social freedom is one of the great assets of the Grand Duchy of Luxembourg.

b. Labor Regulations

Relationships between employers and employees are essentially governed by the Labor Code, which entered into force on September 1, 2006. Additionally, it is quite common in certain sectors of the economy and a number of companies for collective bargaining agreements providing further regulations to be negotiated between unions and employers.

The right to work is granted to every individual who is a native of Luxembourg or a national of one of the Member States of the EU or a citizen with equivalent or similar residency rights. As noted in II.D.4., above, a foreigner without such residency rights must obtain a residence permit with the right to undertake paid work before being employed in Luxembourg.

2. Employment Contracts

Individual contracts for employees are regulated by the Labor Code.

An employment contract must be concluded in writing between an employer and its employees. The contract must be drawn up in duplicate and contain, *inter alia*, the following information:

(i) The position to be occupied and the main characteristics of the work to be performed;

(ii) The normal working hours;

(iii) The remuneration and, if applicable, any benefits or other periodic and non-periodic compensation;

(iv) The duration of a trial period, if provided for;

(v) The number of holidays; and

(vi) Any special stipulations agreed upon between the employer and the employee.

A recent amendment to the Labor Code[64] introduced the requirement for more transparency in employment contracts, notably the social security institution to which the employee is affiliated must be indicated as well as information on overtime arrangements.

Stipulations are void if less favorable to the employee than those provided by law.

Contracts are generally concluded for an indefinite period. Such contracts may be terminated by either party subject to compliance with a specific notice period (determined by law, as set out below). The employer may terminate an employment contract either for economic reasons or for any real and serious reasons relating to the aptitude or behavior of the employee concerned. The employee does not require a reason to terminate an employment contract with notice. In exceptional circumstances, a contract may be terminated by either party with-

[62] Requesting temporary protection — Guichet.lu — Luxembourg.

[63] Law of August 29, 2008, on freedom of movement and immigration, as amended.

[64] Law of July 24, 2024, amending the Labor Code.

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out prior notice (for instance in the event of a major offense being committed by the other party).

Fixed-term contracts may be concluded in specific situations for a maximum period of two years, renewals included (except for certain categories of employees). Such contracts are terminated automatically upon completion of the period agreed upon.

In the case of dismissals of employees, the following notice periods must be observed by employers (unless the dismissal occurs during the trial period):

(i) Two months, if the employee has been employed for less than five years;

(ii) Four months, if the employee has been employed for five years or more but less than 10 years; and

(iii) Six months, if the employee has been employed for 10 years or more.

Where the contract is terminated by the employee, the notice periods set out above are halved.

Where the contract is terminated by an employer, an additional severance indemnity must be paid by the employer to employees with five years or more of service. This indemnification is expressed in terms of monthly salary and depends on the duration of employment as follows:

(i) One month's salary after five years of employment;

(ii) Two months' salary after 10 years of employment;

(iii) Three months' salary after 15 years of employment;

(iv) Six month's salary after 20 years of employment;

(v) Nine month's salary after 25 years of employment; and

(vi) Twelve month's salary after 30 years of employment.

Employment contracts may provide for a trial period depending on the education and experience level, and also on the salary of the employee. A trial period between two weeks and three months may be set if the employee is unqualified. For qualified employees, a trial period of up to six months may be set (with a minimum of two weeks). If the monthly salary stipulated in the employment agreement exceeds a certain threshold determined by Grand-Ducal Regulation,[65] a trial period of up to a year may be set. During the trial period, the contract may be terminated at any time subject to a certain amount of prior notice being given. The prior notice of termination during the trial period depends on the length of the trial period; for example, for a trial period of six months, the prior notice is 24 days. However, a trial period may not be terminated during the first two weeks of the trial period, except where there are very serious reasons for termination.

3. Working Conditions

a. Remuneration

All wages and salaries are subject to a sliding wage and salary scale, meaning that they are automatically adjusted to variations in the cost-of-living index.

There is a legal minimum salary for employees, depending on their qualifications. An employee is considered to be "qualified" if he or she has a school certificate corresponding to at least the official technical school certificate (DAP/CATP), a technical certificate plus several years' experience or six to 10 years' practical work experience depending on the nature of the job. As from January 1, 2025, the legal minimum monthly salary for non-qualified workers is fixed at 2,637.79 euros. For qualified workers, the legal minimum monthly salary is fixed at 3,165.35 euros (20% more than the salary for non-qualified workers). Lower rates apply to individuals between the ages of 15 and 18.

b. Working Hours

Normal working hours are currently eight hours per day and 40 hours per week.

Work performed on Sundays is remunerated at 170% of the normal hourly rate. Work performed on legal holidays is remunerated at up to 300% of the normal hourly rate (and if the legal holiday is a Sunday, at the rate of 270% plus one vacation day). The hourly rate is obtained by dividing the employee's monthly wage or salary by the standard figure of 173 hours. According to Article L. 211-27 (5) of the Labor Code, an employee is not entitled to payments with regard to overtime if he/she performs work as a "*cadre supérieur*," i.e., a senior manager.

As of January 1, 2009, priority is given to granting employees compensatory time off for working overtime, pursuant to the law of May 13, 2008, on the introduction of the single status, as follows:

(i) Compensatory paid time-off on the basis of 1.5 hours off per hour of overtime; or

(ii) A booking, at the rate of 1.5 hours per hour of overtime, on a time saving account the application of which may be fixed in a collective bargaining agreement or an agreement between representatives of employees and employers at the appropriate level.

Overtime pay, at 140% of the normal hourly rate, applies only if:

(i) For organizational reasons connected with the company, compensatory time-off is not possible; or

(ii) The employee is leaving the company before he/she would be able to recuperate accumulated overtime.

An applicable collective bargaining agreement may establish the procedures for the payment of overtime or compensatory time off.

Where overtime pay is paid, the basic hourly rate is exempted from income tax and social security contributions, with the exception of contributions for health care and dependency insurance. The additional amount (40%) is tax-free and exempted from social security contributions.

c. Legal Holidays

The following are regarded as legal holidays:

(i) New Year's Day — January 1;

(ii) Easter Monday — March/April (variable);

[65] The threshold is 5,062.14 (index 944.43) euros with effect from September 1, 2023.

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(iii) Mayday — May 1;

(iv) Europe Day — May 9;

(v) Ascension — May (variable);

(vi) Whit Monday — May/June (variable);

(vii) National Holiday — June 23;

(viii) Assumption — August 15;

(ix) All Saint's Day — November 1;

(x) First Christmas Day — December 25; and

(xi) Second Christmas Day — December 26.

d. Annual Leave

The annual vacation period is 26 working days. Collective bargaining or employment agreements may provide for longer annual leave. Special leave for personal reasons is provided for by law.

e. Personnel Representatives

"Personnel representatives" are elected by a firm's personnel and charged with safeguarding and defending the interests of the personnel.

The number of representatives depends on the size of the staff employed by the firm. Personnel representatives and their deputies benefit from a special protection against dismissal.

4. Right to Tax

Employees that reside in third countries, but who are employed in Luxembourg, are generally taxed on their employment income only in Luxembourg.

Luxembourg has signed Protocols to the double tax treaties that it has entered into with its neighboring countries (i.e., France, Belgium and Germany), agreeing on a certain number of days that an employee working in Luxembourg can work from outside Luxembourg without becoming subject to tax in their country of residence. These limitations constitute an exception to the usual 183-day rule present in most double tax treaties.

Furthermore, as a result of the increase in remote working, in particular due to the COVID-19 crisis, there have been changes in the amount of days an employee working in Luxembourg, but residing in a neighboring country, is allowed to work from outside Luxembourg without becoming subject to income tax in their country of residence.

French resident workers can ordinarily spend up to 29 days working outside of Luxembourg without becoming subject to tax in France.[66] On November 7, 2022, an amendment was signed by the French and Luxembourg Finance Ministers to increase the threshold number of days provided for in the bilateral tax treaty from 29 to 34 days. This change applies to income received as from January 1, 2023.

Concerning Belgian resident workers, an agreement was concluded between Luxembourg and Belgium to raise the threshold from 24 to 34 days retroactively as from January 1, 2022.[67]

The threshold for German resident workers has also been increased from 19 days to 34 days applicable as from January 1, 2024.

F. Financing the Business

1. Credit Institutions

Over the years, Luxembourg's banking sector has grown to become one of Europe's most important financial centers. In March 2024, there were 115 authorized banks operating in Luxembourg.

Domestic credit institutions are universal banks offering a wide range of banking services, such as current and savings account facilities, safe keeping, money transfers, operating on the stock exchange, corporate and personal lending, syndicated financing, trade financing, foreign exchange operations, fiduciary and trustee services, and management of investment funds.

Most of the credit institutions established in Luxembourg are "Euro-banks" specializing in the Euro-bond and currency markets, corporate and international lending, investment fund management, and private customer banking. Most of these banks are wholly owned affiliates of top-ranking international banks.

The development of Luxembourg as a financial center has been promoted by liberal exchange controls, efficient and flexible banking regulations, liberal legislation concerning investment funds, and bank secrecy laws.

Credit institutions and other professionals in the financial sector as well as the financial market are under the supervision of the CSSF. The CSSF examines all application files for a banking license to be delivered by the Ministry of the Treasury and Budget. The CSSF monitors compliance with the national and international rules and regulations applicable to the financial sector and falling within its field of competence, and on a regular basis issues circular letters to be complied with by those acting in the financial sector. Banks are required to report to the CSSF for prudential supervision purposes and to the Luxembourg central bank for monetary policy purposes.

2. Financial Sector Support

Financing may also be obtained through investment firms, securitization vehicles and other financial sector professionals. The activities of investment firms and other professionals in the financial sector (including, among others, lending and factoring) are subject to licensing and reporting requirements in the same way as credit institutions. Securitization vehicles are regulated entities, and thus subject to additional requirements, only if they issue securities to the public on a regular basis.

3. Government Financing

Several government institutions may allocate premiums, subsidies and/or loan interest subsidies for establishing new businesses and making investments. (See II.A.2.b., above.)

[66] Paragraph 3 of the Protocol signed between Luxembourg and France on March 20, 2018.

[67] Law of June 22, 2022, approving the amendment to the tax treaty and the Final Protocol thereto.

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III. Forms of Doing Business in Luxembourg

A. Principal Business Entities

1. Sole Proprietorship

Sole proprietorships are unincorporated businesses owned by a single person, who incurs unlimited liability.

2. Limited Liability Company

A limited liability company may be set up in the form of:

(i) A private limited liability company (*société à responsabilité limitée* or S.à r.l.);

(ii) A public limited liability company (*société anonyme* or SA); or

(iii) A simplified joint stock company (*société par actions simplifiée* or SAS).

In the case of each of these types of companies, the financial liability of the shareholders is limited to their capital contributions (see III.B., C., and D., below).

3. Partnerships

A partnership may take the form of:

(i) A general corporate partnership/unlimited company (*société en nom collectif*);

(ii) A limited corporate partnership (*société en commandite simple*);

(iii) A special limited corporate partnership (*société en commandite spéciale*); or

(iv) A corporate partnership limited by shares (*société en commandite par actions*) (SCAs) (see III.F., below).

4. Branch of a Foreign Corporation

A foreign company may carry out business activities in Luxembourg through a branch office (*succursale*), which has no distinct legal personality. Branches of foreign companies must register with the Luxembourg Register of Commerce and Companies. They are subject to publication requirements similar to those applying to Luxembourg companies (see III.G., below).

5. Other Entities

The following other entities may also be used to carry on business in Luxembourg:

(i) A European Company (*société européenne* or SE) (see III.E.1., below); and

(ii) A cooperative company (*société coopérative*) (see III.E.2. and 3., below). A cooperative company has no firm name (*raison sociale*) but is described by a corporate denomination. A cooperative company may also be organized as a public limited company (*société cooperative organisée comme des sociétés anonymes*).

Business activities can also be conducted within joint ventures taking the form of temporary commercial companies (*société momentanées*) or commercial associations by participation (*société en participation*) (see III.H.2. and 3., below).

B. Public Limited Liability Company (Société Anonyme)

An SA is a public company with its capital divided into shares that is formed by one or more shareholders who contribute a specific amount to the company's share capital. The liability of shareholders is limited to their capital contributions.

1. Incorporation

a. Object Clause

The corporate purpose of an SA must be described in its objects clause. The objects clause of an SA may be broadly worded; however, a universal corporate purpose which would allow a company to engage in all lawful activities of any nature whatsoever is not permitted. Care should be taken to ensure that any objects requiring regulatory approval are included subject to the obtaining of such approval. A business license is required for a company intending to carry on a commercial activity.

b. Corporate Denomination

An SA is identified by a particular name. The name may not be identical or similar to that of an existing corporation. The name of the SA must be followed by the words "*société anonyme*" or the abbreviation "SA" on all documents issued by the SA.

c. Shareholders

One or more shareholders are required to incorporate and hold shares in an SA. There are no restrictions as to the maximum number, nationality or residence of the shareholders.

d. Incorporation Deed

The deed of incorporation[68] of an SA must include among other specifics: the identity of the founder(s); the form of the company; the corporate name; the registered office; the corporate purpose; the subscribed, and, where applicable, the authorized capital; and the capital initially paid up.

e. Share Capital

An SA's share capital must amount to at least 30,000 euros or its equivalent in any foreign currency. In other words, the share capital of an SA can be in any foreign currency, provided the amount of the capital in that other foreign currency is at all times more than the minimum capital equivalent of 30,000 euros. This amount may be increased by Grand-Ducal Regulation and adopted after consultation with the *Conseil d'Etat* to take into account either variations in national currency or changes under EU regulations. Specific capital requirements apply to credit institutions and other regulated professionals in the financial sector.

Shares may be issued with or without par value. When shares are issued with nominal value, new shares cannot be issued at a value lower than the nominal value. When shares have no nominal value, new shares can be issued below the par value, subject to specific conditions. Shares may be in regis-

[68] Law on commercial companies, dated August 10, 1915, as amended (LSC), Art. 420-15.

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tered (*actions nominatives*), dematerialized (*dématérialisée*) or bearer (*actions au porteur*) form. Upon incorporation, the entire share capital must be subscribed for, regardless of the type of shares issued. In the case of dematerialized or bearer shares, the share capital must also be fully paid up in cash or by means of contributions other than cash. In the case of registered shares, the (nominal) share capital may be partly paid-up to the extent of at least 25% of the shares — any premium payable on the shares is required to be paid in full. Where shares are partly paid-up, the board of directors will decide when and how the unpaid portions of the share capital are to be called for payment. Preferred shares, tracking shares, non-voting shares and redeemable shares may be issued subject to limited restrictions.

The shares of an SA are freely transferable subject only to restrictions (if any) provided for in the articles of association or under any agreement that may be entered into by and between the shareholders. Lock-up clauses must however be limited in time and if the articles of association require any approval or provide for any pre-emption clauses in respect of transfers of shares, such clauses may not lead to the transferability of the shares being blocked for a period longer than 12 months. Any clause set for a period longer than 12 months is automatically reduced to 12 months.

Registered shares, in particular, may be transferred by:

(i) A declaration of transfer entered into the share register, dated and signed by the transferor and transferee or by their duly authorized representatives; or

(ii) Acceptance of the transfer by the company based on a private document recording the agreement between the transferor and transferee.

If shares are in registered form, any transfer must be entered in the shareholders' register of the company.

Dematerialized shares are materialized and transferred by means of entries in the securities accounts (held with a clearing institution or a (central or foreign) account provider) of the transferor and the transferee. Where the shares are in bearer form, their transfer is carried out by delivery of the share certificates. With many countries abandoning bearer shares altogether, Luxembourg has chosen to retain bearer shares, but it has opted to implement a depository regime. Bearer shares must be deposited with a professional depository (such as a bank or other licensed entity) which is tasked with holding such bearer shares. The professional depository is also tasked with maintaining a register of bearer share holders, reflecting, amongst other things, the identity of the bearer shareholder, the date of the deposit of the bearer shares with the professional depository and the date of any transfers of bearer shares. The bearer share holder register is not available to any third parties, except for the tax and judicial authorities in Luxembourg who may request a copy of such register. A bearer shareholder may only inspect the entry in the bearer share register which relates to its holding of bearer shares, with the remainder of the bearer share register remaining confidential.

In addition to shares representing the share capital, an SA may also issue founders' shares (*parts bénéficiaires*) that do not represent the share capital. The articles of association set out the rights attached to these founder shares.

f. Incorporation Procedure

The founder(s) of an SA execute an incorporation deed before a Luxembourg notary public upon execution of which the SA comes into existence and all shares are issued to the founder(s). The incorporation deed includes the articles of association. The incorporation deed (and any subsequent amendments to it) are registered and filed by the Luxembourg notary public with the Luxembourg Register of Commerce and Companies (RCS) and published in the Luxembourg Electronic Register of Companies and Associations (*Recueil Electronique des Sociétés et Associations*) (RESA).

g. Cost of Incorporation

The incorporation fees of the Luxembourg notary public are calculated on a fixed scale depending on the contributed capital of the company. A fixed registration duty is due on registration of the notarial deed and ordinarily included in the incorporation fee charged by the notary public. In the case of contributions in kind, fees for the *réviseur d'entreprises agréé* (whose approval of the value of such contributions is mandatory) should also be taken into consideration.

2. Operation

a. Business License

Depending on the type of commercial activity conducted by the company, a business license issued by the Ministry of the Economy may be required in advance. See II.C.2.a., above. A business license is not required for a holding company.

b. Amendment of Articles

The articles of association can be amended by vote at an extraordinary general meeting of the shareholders of the company held in the presence of a Luxembourg notary public, unless the amendment relates to an increase in the share capital and a specific authority has been granted to the board of directors to record the increase before the notary (in which case the board may use its authority to amend the capital clause of the articles to reflect the capital increase). The extraordinary general meeting deliberating on an amendment to the articles must have a quorum of at least one-half of the capital present or represented at the meeting and the agenda must indicate the proposed amendments and, where applicable, the text of any amendment to the object or form of the company. If the quorum requirement is not met, a second meeting may be convened in the manner prescribed by the articles, by means of a notice published at least 15 days before the meeting, in the RESA and in one Luxembourg newspaper. This convening notice must reproduce the agenda and indicate the date and the results of the previous meeting. The second meeting may validly deliberate, regardless of the proportion of the share capital present or represented. At any extraordinary general meeting (save where unanimous consent is required by law as when shareholders' commitments are intended to be increased where the company's nationality is intended to be changed; or if higher voting thresholds are provided for in the articles), resolutions must be carried by at least two-thirds of the votes cast. Quorum and majority thresholds may be increased by the articles of association, but they cannot be reduced. Votes cast do not include

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votes attaching to shares with respect to which the shareholder has not taken part in the vote or has abstained or has returned a blank invalid voting form. Shareholders may vote in person, or be represented at a general meeting by a proxy, or cast their vote by means of a completed and signed voting form.

c. Alterations of Share Capital

An increase or reduction of the share capital is a decision of the extraordinary general meeting held in accordance with the quorum and majority requirements for an amendment to the articles of association.

Where the articles provide for an authorized share capital, the board of directors or the management board, as the case may be, may increase the capital within the limits set forth in the articles, and in particular up to a certain amount, without the need to hold a shareholders' meeting. A capital increase under the authorized capital must be recorded by the board before a notary public after the issuance of new shares but within a specified time (30 days) after the board decision to increase capital by share issuance. The authority granted to the board to issue shares under an authorized share capital cannot exceed a period of five years, but can be renewed by the general meeting of shareholders (each time for up to five years).

Shareholders have statutory preemption rights with respect to the issuance of new shares for cash consideration, but such rights may be withdrawn or restricted by the general meeting of the shareholders. Alternatively, the general meeting may grant the board authority to limit such rights when issuing shares under the authorized share capital.

In certain circumstances, the articles of association may also authorize the board of directors or the management board (as the case may be), to issue new or existing shares for free to members of the personnel of the company or the group to which the company belongs. In this case, the statutory preemption rights do not apply.

d. Stock Buybacks

An SA may acquire its own shares either by itself or through a person acting in his/her own name but on the company's behalf, subject to the following conditions:[69]

(i) The authorization for the acquisition of shares is given by the shareholders' general meeting, which determines the terms and conditions of the proposed acquisitions, in particular the maximum number of shares to be acquired, the period for which the authorization is granted, which may not exceed five years, and, in the case of an acquisition for value, the minimum and maximum consideration. The board of directors or the management board (as the case may be) will ensure that the conditions laid down under points (ii), (iii) and (iv) below are respected when an authorized acquisition takes place;

(ii) The acquisitions, including both the shares that the company previously acquired and holds in its portfolio, and shares acquired by a person acting in his or her own name but on behalf of the company, may not have the effect of reducing the net assets below the amount of the share capital, plus non-distributable reserves;

(iii) Only fully paid-up shares may be repurchased; and

(iv) The acquisition offer must be made on the same conditions to all shareholders in the same situation, except for acquisitions approved unanimously by all shareholders and except in the case of listed companies, which can acquire shares on the market.

Exceptions to the above rules do exist. An SA may issue repurchasable shares, subject to certain conditions. Such repurchasable shares may be acquired by the company by resolution of the board of directors, on fulfillment of the prescribed conditions and subject to the availability of distributable reserves for doing so.

e. General Meeting of Shareholders

The general meeting of shareholders has the widest powers to adopt or ratify any action relating to the company, it being understood that the board of directors (or the management board, as the case may be) has those powers that are not reserved to the general meeting of shareholders by law or the articles of association. Where the company comprises a sole shareholder, the latter exercises the powers reserved to the general meeting.

The shareholders may pass extraordinary resolutions when deciding on:

(i) The amendment of the articles;

(ii) An increase or decrease of the share capital;

(iii) The winding-up of the company; or

(iv) A merger or division.

Meetings at which extraordinary resolutions are passed are required to be held in the presence of a Luxembourg notary. For the required quorum and majority requirements, see III.B.2.b., above.

The shareholders may also pass ordinary resolutions when deciding on, among other matters:

(i) The appointment or removal of members of the board of directors or the supervisory board, as well as the statutory auditor(s); and

(ii) The transfer of the registered office outside the boundaries of the municipality where the company has its registered office, but within the Grand Duchy of Luxembourg.

Unless more stringent provisions are provided for in the articles of association, ordinary resolutions are passed by a simple majority of shareholders present or represented, regardless of the number of shares represented.

Furthermore, the company must hold at least one general meeting each year to adopt the financial statements (passed by ordinary resolutions). The first general meeting of the company is required to be held within 18 months from its incorporation and all subsequent annual general meetings must be held within six months after the financial year end.

Furthermore, rules relating to the provision governing convening notices for shareholders' general meetings are prescribed by law.

[69] LSC, Art. 430-15.

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f. Board of Directors (Conseil d'Administration), Management Board (Directoire), and Supervisory Board (Conseil de Surveillance)

The law allows SAs to choose between two management structures:

(i) A one-tier management structure with a board of directors *(conseil d'administration)*; or

(ii) A two-tier management structure with a management board *(directoire)* and a supervisory board *(conseil de surveillance)*.

In the case of a one-tier management structure, the board of directors is in charge of the management of the company. It has the power to take any action necessary or useful to realize the corporate object, except where the exercise of the power concerned is reserved by law or by the articles to the general meeting of shareholders. The board of directors must include at least three directors. However, where a company has been formed by a sole shareholder or where it has been established at a general meeting of shareholders that the company has a sole shareholder, the board of directors can consist of one member. There are no corporate restrictions as to the nationality or residence of board members.[70] The members may or may not be shareholders. The term of office of any one director may not exceed six years. Unless the constituting instrument provides otherwise, directors may be re-elected. Directors may be removed from office by the shareholders' general meeting at any time.

Where a vacancy arises, the board is allowed to appoint a replacement temporarily until the next general meeting of shareholders at which the final appointment of the director must be decided on. All decisions to be taken by the board of directors are in principle subject to a quorum of at least half of the directors and a voting majority of 50% of the members present or represented. A chairman of the board of directors is elected from the members of the board. The chairman may have a casting vote. The board of directors may delegate specific powers to one or more agent(s) or, as the case may be, a committee and entrust the day-to-day management of the company to one or more directors or agents. Delegation of the daily business to a director entails the obligation for the board to report each year to the ordinary general meeting of shareholders on the salary, fees and any advantages granted to the delegate. In any case, the board of directors retains overall liability for the general policy of the company.

In a two-tier management structure, an SA has a management board and a supervisory board. On the one hand, the management board is in charge of the management of the company and may take any action that is necessary or desirable in view of carrying out the company's corporate object, except where the exercise of the power concerned is reserved by law or the articles to the supervisory board and/or to the general meeting of shareholders. On the other hand, the supervisory board is in charge of carrying out the permanent supervision of the management of the company by the management board. The supervisory board is not authorized to interfere with such management except in the case of the decisions requiring the supervisory board's prior approval pursuant to the articles of association.

The members of the management board are appointed by the supervisory board, unless the articles reserve this power to the general meeting of the shareholders. They are appointed for a renewable period of six years. The number of members of the management board, or the rules for determining that number, must be set forth in the articles; if not specified, this will be determined by the supervisory board. In an SA with a sole shareholder or with a share capital lower than 500,000 euros a single person may exercise the functions incumbent on the management board. Moreover, if an SA has employed 1,000 or more employees and/or workers for the three preceding years, its management board must consist of at least nine directors and the employees and/or workers may designate one-third of the directors.[71]

The supervisory board members are appointed by a general meeting of the shareholders. The supervisory board must be composed of at least three members. The members may be dismissed at any time and their mandate, which may not exceed six years, is, in principle, renewable. As long as the company remains wholly-owned by one shareholder, only one supervisory board member is required.

The supervisory board may entrust one or more of its members with special mandates for one or more specific purposes. It may also decide to create committees and determine their composition and duties. However, powers reserved by law or the articles to the supervisory board itself may not be delegated.

All decisions to be taken by the management board or the supervisory board are in principle subject to a quorum of at least half of the members and a voting majority of 50% of the members present or represented.

Furthermore, the directors (and the members of the management board, as the case may be) represent the company, and must exercise their duties with as much care, diligence and skill as would be displayed by a reasonable person in the same circumstances. Greater expertise, such as would be displayed by a reasonably competent member of the relevant profession, may be expected from a director who is a member of a specific profession, for example, a lawyer or accountant. Along with this general duty, the law also lays down more specific duties.

g. Supervisory Auditor (Commissaire aux Comptes) and Approved Statutory Auditor (Réviseur d'Entreprises Agréé)

Supervisory auditors are officers of the company appointed by the shareholders' general meeting. Their term of office may not exceed six years although they may, unless the articles provide otherwise, be re-elected. They may or may not be shareholders. No specific qualifications are required and no nationality or residence requirements apply to a supervisory auditor.

The supervisory auditor(s) is/are in charge of reporting on and reviewing the annual accounts. In particular, twice a year, the board of directors (or the management board as the case

[70] LSC, Arts. 441-1 to 441-13.

[71] Labor Code, Arts. L426-1 and L426-3.

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may be) must provide the statutory auditor(s) with a statement summarizing the assets and liabilities of the company. The supervisory auditor must then present a report on the financial statements along with recommendations at the annual general meeting of shareholders. A supervisory auditor can have the same fiduciary responsibilities as a director and can incur liability towards the company.

The appointment of a supervisory auditor is mandatory, unless the SA concerned is required, on meeting the requisite thresholds under the law, to appoint an approved statutory auditor (*réviseur d'entreprises agréé*), in which case the SA need not appoint a supervisory auditor. Such an SA may appoint an approved statutory auditor voluntarily.

An approved statutory auditor is an independent auditor appointed from a list of approved statutory auditors in Luxembourg (i.e., a member of the *Institut des Réviseurs d'Entreprises*). The appointment of the approved statutory auditor is a contractual arrangement and the approved statutory auditor is not an officer of the company.

An approved statutory auditor is required to be appointed if the company satisfies two of the following criteria for two consecutive financial years:

(i) Total balance sheet in excess of 4.4 million euros;

(ii) Net turnover in excess of 8.8 million euros; and/or

(iii) Average number of full-time employees in excess of 50.

h. Books and Records

The law requires regular bookkeeping in line with generally accepted accounting principles.[72] An SA may elect to prepare its accounts in accordance with Luxembourg Generally Accepted Accounting Principles (Lux GAAP) or International Financial Reporting Standards (IFRS) as adopted in the European Union. All company documents must be kept for a period of 10 years.

i. Financial Statements

Luxembourg company law (in line with the EU Company Law Directive of July 20, 2013)[73] requires the drawing up of annual financial accounts including:

(i) A balance sheet;

(ii) A profit and loss (P&L) account; and

(iii) The notes to the accounts.

It is also possible for an SA that meets certain thresholds required by law to draw up an abbreviated balance sheet and an abbreviated P&L account.

The annual financial accounts, together with the management report, must be approved by the general meeting of shareholders.[74]

j. Dividends and Other Distributions of Profits

The annual general meeting of shareholders decides on the allocation of profits. Within the limits provided by law, profits may be allocated to reserves, distributed to shareholders, or carried forward. The articles of association of a company may authorize the board of directors to distribute interim dividends within the limits set forth by law and subject to the availability of distributable reserves.

k. Reserves

Five percent of the annual net profits of an SA must be allocated to a legal reserve account until the reserve equals 10% of the SA's share capital.

Contributions can be made by shareholders to other distributable or non-distributable reserve accounts by resolution of the general meeting.

3. Reorganizations

In the case of a reorganization, Luxembourg law provides for a formal procedure designed to notify and protect the interests of third parties. Luxembourg law allows a variety of forms of mergers and demergers. All companies with legal personality under the Law on Commercial Companies, dated August 10, 1915, as amended, and economic interest groupings can be merged or demerged. Cross-border mergers within or outside the European Union are also allowed under Luxembourg law on the condition that the foreign law governing the other party to the merger does not prohibit such a merger.

In particular, a merger may take the form of:

(i) The acquisition of one or more companies by another (merger by acquisition); or

(ii) The incorporation of a new company on the merger of one or more companies (merger by incorporation).

As a result of a merger by acquisition or by incorporation, the target companies are dissolved without liquidation and all their assets and liabilities transferred to the absorbing or newly created entity (as the case may be).

A demerger can be implemented by:

(i) Acquisition (demerger by absorption);

(ii) Incorporation of new companies (demerger by incorporation); or

(iii) A combination of (i) and (ii), above.

Reverse mergers are also possible (i.e., where a subsidiary absorbs its parent company). The transfer of assets, branch of activity transfers, all assets and liabilities transfers, and transfers of professional assets are also allowed.

The Mobility Directive (EU) 2019/2121 of November 27, 2019 (the "Cross-Border Mobility Directive") (CBM) establishes the basis for a uniform legal framework for cross-border conversion projects within the EU, harmonizing the procedures for cross-border migrations, conversions, mergers and divisions.

The CBM Directive was introduced to address issues arising as a result of Member States' national laws being incompatible or difficult to align with each other.

[72] Commercial Code, Arts. 8 to 21.

[73] Dir. 2013/34/EU on annual financial statements, consolidated financial statements and related reports of certain types of undertakings as transposed into Luxembourg law pursuant to the law of December 18, 2015.

[74] Law of December 19, 2002, on the register of commerce and companies and the accounting and overall accounts of undertakings, Title II, Chapters II and IV.

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The CBM Directive was to be implemented by the Member States into their national laws by January 31, 2023. However, as at May 1, 2023, Luxembourg had not yet finalized the draft law in connection with its implementation of the directive. Based on the current draft of the domestic implementing legislation, upon implementation of the CBM Directive in Luxembourg, there will be a clear process to follow in relation to migrations and, while the general process with respect to mergers will not be significantly changed, the scope of simplified mergers will be expanded, permitting, for example, a merger between two entities with a common shareholder to be regarded as a simplified merger without the need for a share issuance (such 'sister company' mergers cannot be regarded as simplified mergers under existing Luxembourg law). The general consensus among practitioners and notaries is that the existing Luxembourg national legal procedures continue to apply until the CBM Directive has been implemented into the Luxembourg law.

4. Dissolution and Liquidation

A company may be dissolved[75] by a decision of the extraordinary general meeting of shareholders or by a court decision (at the request of the public prosecutor ordinarily as a consequence of a breach of applicable law).

Liquidators are appointed by the general meeting of shareholders[76] and, unless the articles provide otherwise, a shareholder or any third party or a member of the board may act as a liquidator.

If the company is held by a sole shareholder, the shareholder may also opt for a one-step dissolution under certain conditions. Under this regime, the company is dissolved without the full liquidation regime applying, and its assets and liabilities are transferred to the sole shareholder by operation of law.

A company may also be dissolved at the conclusion of any bankruptcy proceedings.

C. Private Limited Liability Company (Société à Responsabilité Limitée) (S.à r.l.)

1. In General

An S.à r.l.[77] is formed by the passing of a deed in the presence of a Luxembourg notary public.[78]

The shareholders (minimum one, maximum 100) are liable for the company's obligations only up to the amount of their invested capital.

The share capital of an S.à r.l. must amount to at least 12,000 euros, or its foreign currency equivalent.[79] The share capital must be fully subscribed and fully paid-up. Shares may be issued with or without par value, and if issued with a par value, they may have the same or a different par value. Shares (*parts sociales*) must be in registered form. As in the case of an SA, an S.à r.l can issue founders' shares (*parts bénéficiaires*) which do not represent the share capital and the articles of association determine the rights attached to such shares (see III.B.1.e., above). Non-voting or bearer shares are not allowed. The share capital increase is in principle resolved by the shareholders' general meeting by the passing of an extraordinary resolution. However, the articles of association may provide for an authorized share capital as in the SA (see III.B.2.c., above). In such a case, persons who are entitled to subscribe for such new shares issued under the authorized share capital, other than existing shareholders, must be pre-approved by the shareholders' general meeting (a requirement that does not exist for an SA).

At the shareholders' general meeting, all resolutions are taken by a majority of votes cast representing at least fifty percent (50%) of the share capital represented. If the quorum is not reached at the first meeting, and the meeting is reconvened, decisions at the reconvened meeting will be taken by a majority of the votes cast regardless of the portion of the capital represented, unless the articles of association provide otherwise. For resolutions entailing the amendment of the articles (such as a share capital increase (see above)), the law requires the majority of votes cast of at least three-fourths of the share capital present or represented, unless the articles provide otherwise, in the presence of a Luxembourg notary. In any case, all quorum and voting thresholds may only be increased, not decreased, by the articles of association. The holding of shareholders' general meetings is not obligatory where the number of shareholders does not exceed 60.

An S.à r.l. may have one or several managers (*gérants*) who may be appointed for an unlimited duration and removed from office at any time by a decision of the general meeting of shareholders, on condition that the articles provide for such removal without cause (revocation *ad nutum*), without which a manager may only be removed for cause. No qualifications are required of the managers and no nationality or residence requirements apply. Subject to the provisions of the articles, managers may or may not be shareholders. The day-to-day management of an S.à r.l. (*gestion journalière*) may be delegated to one or more managers, officers or other agents. Such delegation must be temporary or specific. It is not possible for the board to delegate the entirety of its powers. Irrespective of the delegation, the board retains overall liability for the management of the company.

An approved statutory auditor is required to be appointed in the same circumstances as for an SA. (See III.B.2.g., above.)

Credit institutions and insurance companies may not take the form of an S.à r.l. An S.à r.l. may not issue shares to the public.

A legal reserve is required in the same circumstances as for an SA (see III.B.2.k., above).

Comment: The costs of incorporation are the same as for an SA (see III.B.1.g., above), save for the fees for the *réviseur d'entreprise agréé*, in the case of a contribution in kind, as such report is not required for an S.à r.l.

The running costs of an S.à r.l. are ordinarily lower than those of an SA and, due to less restrictive legal provisions applying to a private limited company, an S.à r.l. is often the more favored corporate form in transactions where fewer than 100 shareholders are expected.

[75] LSC, Arts. 480-1 to 480-3.

[76] LSC, Title XI, Arts. 1100-1 to 1100-15.

[77] LSC, Title VII, Ch. 1, Arts. 710-1 to 710-31.

[78] LSC, Title I, Art. 100-10.

[79] Since January 16, 2017, one or more individuals may also incorporate a Simplified Private Limited Liability Company (*Société à Responsabilité Limitée Simplifiée*), with a share capital of between 1 euro and 12,000 euros. Such company form may only be used for activities requiring a business license.

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2. Transfer of Shares

The transfer of shares and founders' shares (*parts bénéficiaires*) with voting rights to non-shareholders is subject to the approval of the majority of shareholders representing at least three-fourths of the share capital. This threshold may be lowered to one-half of the share capital. Where a share transfer is not approved, Luxembourg law provides for a statutory exit procedure the purpose of which is to avoid a shareholder remaining blocked in an S.à r.l.[80]

3. Share Buybacks

An S.à r.l. can acquire its own ordinary shares provided the following conditions, among others, are fulfilled:

(i) The company has sufficient distributable reserves; and

(ii) The equal treatment of shareholders in the same position is respected.

An S.à r.l. can also issue repurchasable shares, the terms of which are set out in the articles of association.

D. Simplified Joint Stock Company (Société par Actions Simplifiée) (SAS)

Simplified joint stock companies were introduced in 2016, as part of the modernization of Luxembourg corporate law.[81] This new company form is directly inspired by the regime governing the French *société par actions simplifiée*.

The main purpose of the SAS is to offer a new vehicle with very light legal prescriptions as to governance, while ensuring at the same time common ground with the SA by having certain rules governing the SA apply to other matters.

The only legal governance obligation is for the SAS to have a chairman (*président*), who may be a legal or natural person and may or may not be a shareholder. Such a chairman may be elected for a limited or unlimited period of time and revocable *ad nutum* or not. The chairman will hold all management and representation powers of the SAS, and potentially certain powers usually reserved for shareholders in the other Luxembourg corporate forms. It is also possible to appoint one or several director(s) (*directeur*(*s*)), who may exercise (all or part of) the powers entrusted to the chairman (under the conditions to be set out in the articles of association) and who shall have the same powers as the chairman with regard to third parties. For other matters, parties have a large organizational freedom (for instance with respect to determining the body which can exercise the powers not expressly reserved to the shareholders of the SAS by law).

E. Other Entities

1. European Company (Societas Europaea) (SE)

An SE is a public company set up in accordance with the corporate law of the European Union (EU), introduced in 2004 under EU Regulation No. 2157/2001. It is now applicable in all Member States of the EU as well as those of the European Economic Area (EEA). The legal framework of an SE allows for companies incorporated in different EU Member States to merge or form a holding company or joint subsidiary, while avoiding the legal and practical constraints arising from the existence of different legal systems. It also provides for the involvement of employees in the management of the company and recognizes their place and role within the company.

An SE with its registered office and its central administration in Luxembourg is governed by the specific provisions applicable to SEs under the EU Regulation as implemented into Luxembourg law and, secondarily, by the same national laws as are applicable to an SA.

An SE must have a minimum share capital of 120,000 euros and currencies other than the euro are not allowed. The registered office of an SE is designated in the articles of association and must be the place where it has its central administration (i.e., its center of operations). The articles of association must provide for governing bodies such as the general meeting of shareholders and (i) a management board and supervisory board (two-tier system) or (ii) an administrative board (one-tier system). An SE must draw up annual accounts.

2. Cooperative Company (Société Coopérative)

A cooperative company is a company made up of a minimum of two members and no legal limit on the maximum number of members. A cooperative company has variable capital (there are no minimum or maximum capital requirements) and its corporate units are absolutely non-transferable to third parties.

A cooperative company[82] may be formed by private or notarial deed, which must be published in the RESA. The corporate denomination of a cooperative company can correspond to the name of the business's purpose or may be a distinct name. It must be managed by one or more agents, who may or may not be members and who are liable only for the performance of the duties entrusted to them. The supervision of the company must be entrusted to one or more supervisory auditors, who may or may not be members. A supervisory auditor need not be appointed in those cooperatives where the accounts are audited by an approved statutory auditor. The members may commit themselves jointly and severally or just severally, without limitation or up to a specified amount.

3. Cooperative Company Organized as Société Anonyme (Société Coopérative Organisée Comme Société Anonyme)

A cooperative company organized as a *société anonyme* is a cooperative company subject to the rules applying to cooperative companies as well as those applying to *sociétés anonymes*,[83] except to the extent specifically deviated therefrom in the section in the law governing this entity. The capital of a cooperative company organized as a *société anonyme* is made up of shares[84] and its incorporation requires a notarial deed with the immediate subscription of the nominal capital specified in the corporate deed.[85]

[80] LSC, Title VII, Art. 710-12.
[81] LSC, Title V, Arts. 500-1 to 500-9.
[82] LSC, Title VIII, Ch. 1, Arts. 811-1 to 813-9.
[83] Law of 10 June 1999, modifying the LSC.
[84] LSC, art. 820-2.
[85] LSC, art. 820-4.

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The corporate deed of a cooperative company organized as a *société anonyme* must indicate the manner in which the corporate fund is or will subsequently be made up; the minimum amount to be subscribed for immediately; and the number of shares subscribed to, the category of shares if more than one category exists, and the rights of each of such categories.

A cooperative company organized as a *société anonyme* does not need to publish consolidated accounts.[86]

F. Partnerships

1. General (Unlimited) Partnership (Société en Nom Collectif) (SNC)

A general partnership may be formed by private or notarial deed, an extract of which must be published in the RESA.

All the members are jointly and severally liable without limitation for all the obligations of the general partnership. The management is entrusted to one or more managers.

2. Limited Corporate Partnership (Société en Commandite Simple) (SCS)

The limited partnership legislation in Luxembourg was modernized in 2013 in ways that increase the use of limited partnerships in various corporate structures and which, in addition, assist with the establishment of vehicles suitable for structuring investment funds, most notably unregulated funds.

A limited corporate partnership may be formed by either private (partnership agreement) or notarial deed. An extract of the partnership agreement must be published in the RESA.

Such a partnership has one or more general partners who incur unlimited, joint and several liability for all the obligations of the partnership and one or more limited partners who are liable only to the extent of the amounts that they have promised to contribute to the partnership. General partners may limit their liability by forming a limited liability company to become a general partner in the partnership.

There is no limitation as to the maximum number of partners in a limited corporate partnership, but there must be at least two (one general partner and one limited partner). Indeed, it is possible for a partner to be both a holder of a limited partnership interest and an unlimited partnership interest, provided there is at least one limited partner and one unlimited partner and that they are legally distinct from each other. A limited partner may hold an interest in a corporate entity acting as a general partner in the partnership. The identity of limited partners is not publicly available.

Limited partners are prohibited from carrying out any acts of management other than "internal management acts." They may be held jointly and severally liable towards third parties for any commitments of the limited partnership in which they have participated contrary to this prohibition.

The law provides the following non-exhaustive list of acts that do not constitute management acts:

(i) Exercising partners' rights;

(ii) Providing advice to the limited partnership, its affiliated entities or their respective managers;

(iii) Performing acts of control and supervision;

(iv) Granting loans, guarantees, securities or any other type of assistance to the limited partnership or its affiliated entities; and

(v) Granting authorizations to the managers for acts exceeding their powers as provided for in the limited partnership agreement.

The procedure governing the transfer, division or pledge of partnership interests is freely defined in the limited partnership agreement. If (and only if) the limited partnership agreement does not contain any relevant provisions, transfers (other than transfers occurring due to death), divisions or pledges of limited partners' interests are subject to the approval of the general partner(s), while transfers (other than transfers occurring due to death), divisions or pledges of unlimited partners' interests are subject to the approval of the limited partners, who decide by majority vote representing three-quarters of the ownership shares, and subject to the approval of the general partner(s).

Distributions and repayments to members are governed by the limited partnership agreement. Unless provided otherwise in the limited partnership agreement, voting rights are proportional to a partner's interest and the share of each partner in the partnership's profits is proportional to its partnership interest.

Any change to the corporate object or nationality, as well as the restructuring or liquidation of the partnership must be decided upon by the partners.

3. Special Limited Corporate Partnership (Société en Commandite Spéciale) (SCSp)

Special limited partnerships were introduced in 2013, as part of the modernization of the limited partnership legislation and as an additional investment vehicle suited to investment funds.

Like a limited corporate partnership, a special limited corporate partnership is formed by way of a partnership agreement entered into by the general partner and one or more limited partners and, in general, has legal features similar to those of a limited corporate partnership.

The main differences between the two forms of limited corporate partnership are the following:

(i) A special limited partnership is an entity without legal personality: it does not have a legal personality separate from that of its partners; and

(ii) The transformation of a special limited partnership into one of the other types of Luxembourg legal entities gives rise to a new legal entity and, in addition to any requirements for such an action set out in the partnership agreement, the substance, form, and legal requirements for the incorporation of a new entity are applicable.

4. Partnership Limited by Shares (Société en Commandite par Actions) (SCA)

A partnership limited by shares is established by a partnership agreement pursuant to a notarial deed published in the RESA and combines features of a limited partnership (*société en commandite simple*) with those of a public limited company (*société anonyme*). Like a limited corporate partnership, a

[86] LSC, art. 820-9.

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partnership limited by shares is formed by way of a partnership agreement entered into by the general partner(s) (who incur(s) unlimited, joint and several liability for all the obligations of the partnership) and one or more limited partners (who are liable only up to the amount of their share capital contribution), but unlike a limited corporate partnership, its shares are freely transferable to non-shareholders, unless the partnership agreement provides otherwise.

Shares may be in registered form, dematerialized form or bearer form and may have a par value or no-par value. If shares are issued with a par value, they may have the same or different par values. Bearer shares are subject to the same formalities as those issued by an SA (see III.B.1.e., above).

General partners may limit their liability by forming a limited liability company to become a general partner in the partnership. Limited partners may not take part in the management of the partnership. The partnership is managed by one or more of the general partners designated by the articles of association, or alternatively, by a board of directors appointed for the partnership. Limited partners are prohibited from carrying out any acts of management other than "internal management acts," in the same way as the limited partners of a limited partnership (see III.F.2., above).

The supervision of a partnership limited by shares must be entrusted to at least three supervisory internal auditors, who constitute a supervisory board. The supervisory internal auditors provide a supervisory function and need not have any specific audit qualifications. The supervisory board may give its opinion on any matters that the managers refer to it and may authorize acts that fall outside the managers' powers. The general meeting of partners may voluntarily appoint an approved statutory auditor (*réviseur d'entreprises agréé*), in which case there is no need to appoint supervisory internal auditors. The partnership must appoint an approved statutory auditor if the conditions applicable to an SA for the mandatory appointment of an approved statutory auditor are fulfilled (see III.B.2.g., above).

G. Branch of a Foreign Corporation (Succursale)

All companies or associations constituted or having their registered office in a foreign jurisdiction may carry on business and act in Luxembourg courts. Any company whose central administration is in Luxembourg is subject to Luxembourg law even though the constitutive instruments may have been executed in a foreign jurisdiction. A foreign company may set up a branch[87] in Luxembourg and must then file certain information and documents with the Luxembourg Register of Commerce and Companies (RCS) and publish such information in the RESA.

No fixed or minimum capital requirements are imposed on branches of foreign companies and there are no residence or nationality requirements for the managers of such branches.

[87] LSC, Title XIII, Arts. 1300-1 to 1300-14.

H. Other Business Entities

1. Civil Company (Société Civile)

A civil company[88] must be established by means of a special notarial deed or by private instrument published in the RESA.[89] Two originals are sufficient for civil companies if they are established by means of a private instrument. This company form is particularly convenient for professionals such as doctors, architects, consultants and accountants. The form is also used to protect real property investments when the acquisition of real property is made by more than one associate, in which case the civil company is called a *société civile immobilière* (SCI). An SCI gives the associates protective rights if one of them decides to sell the immovable property.

2. Temporary Commercial Company (Société Momentanée)

A *société momentanée* carries out one or more specified commercial transactions without trading under a name.

A *société momentanée* is set up by a written agreement and has no legal personality. Its members are jointly and severally liable toward third parties, with no limitation.

3. Commercial Company by Participation (Société en Participation)

A *société en participation* is a company by which one or more persons take an interest in transactions managed by one or more other persons in his or their own name.

A *société en participation* exists through a written agreement that requires neither registration nor public notice.

The managers are jointly and severally liable toward third parties with no limitation.

4. Economic Interest Grouping

An economic interest grouping (*groupement d'intérêt économique* or EIG),[90] which is subject to special legislation, has elements of both a joint venture and a private company. A GIE is a suitable form for businesses that seek to cooperate in various activities while maintaining complete independence in other respects. A GIE may be created with or without capital and may be civil or commercial. Although its principal purpose is not to make a profit, it is not prohibited from doing so. Profits are apportioned according to each member's ownership share, but the members of a GIE are liable for its debts.

On a cross-border level, EU members may create a European Economic Interest Grouping (EEIG).[91]

[88] Civil Code, Title IX, Arts. 1832 to 1873.

[89] LSC, Title I, Arts. 100-4 and 100-10.

[90] Law of March 25, 1991, on Economic Interest Groups.

[91] Law of March 25, 1991, containing various measures for applying Regulation EEC 2137/85 of the Council of July 25, 1985, relating to the establishment of a European Economic Interest Group (EEIG).

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IV. Special Purpose Companies

A. Holding and Finance Companies (Sociétés à Participation Financière)

1. In General

The widely used "Soparfi" (*société à participation financière*) in fact does not enjoy a separate legal or tax regime. The term refers to companies that function as holding and/or finance companies without carrying on any other significant activities. In such cases, the general features of the Luxembourg tax system are such that the tax liability is minimal. As a normally taxed entity, a Soparfi generally enjoys tax treaty protection and access to the EU Parent-Subsidiary and Interest and Royalty Directives.

The term "Soparfi" was coined to distinguish this type of structure from the former "Holding 1929," a wholly tax-exempt company that was itself widely used but the status of which was fully abolished with effect from December 31, 2010.

Any commercial company with share capital that also has one or more participations may enjoy the advantages described in IV.A.2. to 5., below, if it satisfies the specific conditions laid down in the tax laws.

Because a Soparfi does not enjoy different tax treatment from that which applies to other Luxembourg companies, the tax issues discussed in VI., below, are also applicable to Soparfis.

2. Corporate Income Tax

Soparfis are subject to two income taxes, namely national corporate income tax and municipal business tax. National corporate income tax (CIT) is levied at a rate of 16% from 2025.[92] A surcharge of 7% to finance an unemployment fund is applied to the corporate income tax, making the effective corporate income tax rate 17.12% for 2025. Municipal business tax is levied on the corporate income tax base, the rate varying from community to community. In Luxembourg City, the municipal business tax rate is 6.75% (2025). Often, corporate income tax, the surcharge and municipal business tax are simply collectively referred to as "corporate income tax" and the combined tax rate for a Soparfi located in Luxembourg City is presented as the aggregate "corporate income tax rate." From fiscal year 2025, that combined rate (i.e., CIT, solidarity surtax and municipal business tax) is 23.87%.

3. Taxation of Incoming Dividends and Capital Gains

a. Participation Exemption

Dividends and/or capital gains relating to qualifying participations are exempt from income tax provided certain conditions are met.

(1) Dividends

Under Article 166 of the Income Tax Law (LIR), dividends (including liquidation profits) received by a Soparfi are exempt from Luxembourg corporate income tax if the following requirements are met:

> (i) The Soparfi must hold 10% or more of the nominal paid-up share capital of the subsidiary or the participation must have an acquisition price of 1.2 million euros or more;
>
> (ii) The subsidiary must be (a) a resident of Luxembourg and fully subject to Luxembourg income tax or (b) a resident of an EU Member State and covered by the EU Parent-Subsidiary Directive or (c) the subsidiary must be subject in its country of residence to an income tax that is comparable to the Luxembourg corporate income tax; and
>
> (iii) At the time of the dividend/liquidation distribution, the minimum participation referred to above under (i) must have been held by the Soparfi for an uninterrupted period of at least 12 months, or the Soparfi must commit itself to continue to hold the minimum participation for an uninterrupted period of at least 12 months.

Starting from the 2025 tax year, the taxpayer can choose to opt-out of the participation exemption on dividends. The default remains application of the participation exemption, thus, the choice to opt out must be exercised each tax year it is desired and it must be done so individually for each shareholder.[93]

The participation exemption also applies to participations held through a Luxembourg transparent entity (for example, a partnership). The Soparfi is considered to have a direct investment in the subsidiary equal to its pro rata share of the net assets of the partnership, albeit that the partnership has legal personality.

In March 2015, a common minimum anti-abuse rule and an anti-hybrid rule were introduced in the EU Parent-Subsidiary Directive to prevent abusive structuring and erosion of the tax base in EU Member States. These amendments are implemented into Luxembourg law as of January 1, 2016.[94]

The anti-hybrid rule disallows the participation exemption on profit distributions received by a Soparfi that fall within the scope of the EU Parent-Subsidiary Directive if such distributions are tax deductible for the distributing EU subsidiary.

The common minimum anti-abuse rule disallows the application of the Participation Exemption based on the EU Parent-Subsidiary Directive (i.e., as available to subsidiaries fulfilling condition (b) in (ii), above) with respect to profit distributions received from companies within the meaning of the EU Parent-Subsidiary Directive in the case of artificial arrangements that have been put in place for purposes of obtaining a tax advantage and not for valid commercial reasons reflecting economic reality.

On July 31, 2024, the Administrative Court applied the specific anti-abuse rule laid down in Article 166(2*bis*) of the LIR to deny the participation exemption with respect to a gain in relation to the repayment in-kind of a profit participating facility by a Belgian subsidiary of the Luxembourg taxpayer by virtue of the arrangement being considered "non-genuine."[95] An arrangement is considered "non-genuine" if, based on all rel-

[92] LIR, Art. 174.

[93] LIR, Art. 166(1).

[94] Law of December 18, 2015, Art. 2.

[95] Luxembourg Administrative Court, 49080C.

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evant facts and circumstances, it was not structured for "valid commercial reasons that reflect economic reality." The case further confirmed that the application of the specific anti-abuse rule in Article 166(2*bis*) takes precedence over the general anti-abuse rule in paragraph 6 of the StAnpG, potentially rendering foreign tax advantages relevant for purposes of the application of the anti-abuse rule in this area.

Dividends distributed by a securitization company governed by the Law of March 22, 2004, are reclassified as "interest" and, therefore, do not qualify for the exemption.

(2) Capital Gains

On December 24, 1990, a Grand-Ducal Decree was adopted (as amended on December 21, 2007) that extends the Luxembourg participation exemption to capital gains, including currency exchange gains, realized on the alienation of shares, if the following requirements are met:

(i) The Soparfi must hold 10% or more of the nominal paid up share capital of the subsidiary or the participation must have an acquisition price of at least 6 million euros;

(ii) The subsidiary must be a resident of Luxembourg and fully subject to Luxembourg income tax or a resident of an EU Member State and covered by the EU Parent-Subsidiary Directive or, in the case of a nonresident subsidiary, must be subject in its country of residence to an income tax that is comparable to Luxembourg corporate income tax; and

(iii) At the time of the alienation of the shares, the minimum participation referred to above under (i) must have been held by the Soparfi for an uninterrupted period of at least 12 months, or the Soparfi must commit itself to continue to hold the minimum participation for an uninterrupted period of at least 12 months.

The participation exemption also applies to participations held through an entity that is, according to Luxembourg tax principles, considered tax-transparent (for example, a partnership). The Soparfi is considered to have a direct investment in the subsidiary equal to its pro rata part of the net assets of the partnership, even though the partnership has legal personality.

Starting from the 2025 tax year, the taxpayer can choose to opt-out of the participation exemption on dividends. The default remains application of the participation exemption, thus, the choice to opt out must be exercised each tax year it is desired and it must be done so individually for each shareholder.[96]

Capital gains realized on shares in the capital of a securitization company governed by the Law of March 22, 2004, are excluded from the exemption.

(3) Holding Period — Comparison with Tax Treaties

One of the requirements of the domestic participation exemption is that a minimum participation is held for at least 12 months. Once, and for as long as, the minimum threshold is met and the minimum holding period is or will be met, acquisitions of new shares immediately qualify for the exemption. It should be noted that many of Luxembourg's older tax treaties contain a separate participation exemption for dividends and in many cases also for net wealth tax purposes. The minimum ownership period under a treaty is generally shorter than the minimum ownership period required under Luxembourg law, but in many cases the relevant shares are required to be held from the beginning of the accounting year. The requirements under Luxembourg law should, therefore, be carefully compared with those under applicable tax treaties.

(4) Subject to Tax

As noted under (1) and (2), above, nonresident subsidiaries that are not covered by the EU Parent-Subsidiary Directive must be subject in their country of residence to a "comparable income tax"[97] to qualify for the Luxembourg participation exemption. The Luxembourg tax authorities (LTA) take the position that a foreign income tax is comparable if the rate of income tax due is equal to at least 50% of the corporate income tax rate in Luxembourg (i.e., currently at least 8%) calculated on a taxable basis that is similar to the basis applying in Luxembourg. Temporary tax holidays aimed at improving the local economy or environment are generally allowed provided the subsidiary will become subject to the qualifying tax regime at the expiration of the temporary tax holiday. Whether the participation exemption for an interest in a subsidiary benefiting from a temporary tax holiday will be granted is determined on a case-by-case basis. As noted in (3), above, most treaties concluded by Luxembourg themselves also contain a participation exemption with respect to dividends. However, in the relevant treaty provisions there is in general no "subject to comparable income tax" test.

(5) Pre-acquisition Retained Earnings

In most cases, the distribution of a pre-acquisition dividend will result in a corresponding decrease in the value of the participation. Under the participation exemption, the dividend is exempt from income tax and the corresponding decrease in value is nondeductible. Subsequent increases in value up to the historical acquisition price of the participation are exempt from income tax.

(6) Luxembourg Permanent Establishment

The participation exemption also applies where income from qualifying subsidiaries is derived by a Luxembourg permanent establishment (PE) of a foreign taxpayer that is covered by the EU Parent-Subsidiary Directive or a capital company resident in a tax treaty partner country.

Comment: A PE structure offers further possibilities for the repatriation of profits free of Luxembourg dividend withholding tax due to the fact that Luxembourg does not levy withholding tax on profits distributed by a Luxembourg PE to its foreign head office.

b. Deduction of Costs (Impairments)

(1) Write-Offs

If the value of a participation decreases and is depreciated accordingly in the participation holder's commercial accounts, such a loss is deductible for income tax purposes (regardless

[96] LIR, Art. 166(1).

[97] LIR, Art. 166(2)(3).

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of whether or not the loss is the consequence of a currency exchange result). However, subsequent appreciation of the participation (including appreciation upon alienation) is taxable up to its historical acquisition price ("recapture"). The same applies to the writing down of a receivable on, or a loan granted to, a qualifying subsidiary. These write-offs may result in tax losses, which may be carried forward for a 17-year period only, using a "first-in, first-out" method.[98] Tax losses incurred through December 31, 2016, can be carried forward without any limitation.[99]

(2) Financing Expenses

Financing expenses are in principle deductible, but deduction may be restricted under several rules such as anti-hybrid rules (see VI.B.4.f., below) and a limitation of net interest expense based on EBITDA (see VI.B.4.e., below).

Financing expenses directly connected with a participation are, to the extent they are not denied based on the above rules, tax-deductible to the extent they exceed exempt income from the participation concerned in a particular year. The deduction may result in tax losses, which can be carried forward for a 17-year period, using a "first-in, first-out" method. Tax losses incurred through December 31, 2016, can be carried forward without any limitation.[100] However, all finance expenses that have been so deducted must be set off against any exempt capital gain arising on a subsequent alienation of that participation ("recapture").

Expenses are allocated to the extent possible on a historical link basis and otherwise on a *pro rata* basis (for example, divided over the acquisition price of the participation).

There are no prescribed debt-equity ratios for commercial companies such as Soparfis. The long-standing practice of the Luxembourg tax authorities honored a safe harbor debt-to-equity ratio of 85:15. Following the February 2020 OECD report,[101] there is no longer any fixed ratio that can be regarded as a safe harbor. Moreover, the administrative court stated explicitly that the 85:15 ratio is not legally binding.[102] The taxpayer may be asked to support the arm's-length debt capacity and especially the interest level. If a higher leverage is maintained than could be obtained from third parties, part of the interest payments may be considered to constitute a hidden dividend, resulting in that part not being deductible for Luxembourg income tax purposes and, depending on the particular case, Luxembourg dividend withholding tax becoming due.

(3) Currency Exchange Results on Debt Instruments

Currency gains and losses on loans that finance the acquisition costs of subsidiaries are taxable/deductible. Currency exposure should be avoided preferably by denominating such loans in euros or by concluding a hedge agreement with respect to such loans.

Currency gains on the investment itself are exempt by virtue of the participation exemption. Currency losses on the investment itself are tax-deductible but may be subject to the recapture rules.

c. Non-qualifying Participation

(1) Dividends

Fifty percent of the amount of dividends[103] received from resident companies that are fully subject to income tax is exempt. This partial exemption also applies to dividends received from companies resident in EU Member States as well as share capital companies resident in tax treaty partner countries that are subject to an income tax that is comparable to the Luxembourg corporate income tax. Costs connected with such dividends are deductible to the extent of 50%.

(2) Capital Gains

Capital gains[104] realized on the disposal of shares in a non-qualifying participation that are held for at least five years can be allocated to a reinvestment reserve.

4. Taxation of Controlled Foreign Companies (CFCs)

Income from a CFC, that:

(i) Is considered subject to a low tax rate; and

(ii) Earns income dependent on significant people functions carried out by a Luxembourg company,

may be attributable to the taxable income of that company.

See VI.B.3.h.(5), below, for a description of the CFC rules.

5. Taxation of Financing Activities

Soparfis are often used as intragroup finance companies. In the case of in- and on-lending transactions, no thin capitalization rules apply. As Soparfis are regularly taxed entities, they have full access to tax treaty protection and the EU Interest and Royalty Directive.

In accordance with the arm's-length principle, a Soparfi engaged in intragroup financing is expected to earn income from that activity. To avoid transfer pricing challenges from the Luxembourg tax authorities, it is possible to apply for an advance pricing agreement (APA) under Article 29a of the *Abgabenordnung* (General income tax law). On December 27, 2016, the Luxembourg direct tax authorities issued the Circular 56/1 – 56*bis*/1 regarding the tax treatment applicable to Luxembourg companies carrying out intra-group financing transaction, which abrogates and replaces the previously applicable circulars as of January 1, 2017.

To obtain an APA, pursuant to Circular 56/1 – 56*bis*/1, a Luxembourg company will be considered as having sufficient substance if, broadly summarized:

- The majority of the financing company's directors/managers are (i) Luxembourg residents, or (ii) nonresidents who exercise a professional activity in Luxembourg that falls within the scope of Article 10 of the Income Tax

[98] LIR, Art 114(2).
[99] LIR, Art 114(3).
[100] LIR, Art 114(3).
[101] OECD Report, Transfer Pricing Guidance on Financial Transactions, February 2020.
[102] Administrative Court, April 17, 2025, nº50602C.
[103] LIR, Art. 115(15a).
[104] LIR, Art. 54.

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Law[105] and are taxable in Luxembourg on at least 50% of that income. The directors/managers must have the capacity to take binding decisions for the company;

• The key decisions regarding the company are taken in Luxembourg, and at least one shareholders' meeting a year takes place in the location indicated in its articles of association;

• It is not considered as tax-resident in another country (dual residence);

• It has qualified personnel adapted to the needs of the control of the transactions carried out; and

• That personnel has the understanding of risk management in relation to the transactions carried out.

Luxembourg tax law does not prescribe a debt-to-equity ratio for financing companies subject to tax in Luxembourg. However, pursuant to the Circular, a financing company's equity should be sufficient for the functions it performs, the assets used and the risks it assumes. In addition, that equity should effectively be at risk. Under the previous Circular, this criterion was deemed to be met if the minimum equity is at least 1% of the amount lent or 2 million euros. The new Circular henceforth states that the appropriate amount of equity at risk should be determined on a case-by-case basis.

The following information should be included in the APA request:

• The precise description of the applicant (name, address, file number, if applicable) and the entities or branches involved in the transactions or arrangements which are the subject of the application;

• A detailed description of all intra-group financing transactions relating to the company and the legal arrangements or acts referred to in the request accompanied by a detailed statement of the legal position of the applicant;

• The qualifications of the relevant employees and the description of their duties;

• The other state(s) concerned by the transactions or arrangements;

• A presentation of the legal structure of the group, including information concerning the economic beneficiary(ies) of the applicant's capital;

• The fiscal years concerned by the application;

• A transfer pricing study in accordance with the principles set out in the Circular and as laid down by the OECD in the area of transfer pricing; and

• The assurance that the information needed to assess the facts is complete and in line with reality.

If the tax authorities approve the request, the APA, which is renewable, should be valid for a maximum of five years, unless the description of the transaction was incorrect or incomplete, or the approval is not in conformity with international tax provisions. The approval will also cease to apply if the relevant domestic or international legal provisions are amended or essential elements of the transaction(s) are modified.

6. Withholding Tax on Outgoing Dividends

a. Domestic Rate and Treaties

Dividends distributed by a Soparfi are subject to Luxembourg dividend withholding tax at the rate of 15%, unless a lower treaty rate or an exemption applies.

b. Exemptions

Dividends distributed by a Soparfi are exempt from Luxembourg dividend withholding tax if distributed to:[106]

(i) An EU resident company covered by Article 2 of the EU Parent-Subsidiary Directive or a PE of such a company;

(ii) A Luxembourg resident capital company that is subject to corporate income tax;

(iii) A Luxembourg PE of a capital company that is a tax resident of a country with which Luxembourg has concluded a tax treaty;

(iv) A Swiss resident capital company that is fully subject to Swiss corporate income tax;

(v) A capital company that is a tax resident of a European Economic Area (EEA) state, other than an EU Member State, and that is fully subject to a tax that is comparable to the Luxembourg corporate income tax;

(vi) A PE of a capital company that is a tax resident of an EEA state, other than an EU Member State; or

(vii) A company that is resident in a jurisdiction with which Luxembourg has concluded a tax treaty, if the company is subject to a tax that is comparable to the Luxembourg corporate income tax.[107]

The exemption as such applies provided, at the time the dividend is put at the disposal of any of the beneficiaries listed above, the beneficiary has held, or commits itself to continue to hold, directly, for a period of at least 12 months, a participation of at least 10%, or a participation that has an acquisition price of at least 1.2 million euros, in the nominal paid-up share capital of the subsidiary.

In relation to exemption (i), as of January 1, 2016, the common minimum anti-abuse rule disallows the application of the exemption for profit distributions to companies within the meaning of the EU Parent-Subsidiary Directive, in the case of artificial arrangements put in place for purposes of obtaining a tax advantage and not for valid commercial reasons reflecting economic reality. Other participation and withholding tax exemption rules may still apply.[108]

c. Liquidation of a Soparfi

Under Luxembourg law, a liquidation distribution made by a Soparfi is considered to be a capital gain and, therefore, is

[105] Namely, income from commercial activities, agriculture and forestry, professional activities (e.g., director's fees) or salaried employment.

[106] LIR, Art. 147(2).

[107] A tax is considered comparable if the rate is at least half of the Luxembourg rate (i.e., 8.5%) imposed on a comparable basis.

[108] Law of December 18, 2015, Art. 1.

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not subject to dividend withholding tax. Such a capital gain is taxable under the rules described in 6., below. In the case of a nonresident, this means that only holders of a substantial interest are subject to Luxembourg income tax on capital gains realized on a liquidation and only if:

(i) They were Luxembourg resident taxpayers for more than 15 years and became nonresident taxpayers less than five years before the realization of the capital gain; or

(ii) They realized the capital gain within six months following the acquisition of shares.

It should be noted, however, that Luxembourg will generally not be entitled to tax such gains of nonresident shareholders under the terms of applicable tax treaties.

Profit distributions made by a Soparfi in the event of a partial liquidation are not subject to dividend withholding tax. A partial liquidation generally means a transaction whereby the Soparfi repurchases and cancels all shares of one or more shareholders.

d. Repurchase of Shares in a Soparfi, Including Classes of Shares

In principle, a repurchase of shares followed by a cancellation of the repurchased shares could be construed as being subject to Luxembourg dividend withholding tax to the extent that the repurchase price represents retained earnings and profits related to the repurchased shares.

However, pursuant to case law,[109] such a repurchase is to be treated as a mere sale of the shares by the shareholder. Proceeds of share sales are not subject to withholding tax. It is worth noting that such a repurchase should occur at an arm's length price. Otherwise, any amount paid that exceeds the fair market value of the repurchased shares could be requalified as a hidden dividend distribution subject to 15% dividend withholding tax. The exemption from withholding tax is also subject to the operation not being abusive. Recent case law gives an example of a repurchase of shares that was held to be abusive and was therefore subject to withholding tax.[110]

As discussed at IV.A.6.c., above, a repurchase by a Soparfi of all its shares from one or more shareholders, who thereby cease to be shareholders, followed by the cancellation of the shares qualifies as a partial liquidation and is therefore not subject to dividend withholding tax.

The repurchase and cancellation of a class of shares will also qualify as a partial liquidation, and be treated as capital gains and exempt from withholding tax, provided that the abuse of law principle does not apply, if the following conditions are met:

- The share classes were either set up upon incorporation or upon an increase in share capital;
- Each class of shares carries different economic rights, as defined in the articles of association;
- The share class is purchased and cancelled in its entirety;
- The share capital must be reduced accordingly no later than six months after the date of the repurchase; and
- The repurchase price of a class of shares must be determinable based on criteria laid down in the entity's articles of association, or in any other document referred to in those articles of association, making it possible to reflect the estimated realizable value of the class of shares at the time of the repurchase.

In practice, this partial liquidation concept was, before 2025, also often applied to the repurchase and cancellation of an entire class of shares, regardless of whether the shareholders of that class remained shareholders by virtue of their holding other classes of shares issued by the same company. As of December 24, 2024, this position that the redemption of an entire class of shares will qualify as a partial liquidation is now codified in the law, in order to enhance the level of legal certainty in this respect, subject to conditions.[111] Specifically, the redemption of an entire class of shares will qualify as a partial liquidation if the following conditions are met:

(i) The share class is cancelled entirely within six months of its being repurchased;

(ii) The share classes were set up either on incorporation or on a share capital increase;

(iii) Each class of shares carries different economic rights, as defined in the articles of association; and

(iv) The redemption price for a class of shares, which should reflect the fair market value of the shares as of the redemption date, can be determined based on criteria laid down in the articles of association or another document referred to in those articles.

Comment: As the commentary on the bill of law states, the general anti-abuse rule is not set aside by virtue of this codification; the case law in this respect therefore remains relevant.

e. Capital Reduction

A distribution by a Soparfi in the context of a contributed share capital reduction is not subject to dividend withholding tax provided the reduction is based on sound business reasons. Sound business reasons are deemed not to exist to the extent the Soparfi has retained earnings and profits available for distribution.

7. Capital Gains

Under Luxembourg law, resident shareholders are subject to income tax on capital gains realized on an alienation of shares in a Soparfi if:

(i) The gain is realized within six months after acquisition; or

(ii) The alienator holds a substantial interest in the Soparfi.

In very broad terms, a substantial interest exists if a shareholder either alone or together with certain close relatives has held a shareholding of more than 10% in a Luxembourg com-

[109] Administrative tribunal, January 27, 2023, n°42432 and Administrative Court, November 23, 2017, n°39193C.

[110] Administrative court, June 4, 2024, n°49203C.

[111] Law of December 20, 2024, modifying the *Abgabenordnung*, the net wealth tax law and the income tax law, article 4, modifying article 101 LIR in this regard.

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pany at any time during the five-year period preceding the alienation. A capital gain realized on the alienation of warrants and/or convertible loans is also subject to income tax if the warrantholder/lender has a substantial interest in the issuer/borrower. In the case of individuals, a capital gain realized after the six-month period is taxed at half the progressive rates.

A nonresident shareholder, however, is subject to Luxembourg income tax on capital gains only if:

(i) The nonresident holds a substantial interest, and the realization of the capital gain takes place within six months after acquisition; or

(ii) The nonresident holds a substantial interest, has been a Luxembourg resident taxpayer for more than 15 years and has become a nonresident taxpayer less than five years before the alienation takes place. Only the latter category is subject to Luxembourg income tax on capital gains related to the alienation of warrants and/or convertible loans. It should be noted, however, that Luxembourg will generally not be entitled to tax such gains of nonresidents under the terms of applicable tax treaties.

8. Net Wealth Tax

A Soparfi is subject to net wealth tax, which is levied at a rate of 0.5% on a company's worldwide net wealth as of January 1 of each year. Net wealth can be defined as assets minus liabilities, both to be taken into account at fair market value. The net wealth tax act also contains a kind of participation exemption that is substantially the same as the participation exemption with respect to dividends for corporate income tax purposes, except that no holding period requirement applies. The annual net wealth tax burden can generally be limited to the minimum, if arrangements are properly structured. Luxembourg corporate income tax proper (including solidarity surcharge and before any available tax credits) is "creditable" against the net wealth tax, provided certain conditions are satisfied.

Soparfis are subject to a minimum fixed net wealth tax. For purposes of the minimum tax, Soparfis are defined as companies that are exempt from any financial supervision at least 90% of whose assets are comprised of financial assets. The minimum tax amounts to 4,815 euros where total assets exceed 350,000 euros. Below that threshold, it amounts to 535 euros.

For a full description of minimum net wealth tax rules, see VI.C.4., below.

9. Chamber of Commerce Fees

A Soparfi is subject to a lump-sum Chamber of Commerce fee, provided it is a company registered under the NACE CODE 64.202. See V.H.6., below.

B. Investment Funds

1. In General

Luxembourg regulated investment funds are not subject to taxation on either profits or capital gains and there are no withholding taxes on dividends paid to investors.

Three main categories of Luxembourg regulated investment funds can be identified:

(i) Funds that comply with EU harmonized investment restrictions and the units/shares of which may be marketed in all EU Member States to any investor (commonly referred to as "undertakings for collective investment in transferable securities" (UCITS));

(ii) Funds that do not comply with these investment restrictions, referred to as "undertakings for collective investment" (UCIs); and

(iii) Alternative investment funds (AIFs) in the form of "specialized investment funds" (SIFs) or, "reserved alternative investment funds" or (RAIFs).

UCITS and UCIs may issue securities to the public. SIFs and RAIFs are described in IV.C. and IV.D. respectively, below.

For a fund to qualify as an undertaking for collective investment, the following conditions must be complied with:

(i) There must be collective investment of funds;

(ii) The funds must have been raised from the public; and

(iii) The investments must be made according to the principle of diversification of risk.

The Law of December 17, 2010 (the "2010 UCI Act"), which governs UCITS and UCIs, implemented Directive 2009/65/EC[112] (the "UCITS Directive").[113] The UCITS Directive makes it possible for a UCITS to be freely marketed throughout the European Union based on a "European passport." A UCITS must, *inter alia*:

(i) Invest in transferable securities;

(ii) Comply with specific investment restrictions; and

(iii) Be open-ended (i.e., investors must be able to sell their shares back to the UCITS).

Both UCITS and UCIs are subject to prior authorization and supervision by the CSSF.

2. Legal Forms

The 2010 UCI Act distinguishes three legal forms that undertakings for collective investment may take. These are described in a. to c., below.

a. Common Funds (Fonds Communs de Placement)

Fonds communs de placement (FCPs) are similar in many respects to unit trusts in the United Kingdom and mutual funds in the United States. They are co-proprietorships, the joint owners of which are liable only up to the amount they have contributed. FCPs have no legal personality and must be managed

[112] Directive 2009/65/EC of July 13, 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities replaced Directive 85/611/EC of December 20, 1985, coordinating the legislative, regulatory and administrative provisions concerning certain collective investment funds holding securities, as amended (the "former UCITS Directive").

[113] The former UCITS Directive was implemented for the first time in Luxembourg law via the law of March 30, 1988. Amendments to the directive made by way of Directive 2001/107/EC and 2001/108/EC have been implemented in Luxembourg law via the law of December 20, 2002, on undertakings for collective investment (the "2002 UCI Act"). The 2010 UCI Act then replaced the 2002 UCI Act to implement the UCITS Directive.

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by a management company that itself must be approved by the CSSF.

b. Investment Companies with Variable Capital (Sociétés d'Investissement à Capital Variable)

Until recently, a *société d'investissement à capital variable* (SICAV) was always a limited liability company with a variable capital that was always equal to its net assets. No formalities were required for increases and decreases in capital. The law of July 24, 2023 allows SICAVs to take the legal form of a *société en commandite par actions,* in addition to that of a *société anonyme,* or to be incorporated as a *société à responsabilité limitée,* a *société en commandite simple or spéciale,* or a *société coopérative* organized as *a société anonyme.*

c. Fixed Capital Investment Companies (Sociétés d'Investissement à Capital Fixe)

Undertakings for collective investment can also be formed as other companies or entities. Undertakings for collective investment formed as companies that are not SICAVs are commonly referred to as SICAFs (*sociétés d'investissement à capital fixe*). Changes to their issued capital, which may be made within the limits of the authorized capital, require periodic notarization and publication. The authorized capital may be increased by a general meeting of shareholders.

3. Umbrella Funds

Multiple compartment UCITS/UCIs (umbrella funds) are recognized under the 2010 UCI Act and are a popular vehicle among the larger initiators.

Investors may purchase shares in compartments/sub-funds that have different investment policies and segregated assets and liabilities, and accounting records. This allows initiators to set up multi-manager UCITS/UCIs and retain those customers that are looking for different investment strategies.

Furthermore, the 2010 UCI Act allows, subject to certain restrictions, the investment of one compartment/sub-fund of an umbrella fund into another compartment/sub-fund of the same umbrella. This allows initiators to arrange, inter alia, for diversification within the same legal structure.

4. Master Feeder Structures of UCITS

Based on Directive 2009/65/EC (UCITS Directive), the 2010 UCI Act provides for the possibility to establish UCITS "master feeder structures," which had not been previously possible. This gives initiators a wider range of opportunities under the UCITS regime.

5. General Regulations

a. Depository

The custody of the assets of a UCITS/UCI must be entrusted to a depository (custodian). The depository must be a credit institution within the meaning of the Law of April 5, 1993, concerning the financial sector, as amended, i.e., a bank regulated in Luxembourg or the Luxembourg branch of a European-regulated bank. The role of the depository depends on the form of the fund (FCP/SICAV).

b. Minimum Capital

A UCITS/UCI must have a capital of at least 1.25 million euros, which must be attained within a period of 12 months[114] following the authorization of the UCITS/UCI.

c. Administration

The central administration of a UCI must be in Luxembourg. However, the central administration of a UCITS may, subject to certain conditions, be located in another EU Member State.

d. Investment and Borrowing Restrictions

UCITS are subject to very specific investment restrictions and are prevented from borrowing.

In addition, the CSSF has issued specific regulations for UCIs having certain investment policies (such as real estate or alternative strategies). Investment restrictions and borrowing limits for UCIs are determined by the CSSF on a case-by-case basis.

e. Dividends

SICAVs and FCPs are subject to no restrictions (other than restrictions set forth in their constituting documents) with regard to dividends, except that net assets must be at least 1.25 million euros. SICAFs are subject to the Law of August 10, 1915 regarding commercial companies, as amended.

f. Documentation and Reporting

A UCITS under the 2010 UCI Act must publish both a prospectus and a simplified prospectus. A UCITS initially established under the 2010 UCI Act must publish both a prospectus and a key investor information document (a "KIID"). A UCI must issue a prospectus. Both a UCITS and a UCI must publish a semi-annual and an annual audited report.

g. Promoter Requirement — Initiator

Even though this is not required in the 2010 UCI Act, the CSSF does not authorize the creation of a UCITS or UCI unless it is "promoted" by a well-known financial institution that commits its name and reputation to the undertaking for collective investment and that is required to prove a certain financial substance. The promoter is not necessarily the initiator of the UCITS or UCI (meaning the entity upon whose initiative the undertaking for collective investment is created). Generally, the CSSF requires that the prospectus of the undertaking for collective investment states the name of its promoter.

6. Management Companies of UCITS

An FCP (and a SICAV or SICAF that has appointed a management company) must have a management company that either:

(i) As a Luxembourg management company, complies with, *inter alia*, the following regulations:

- Its activity must be limited to the management of investment funds, including providing investment man-

[114] Six months before the entry into force of the law of July 21, 2023.

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agement and administration, and the marketing of UCITS services. The administration of its own assets may be an ancillary activity only.

• Its capital must be at least 125,000 euros, with an additional capital of 0.02% of the amount of assets under management exceeding 250 million euros. The maximum capital required by law is 10 million euros.[115]

• A program of activities setting out its organizational structure must be submitted to the CSSF.

• Its business conduct must be decided by at least two persons of sufficiently good repute and sufficient experience in relation to the type of UCITS concerned for the UCITS to be managed by the management company.

• Investment management functions may only be outsourced to entities that are authorized or registered for the purposes of asset management and are subject to prudential supervision by a supervisory authority cooperating with the CSSF; or

(ii) Is authorized as a management company within the meaning of Directive 2009/65/EU on the coordination of laws, regulation and administrative provisions relating to UCITS in another EU Member State and pursues in Luxembourg the activity for which it has been authorized either by virtue of the establishment of a branch or under the freedom to provide services, subject to certain conditions.[116]

The same requirements apply *mutatis mutandis* to a SICAV or SICAF that has not appointed a management company. However, such a self-managed SICAV or SICAF may not carry on the activity of discretionary portfolio management.

7. Taxation of Undertakings for Collective Investment

a. Exempt Status

UCITS and UCIs governed by the 2010 UCI Act are exempt from all Luxembourg taxes, with the exception of the annual subscription tax (*taxe d'abonnement*) and, in the case of certain UCIs, the annual real estate levy in relation to real estate located in Luxembourg.[117]

b. Annual Subscription Tax (Taxe d'Abonnement)

An annual subscription tax of 0.05% of net assets is calculated and payable quarterly, based on the net asset value at the end of each quarter. A rate of 0.01% applies to:[118]

(i) (Individual compartments of) undertakings for collective investment that are authorized money market funds in the sense of EU Regulation 2017/1131;

(ii) Individual compartments of undertakings for collective investment with multiple compartments referred to in the 2010 UCI Act, as well as individual classes of securities issued within an undertaking for collective investment or within a compartment of an undertaking for collective investment with multiple compartments, provided the securities of such compartments or classes are reserved for one or more institutional investors.

The following are exempt from the subscription tax:

(i) The value of the assets represented by units held in other undertakings for collective investment, provided such units have already been subject to the annual subscription tax provided for as described above;

Comment: It should be noted that this exemption applies only to the extent an undertaking for collective investment invests in other Luxembourg undertakings for collective investment. Not extending this exemption to investments in undertakings for collective investment in other EU/EEA Member States would appear to be a violation of the Treaty on the Functioning of the European Union (TFEU) and the EEA Treaty.

(ii) Undertakings for collective investment and individual compartments of undertakings for collective investment with multiple compartments:

• Whose units are reserved for institutional investors;

• That are authorized as short-term money market funds in the sense of Regulation (UE) 2017/1131; and

• That have been granted the highest rating by a recognized rating agency.

Where several classes of units exist within a UCI or a compartment thereof, the exemption applies only to those classes that are reserved for institutional investors.

(iii) Undertakings for collective investment whose units are reserved for: institutions for the provision of occupational retirement or similar investment vehicles, established on the initiative of one and the same group for the benefit of the employees; and companies of that group investing the funds they hold to provide pension benefits to their employees;

(iv) Undertakings, as well as individual compartments of undertakings with multiple compartments whose main objective is to invest in microfinance institutions. Qualifying undertakings are undertakings whose investment policy prescribes that at least 50% of their assets must be invested in one or more micro-finance institutions or that benefit from the micro-finance label of the Luxembourg Fund Labeling Agency;[119]

(v) UCIs, as well as individual compartments of UCIs with multiple compartments: (a) whose securities are listed or traded on at least one stock exchange or another regulated market operating regularly, recognized and open to the public; and (b) whose exclusive object is to replicate the performance of one or more indices. If several classes of securities exist within the UCI or the compartment, the

[115] Law of December 17, 2010, Art. 102.

[116] Law of December 17, 2010, Arts. 119–124.

[117] Note, however, the potential corporate income tax consequences of the anti-reverse hybrid rules, for which see VIII.

[118] Law of December 17, 2010, Art. 174.

[119] Grand-Ducal Regulation of July 14, 2010, determining the conditions and criteria for exemption from the annual subscription tax for undertakings investing in microfinance.

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exemption applies only to classes fulfilling the conditions under (a);

(vi) UCIs, as well as individual compartments of UCIs with multiple compartments, that qualify as European Long Term Investment Funds (ELTIFs) or are reserved to individual investors acting through a pan-European personal pension product;[120]

(vii) UCIs, as well as individual compartments of UCIs with multiple compartments, that are exchange traded funds admitted to trading the entire trading day on a recognized exchange and for which at least one market maker is active for purposes of ensuring that the unit price on the exchange does not deviate significantly from the NAV per unit;[121]

(viii) As of 2025, active exchange-traded funds (ETFs) qualifying as UCITS.[122]

The Budget Law of 2021[123] reduced the annual subscription tax rates on net assets of UCIs that are invested in environmentally sustainable economic activity as defined in the relevant EU regulation. The lower rates range from 0.04% to 0.01% according to the degree of the fund being invested in such activity. The net assets invested in other activities remain subject to the general rate. For a reduced rate to be available, an auditor must certify the percentage of assets invested by the UCI in such activity and the UCI must send the certified statement to the Registration Duties, Estates and VAT Authority. The lower rate is applicable for the four quarters following the submission of the certified statement.

The European Commission defines fossil gas and nuclear energy as sustainable economic activities under the EU Regulation.[124] Wishing to maintain its opposition to nuclear energy and its commitment to the transition to renewable energy, Luxembourg, via the Budget Law 2023,[125] excludes all investments in nuclear energy and fossil gas from the reduced subscription tax rates.

c. Withholding Taxes on Dividends

There are no withholding taxes on dividends paid by Luxembourg UCIs governed by the 2010 UCI Act.

Withholding taxes deducted at source from income received from its investments by a UCI governed by the 2010 UCI Act are normally not recoverable under most of Luxembourg's tax treaties because of the tax-exempt status of UCIs in Luxembourg. Nonetheless, according to a 2017 Circular,[126] many tax treaties do apply to such investment funds, either based on an agreement to that effect between Luxembourg and the treaty partner (for example, Denmark, Indonesia, Ireland, Morocco or Spain), based on what Luxembourg considers to be the clear text of the tax treaty concerned or, in other cases, because of a common understanding between the tax authorities of the treaty partners.

d. Taxation of Capital Gains

Capital gains derived by nonresident unitholders from an interest in a Luxembourg UCI are exempt from Luxembourg income tax.[127]

e. Value-Added Tax

Luxembourg SICAV-UCIs are considered VAT entrepreneurs that only perform VAT-exempt activities and are not entitled to any input VAT deduction right. Fund management services provided to Luxembourg UCIs are also VAT-exempt, so that no VAT burden is incurred with respect to them. In line with the case law of the Court of Justice of the European Union (CJEU),[128] the fund management services exemption also covers fund investment advisory services to the extent they form a distinct whole and are essential for and specific to the UCI under management. Luxembourg SICAV-UCIs may have to register for Luxembourg VAT purposes.[129]

Luxembourg FCP-UCIs are not considered as independent persons, but as part of their management company (i.e., no stand-alone VAT status).

f. Real Estate Levy

As of 2021, a UCI, other than a UCI that has the legal form of a limited partnership (*société commandite simple*) (SCS) or that is an FCP that derives income or gains from Luxembourg situated real property, is subject to a real estate levy at a flat rate of 20%.

The real estate levy applies to the following categories of income:

(i) Gross rental income (before VAT), derived from Luxembourg-situated real property assets, received, or realized directly, or proportionally if derived indirectly through tax transparent entities or FCPs;

(ii) Capital gains resulting from the disposal of such real property assets, received or realized directly, or proportionally if derived indirectly through tax transparent entities or FCPs; and

(iii) Gains resulting from the disposal of interests in tax transparent entities or units in FCPs, that hold such real property assets directly, or proportionally if derived indirectly through other tax transparent entities or FCPs. See VI.C.7.d.

g. Stamp Duty

There is no stamp duty in Luxembourg on UCI share issues or share transfers. However, the incorporation of a UCI

[120] Law of July 21, 2023.

[121] Law of December 20, 2024, Art. 18 modifying the 2010 UCI Law in this respect.

[122] Law of December 20, 2024, article 19, modifying the 2010 UCI Law in this respect.

[123] Law of December 19, 2020, Art. 9; Circular n°804, December 23, 2020.

[124] Complementary Delegated Regulation (EU) 2022/1214 of March 9, 2022.

[125] Law of December 23, 2022.

[126] L.G - A. no. 61 dated December 8, 2017.

[127] LIR, Art. 156(8)(c), as amended by Law of December 17, 2010, regarding UCIs.

[128] Court of Justice of the European Union (CJEU), Ruling C-275/11, GfbK.

[129] Registration is not compulsory for SICAV-UCIs that only perform VAT-exempt activities, do not acquire goods from EU Member States other than Luxembourg for more than 10,000 euros per year and do not receive invoices for services rendered to them by foreign entrepreneurs.

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and any subsequent amendment of its constituting documents both trigger a registration duty of 75 euros.[130]

C. Specialized Investment Funds

1. In General

In February 2007, Luxembourg enacted the Law on Specialized Investment Funds (the "SIF Law"), commonly referred to as institutional investor funds, the securities of which are not intended to be and may not be offered to the public. The SIF Law replaces the 1991 Law on UCIs. [131] The result is a lightly regulated, operationally flexible and tax-efficient investment fund regime aimed at an internationally qualified investor base.

2. Legal Form and Eligible Investors

The SIF regime may be applied to any entity formed under Luxembourg law, including an FCP and a SICAV. In summary, the SIF regime can be applied to:

(i) A tax-transparent common fund established by a contractual arrangement (*fonds commun de placement*), managed by a Luxembourg management company (i.e., an FCP-SIF); the acronym SIF or the words "specialized investment fund" must always be added to the name of the FCP in question;

(ii) An investment company with variable capital (SICAV) in the corporate form of a private limited liability company (*société à responsabilité limitée* or S.à r.l.), a public limited liability company (*société anonyme* or SA), a partnership limited by shares (*société en commandite par actions* or SCA) or a cooperative company in the form of a public limited liability company (*société coopérative sous forme de société anonyme* or SCSA) (i.e., a SICAV-SIF);

(iii) Any other entity formed under Luxembourg law, including a limited partnership (*société en commandite simple* or SCS). The acronym SIF is always to be added to the corporate form in question.

Any "well-informed" investor may invest in, and also initiate or launch, an SIF. "Well-informed" investor status basically means any professional investor and any institutional investor. It also means any other investor confirming in writing that it adheres to the status of a "well-informed" investor and investing at least 100,000[132] euros in the fund or, in the case of a smaller investment, obtaining an appraisal from a credit institution (within the meaning of Directive 2006/48/EC), a qualifying investment enterprise (within the meaning of Directive 2004/39/EC) or a management company (within the meaning of Directive 2006/48/EC) certifying the investor's expertise, experience and knowledge justifying his or her adequate appraisal of an investment in the relevant SIF. It is thus not the SIF itself that is "specialized," but the investor base.

These conditions set forth in relation to the "well-informed" investor are not applicable to the directors and other persons who participate in the management of specialized investment funds.

3. Investment Policy

Although the SIF Law imposes the condition that a SIF adheres to a policy of risk diversification, the law does not elaborate on any quantitative, qualitative, geographical or other type of investment restrictions. To speed up the regulatory approval process, the CSSF published Circular 07/309, which provides additional guidance as to this risk diversification principle. Pursuant to this Circular, a SIF should generally not invest more than 30% of its assets or commitments in securities of the same kind issued by the same issuer. However, exemptions may apply to investments in securities issued or certified by an Organization for Economic Co-operation and Development (OECD) Member State or by its territorial public communities, including international or local institutions and supranational bodies, and investments in other UCIs that are subject to risk diversification requirements that in purpose and nature are at least comparable to the requirements imposed on SIFs.

A SIF is not permitted to hold a short position with respect to similar securities issued by the same issuer for more than 30% of the SIF's assets. If a SIF invests in derivative financial instruments, it must ensure, through a diversification of its underlying assets, a comparable risk diversification. These guidelines apply to all SIFs, although the CSSF may grant exemptions, if appropriate. In addition, depending on the investment policy, the CSSF may require the relevant SIFs to adopt additional investment limitations. A second CSSF Circular[133] provides detailed information on the financial reporting obligations that must be adopted by SIFs.

4. Capital Contributions, Distributions and Repayments

The minimum capital of a SIF is 1.25 million euros, to be attained in 12 months from the approval of the SIF by the CSSF. Shares issued by a SICAV-SIF must be fully subscribed to. However, they need not be paid up at issue for an amount of more than 5% of the subscribed capital.

A SIF may distribute its net assets, provided the minimum capital remains intact.

5. Custodianship

As is the case with all Luxembourg fund vehicles, the assets of a SIF have to be safeguarded by a Luxembourg established custodian bank. However, the SIF Law no longer imposes specific functions on the custodian bank, thus resulting in fewer constraints for the organization of the relationship between a SIF and its custodian bank compared to funds governed by the 2010 UCI Act.

6. Approval and Supervision

Setting up a SIF does not require the authorization of the CSSF before its launch. The constitutional documents for the relevant SIF need to be filed with the CSSF within one month following the establishment of the SIF. The CSSF will then verify the compliance of the SIF and its directors with applicable laws and regulations prior to admitting the fund to the official SIF list, although the SIF may start its activities as soon as it is established.

[130] Law of December 19, 2008, Art. 3, as amended.

[131] Law of February 13, 2007, relating to specialized investment funds.

[132] Reduced from 125,000 euros by the law of July 21, 2023.

[133] CSSF Circular 07/310 of August 3, 2007.

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7. Publication of Prospectus and Annual Report

Each SIF needs to prepare an "issuing document," which may be labeled as a private placement memorandum, offering a memorandum or prospectus, as the case may be. Even though no minimum content is prescribed (unless a Prospectus Directive-compliant prospectus is to be prepared), the document must include any information necessary for the investors to make an informed investment decision.

A SIF only needs to produce an annual report following a preset reporting template providing for a minimum level of disclosure. This annual report has to be provided to investors and the CSSF within six months from the end of the period to which it relates.

A SIF is not obliged to publish or disclose its net asset value.

8. Tax Aspects of a Specialized Investment Fund

The SIF tax regime follows the regime applicable to UCITS/UCIs. A SIF is exempt from corporate income,[134] municipal business and net wealth tax, and distributions made by a SIF are exempt from dividend withholding tax.

Luxembourg SICAV-SIFs are considered VAT entrepreneurs that only perform VAT-exempt activities and are not entitled to any input VAT deduction right. Fund management services provided to Luxembourg SIFs are also VAT-exempt, so that no VAT burden is incurred with respect to them. In line with the case law of the Court of Justice of the European Union (CJEU),[135] the fund management services exemption also covers fund investment advisory services to the extent they form a distinct whole and are essential for and specific to the SIF being managed. Luxembourg SICAV-SIFs may have to register for Luxembourg VAT purposes.[136]

Luxembourg FCP-SIFs are not considered as independent persons, but as part of their management company (i.e., no stand-alone VAT status).

Whether a SIF is organized with or without legal personality, its constitution and subsequent modifications to its constituting documents are subject to a registration tax of 75 euros.

SIFs are further subject to an annual subscription tax (*taxe d'abonnement*) of 0.01% assessed on total net assets. The subscription tax does not apply to:

(i) SIFs that invest in other UCIs governed by the 2010 UCI Act that have already been subject to the annual subscription tax;

(ii) SIFs that invest in certain money market instruments only;

(iii) SIFs whose investment policy prescribes that at least 50% of their assets must be invested in one or more microfinance institutions or that benefit from the microfinance label of the Luxembourg Fund Labeling Agency;[137]

(iv) SIFs implementing pension pooling schemes; or

(v) SIFs that qualify as European Long Term Investment Funds (ELTIFs) or are reserved to individual investors acting through a pan-European personal pension product.[138]

Withholding taxes deducted at source from income received by a SIF on its investments are normally not recoverable under most of Luxembourg's tax treaties as a result of the tax-exempt status of SIFs in Luxembourg. Nonetheless, according to the LTA Circular,[139] many of Luxembourg's treaties do apply to such investment funds, either based on an agreement to that effect between Luxembourg and the treaty partner concerned (for example, Denmark, Indonesia, Ireland, Morocco or Spain), based on what Luxembourg considers to be the clear text of the treaty concerned, or in other cases because of a common understanding with the tax authorities of the treaty partner concerned.

As of 2021, a SIF, other than a SIF that has the legal form of a limited partnership (*société commandite simple*) or of an FCP that derive income or gains from Luxembourg-situated real property, is subject to a real estate levy at a flat rate of 20%.

The real estate levy applies to the following categories of income:

(i) Gross rental income (before VAT), derived from Luxembourg situated real property assets, received or realized directly, or proportionally if realized indirectly through tax transparent entities or FCPs;

(ii) Capital gains resulting from the disposal of such real property assets, received or realized directly, or proportionally if realized indirectly through tax transparent entities or FCPs; and

(iii) Gains resulting from the disposal of interests in tax transparent entities or units in FCPs, that hold such real property assets directly, or proportionally if realized indirectly through other tax transparent entities or FCPs. See VI.C.7.d.

D. Reserved Alternative Investment Funds

1. In General

The Law of July 23, 2016, relating to reserved alternative investment funds (the "RAIF Law") introduced another alternative investment fund (AIF) regime,[140] the reserved alternative investment fund (*fonds d'investissement alternatif reserve*, RAIF). This regime is reserved for funds managed by fund managers regulated under the Alternative Investment Fund Manager (AIFM) Directive.[141]

[134] Note, however, the potential corporate income tax consequences of the anti-reverse hybrid rules. See VIII.

[135] CJEU, Ruling C-275/11, GfbK.

[136] Registration is not compulsory for a SICAV-SIF that performs only VAT-exempt activities, does not acquire goods from EU Member States other than Luxembourg for more than 10,000 euros per year and does not receive invoices for services rendered to it by foreign entrepreneurs.

[137] Grand-Ducal Regulation of July 14, 2010, determining the conditions and criteria for exemption from the annual subscription tax for undertakings investing in micro-finance.

[138] Law of July 21, 2023.

[139] L.G. — A. no. 61 dated December 8, 2017.

[140] Law of July 23, 2016 relating to reserved alternative investment funds (AIFs) (No. 140).

[141] Directive 2011/61/EU on alternative investment fund managers (AIFMs).

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2. Purpose of the Reserved Alternative Investment Fund

The RAIF Law governs a regime that responds to the needs of AIFMs and investors alike for ease of establishment and flexible corporate/operating rules. Under the RAIF Law, initiators are able to set up a RAIF without CSSF approval, and to benefit from the structuring features which are otherwise only available to regulated AIFs (umbrella structure, variable capital, and a special tax regime). Access to the AIFMD marketing passport will be available, and investor protection will be ensured by the full application of the AIFMD regime at manager level.

3. Eligibility Requirements

As under the SIF regime, a RAIF may invest in any kind of assets that may be legally acquired. Any type of investment strategy is permitted without any restriction whatsoever, provided the RAIF's manager aims to spread the investment risks. The RAIF Law itself is silent on the scope and meaning of this diversification requirement, but the legislative explanatory notes refer to the SIF regime and the related Circular[142] with respect to risk-spreading by SIFs. Taking these as guidance, the following principles should be considered applicable to RAIFs:

(i) A RAIF may not invest more than 30% of its assets or commitments in securities of the same type issued by the same issuer. For the purpose of applying this restriction, every sub-fund of a target umbrella undertaking for collective investment is to be considered as a separate issuer, provided the principle of segregation of liabilities among the various sub-funds vis-à-vis third parties is ensured;

(ii) Short sales may not result in a RAIF holding a short position in securities of the same type issued by the same issuer that represents more than 30% of the RAIF's assets; and

(iii) When using financial derivative instruments, a RAIF must ensure a similar level of risk-spreading, via appropriate diversification of the underlying assets. Similarly, the counterparty risk in an over-the-counter transaction must, where applicable, be limited according to the quality and qualification of the counterparty.

Comment: The RAIF regime offers the choice of waiving the diversification regime if a RAIF's sole objective is to invest in securities representing risk capital and if it opts for the special related tax regime (see IV.D.3., below).

The notion of risk capital has been defined as the direct or indirect contribution of assets to entities in view of their launch, development or listing on a stock exchange. The aim of this exception is to reproduce partially the SICAR regime (see IV.H., below) in the unregulated fund context.

4. Tax Regime

a. Default Tax Regime

The default tax regime applicable to RAIFs mirrors the SIF regime. This means that a RAIF will only be subject, at the fund level, to an annual subscription tax levied at a rate of 0.01% of its net assets (calculated on the last day of each quarter). Depending on the investment assets, some exemptions from subscription tax apply with a view to avoiding duplication of this tax. [143] Irrespective of the legal form chosen for an RAIF, an RAIF is not subject to corporate income tax,[144] municipal business tax or net wealth tax. Nor do distributions of profits made by an RAIF give rise to dividend withholding tax.

As of 2021, a RAIF under the default tax regime, other than a RAIF that has the legal form of a limited partnership (*société commandite simple*), or an FCP that derives income or gains from Luxembourg-situated real property, is subject to a "real estate levy" at a flat rate of 20%.

The real estate levy applies to the following categories of income:

(i) Gross rental income (before VAT), derived from Luxembourg situated real property assets, received or realized directly, or proportionally if realized indirectly through tax transparent entities or FCPs;

(ii) Capital gains resulting from the disposal of such real property assets, received or realized directly, or proportionally if realized indirectly through tax transparent entities or FCPs; and

(iii) Gains resulting from the disposal of interests in tax transparent entities or units in FCPs, that hold such real property assets directly, or proportionally if realized indirectly through other tax transparent entities or FCPs.

See, in this respect, VI.C.7.d., below.

b. Optional Regime

As an alternative to the default regime, a RAIF that does not have the legal form of an FCP may choose to be taxed under the same tax rules as those applicable to SICARs (see IV.H., below). To benefit from this optional regime, the RAIF's constituting documents must provide that:

(i) Its sole object is to invest in risk capital assets; and

(ii) The RAIF is subject to Article 48 of the RAIF Law (which provides for the possibility of applying for the optional regime).

At the end of the relevant financial year, the auditor must confirm that the RAIF has complied with the risk capital investment policy. This report must be filed with the competent tax authorities.

The choice between the default tax regime or this optional tax regime must be made at the umbrella level, meaning that within a single umbrella structure it will not be possible to have some sub-funds subject to the default tax regime and others to the optional SICAR-like tax regime.

Under these SICAR-mirroring tax rules, a RAIF that has a corporate legal form (such as the SA, S.à r.l. or SCA) will be a normally taxable entity for corporate income tax and municipal business tax purposes, but with an exemption from its taxable basis for any profits and gains derived from securities (*valeurs*

[142] Circular CSSF 07/309.

[143] See IV.C.7.

[144] Note, however, the potential corporate income tax consequences of the anti-reverse hybrid rules, for which, see VIII.

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mobilières) invested in risk capital, or from funds reserved for investment that are actually invested within 12 months. As a normally taxable entity, a RAIF should have access to the extensive network of tax treaties signed by Luxembourg with other jurisdictions (subject to acceptance by the relevant source countries). Other than this liability for corporate income tax and municipal business tax, subject to a broad exemption, there should be no other liability for direct taxes. Such a RAIF will be exempt from net wealth tax (except for a minimum net wealth tax set at 4,815 euros, in principle). In line with the tax rules applying to SICARs, distributions of profits made by a RAIF will not give rise to a dividend withholding tax liability.

A risk capital RAIF that has the form of a partnership (an SCS or SCSp) will be deemed to be transparent for corporate income tax and net wealth tax purposes. In addition, it will be deemed not to conduct a business and therefore will not be liable to municipal business tax. The profits and gains of such a RAIF will therefore not be liable to corporate income tax and municipal business tax at either the level of the RAIF or the level of its nonresident partners (that do not have a Luxembourg permanent establishment (PE) to which their interests in the RAIF are allocable), nor is it subject to net wealth tax. Its distributions of profits should not give rise to any dividend withholding tax.

c. Value Added Tax

By virtue of qualifying as an AIF, a RAIF should benefit from the VAT exemption for AIF management services subject to the same conditions and restrictions as apply to AIFs.

E. Pension Funds

1. In General

In June 1999, a private pension fund scheme was established by the Luxembourg legislature.[145] Under this scheme, pension funds are fully taxable legal entities. However, the law also enables such funds to reduce their taxable basis, subject to certain conditions. The Law of June 8, 1999, was replaced by the Law of July 13, 2005, on pension funds[146] in the form of *sociétés d'épargne-pension à capital variable* (SEPCAVs) or *associations d'épargne-pension* (ASSEPs) (see IV.E.2., below). A third category of private pension funds is based on the insurance law.[147]

2. Legal Forms

a. Pension Savings Company (Société d'Épargne-Pension à Capital Variable)

A pension fund can be organized as a pension savings company with variable capital (SEPCAV). A SEPCAV has the form of a cooperative society organized as a public limited liability company incorporated in Luxembourg. The corporate rules for SEPCAVs are set out in the Company Law. The beneficiaries of such funds are their shareholders. The minimum nominal capital of a SEPCAV is 1 million euros,[148] which must be paid up within two years after the company obtains a license to operate as a pension fund.

b. Pension Savings Association (Association d'Épargne-Pension)

A pension fund can also be organized as a pension savings association (ASSEP). ASSEPs resemble partnerships or associations. The beneficiaries are creditors. The minimum capital of an ASSEP is 5 million euros, which must be paid up within 10 years after the ASSEP obtains a license.[149]

c. CAA Pension Funds

CAA Pension Funds are submitted to the supervision of the Insurance Commissioner (*Commissariat aux Assurances*) (CAA). They can be organized using the following legal forms:

(i) Mutual insurance association (*Association d'assurances mutuelles*);

(ii) Cooperative company (*Société cooperative)*;

(iii) Cooperative company organized as a public company (*Société coopérative organisée comme une société anonyme)*; or

(iv) Non-profit organization (*Association sans but lucratif*).

Usually, a CAA Pension Fund is organized in the form of an *association sans but lucratif* (not-for-profit association), as this form provides for the most flexibility.

3. Object Clause

The purpose of these pension funds is the collection of assets and their investment in order to spread the investment risks and to maximize the results of the management of the assets for the benefit of the beneficiaries of the funds. The SEPCAV can be used for defined contribution plans, whereas an ASSEP and a CAA Pension Fund can be used both for defined contribution and for defined benefit plans.

4. Authorization

The articles of association of both a SEPCAV and an ASSEP must be accompanied by an attachment containing a set of rules with information regarding, among other items, the contributors, the obligations and rights of contributors, management and management remuneration, investment policy, and rules for the valuation of assets. No investment restrictions are imposed on pension funds; however, the articles of association and the attached rules must be approved by the CSSF. A CAA Pension Fund is subject to the supervision of the CAA. The CSSF must notify the European Securities and Market Authorities (ESMA), and the CAA must notify the European Insurance and Occupational Pensions Authorities (EIOPA), about any new agreement, rejection of agreement request, and approval of cross-border activities.

[145] Law of June 8, 1999.
[146] IRP (*Institutions de retraite professionnelle*).
[147] Law of December 7, 2015, concerning the insurance sector.
[148] Law of July 13, 2005, Art. 9.
[149] Law of July 13, 2005, Art. 28(1).

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5. Management

Both SEPCAVs and ASSEPs may delegate the asset management to one or more managers. These managers must be approved by the CSSF. Foreign asset managers may also be engaged.

6. Taxation

a. Income Tax and Net Wealth Tax

(1) Société d'Épargne-Pension à Capital Variable

As noted in IV.E.1., above, SEPCAVs are fully taxable companies that, subject to certain conditions, may be exempted from income tax. An exemption from income tax applies to income and gains derived from transferable securities, provided the income tax administration is given information regarding the name of the beneficiaries of the investors as well as information regarding the investment. Other income remains taxable. A SEPCAV is exempt from net wealth tax[150] except, as of January 1, 2016, the minimum net wealth tax (see VI.C.4., below).

(2) Association d'Épargne-Pension

ASSEPs are subject to the corporate income tax. However, the taxable basis for the calculation of the income of an ASSEP is minimal, as the reserves, which are in fact the counterpart of the obligations assumed by the fund toward its beneficiaries, are not taken into account for purposes of determining the taxable basis.[151]

As a fund is required to have provisions set up for current and future benefits equaling at all times the value of the assets of the ASSEP, less liabilities toward third parties, an ASSEP will have no taxable income. An ASSEP is exempt from net wealth tax[152] except, as of January 1, 2016, the minimum net wealth tax (see VI.C.4., below).

Disclosure of beneficiaries is not compulsory, as it is in the case of a SEPCAV.

(3) CAA Pension Funds

The tax treatment of a CAA Pension Fund is similar to that of an ASSEP.

b. Tax Treaty Protection

From a Luxembourg perspective, pension funds are fully taxable entities and can thus benefit from Luxembourg's tax treaties. However, treaty protection will be much more dependent on the position taken by the relevant foreign authorities.

c. Value-Added Tax

Pension funds generally qualify as value-added tax (VAT) taxable persons performing activity falling within the scope of VAT. However, the activities of an authorized pension fund are not subject to VAT. Such a pension fund is therefore not entitled to a VAT input credit for VAT charged on supplies made to it. At the same time, no VAT is chargeable on management services provided to supervised pension funds organized under the SIF regime. In line with ruling C-275/11 GfbK of the CJEU, the fund management services exemption also covers fund investment advisory services to the extent they form a distinct whole and are essential for and specific to the authorized pension fund being managed. Luxembourg pension funds may have to register for Luxembourg VAT purposes.[153]

Note: Since the C-424/11 *Wheels* decision was issued by the CJEU on March 7, 2013, pension funds whose members are not subject to any risk element may not benefit from the fund management VAT exemption.

F. Banks

1. In General

Banks are subject to the normal income and net wealth taxes. However, banks benefit from the regulations described below, which reduce the taxable basis for income tax purposes.

2. Loan Provisions

Specific provisions are allowed where it can be shown that there is a specific collection risk and general loss provisions are permitted within the guidelines provided by the authorities.[154]

3. Fiscal Neutralization of Exchange Gains

Where a bank's commercial accounts are in a currency different from the one in its fiscal accounts and the fiscal accounts show an exchange gain arising on the shareholders' equity, kept at historical rates, the gain may be neutralized (i.e., deferred). An exchange loss will be allowed as a tax deduction, but any subsequent exchange gains must first be recaptured against prior exchange losses deducted before they may be neutralized.[155]

Effective from 2017 and retroactively for fiscal year 2016, such fiscal neutralization is extended to all Luxembourg resident companies.[156]

A formal request must now be filed to benefit from the fiscal neutralization. The request must be filed at the latest three months before the end of the first tax year with respect to which the taxpayer wishes to benefit from the fiscal neutralization.

G. Securitization Companies and Funds

1. In General

The Law on Securitization Vehicles was adopted in March 2004.[157] The law defines securitization as an operation by means of which a securitization vehicle (SV) acquires or assumes, either directly or through other entities, risks attached to assets

[150] Law of July 13, 2005, Art. 104.
[151] LIR, Art. 167(1)(7).
[152] Law of July 13, 2005, Art. 104.
[153] Registration is not compulsory for an authorized pension that only performs VAT-exempt activities, does not acquire goods from EU Member States other than Luxembourg for more than 10,000 euros per year, and does not receive invoices for services rendered to it by foreign entrepreneurs.
[154] Banks may be asked to establish provisions when there is a specific liquidity risk (Circular CSSF 07/301, Art. 47).
[155] LIR, Art. 54 *bis.*
[156] Introduced by Law of December 23, 2016, Memorial A 274 of December 27, 2016.
[157] Law of March 22, 2004, as amended.

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or engagements by issuing securities (shares, warrants, bonds, etc.), the value of or return on which depends on these risks.

An SV is not required actually to acquire the underlying asset, and risks may even be related to engagements that are assumed by others (for example, guarantees and insurance). Securitization operations may be classified as acquisition vehicles and issuing vehicles.

To be governed by the securitization legislation, an SV has to express this explicitly in its formation documents.

2. Form and Characteristics of a Securitization Vehicle

An SV can take the form of a Luxembourg limited liability company[158] or a Luxembourg fund. A fund is managed and administered by a designated Luxembourg company. A fund can be organized either as a joint ownership or as a fiduciary property, whereby the assets are held by a fiduciary for the risk and account of the investors.

An SV can have one or more separate "compartments" that represent a distinct part of the assets, respectively a distinct joint ownership or fiduciary property. The compartments allow for the separation of management, liabilities, recourse and liquidation.

An SV may issue securities with different par values. Securities can be subordinated to other securities or even to some categories of shares. Securities can track the return on one or more assets or engagements, even within a single compartment. There are no prescribed debt-to-equity ratios.

The articles of association of a company, or regulations of a fund, as well as any other contract entered into by the SV, may limit or exclude the exercise of creditor rights, such as the right to petition for bankruptcy.

3. Regulatory Aspects

An SV organized as a company must prepare its accounts under general Luxembourg accounting principles, even though such an entity would normally qualify as a "small company" and could, therefore, draw up accounts in a simplified form. A fund SV is subject to the same accounting rules as apply to Luxembourg collective investment funds, i.e., FCPs. In both cases, the accounts of an SV must be audited by an auditor who is approved by the regulatory body of the financial sector, the CSSF. In case of a regulated SV, the auditor is required to inform the CSSF of any violation of the law governing the SV and any notified irregularities. The regulated SV is required to spontaneously transmit the auditor's report and commentaries.

The investors in and creditors of an SV can entrust the management of their interest to a "fiduciary representative," likely a security trustee, who must be approved by, and will work under, the supervision of the CSSF.

The SV itself needs approval and supervision from the CSSF only if it issues securities to the public on a continuous basis. Such an SV must entrust its liquid assets and securities to a depository, which must be a Luxembourg credit institution.

4. Tax Aspects of a Fund Securitization Vehicle

A fund SV is treated as a tax-transparent entity.[159] There is no annual subscription tax (*taxe d'abonnement*). In the case of resident investors, the Luxembourg tax administration usually accepts that transactions at the fund level are disregarded and that income is recognized only in the case of a disposal of units and a distribution made by the fund. Nonresidents are not subject to Luxembourg tax on income and capital gains derived from a fund.

5. Tax Aspects of a Company Securitization Vehicle

A company SV is fully subject to Luxembourg corporate income tax and municipal business tax on its worldwide profits. A company SV is thus regarded by the Luxembourg tax authorities as a Luxembourg resident under Luxembourg's tax treaties. A company SV should also be covered by the EU Parent-Subsidiary Directive, the EU Merger Directive and the EU Interest and Royalty Directive as it is not tax-exempt and does not have an option to be exempt from income tax.

An SV is exempt from the annual net wealth tax except, as of January 1, 2016, for the minimum net wealth tax (see VI.C.4., below). Profit distributions are not regarded as dividends and, therefore, profit distributions made by an SV are not subject to withholding tax, and the income does not qualify for partial (i.e., 50%) or total participation exemption in the hands of a Luxembourg investor. Also, capital gains realized upon the disposal of shares in an SV are not eligible for the participation exemption.

Nonresidents who own or have owned a participation of more than 10% in the share capital of an SV may be subject to Luxembourg income tax on a capital gain realized within six months following the acquisition of the alienated shares.

Engagements vis-à-vis the investors and other creditors, i.e., (future) profit distributions and accrued interest, are deductible.

Tax law provides for a simplified form of group taxation for Luxembourg companies held to the extent of at least 95% (or, in some cases, 75%) by another Luxembourg company or a foreign company with a Luxembourg PE. To prevent possible abuse, an SV is excluded from being a member of such a fiscal unity.

For the same reason, an SV is also excluded from roll-over relief as provided for in Article 22 *bis* LIR.

6. VAT Aspects

An SV is considered to be a VAT entrepreneur under Luxembourg VAT law, only performing VAT-exempt activities, without being entitled to any input VAT deduction right. Fund management services provided to an SV located in Luxembourg are VAT-exempt under Luxembourg VAT law. In line with decision C-275/11 GfbK of the CJEU, the fund management services exemption also covers fund investment advisory services to the extent they form a distinct whole and are es-

[158] A limited liability company (SA), partnership limited by shares (SCA), private limited liability company (S.à r.l.) or cooperative society organized as a public limited liability company.

[159] Law of March 22, 2004, Art. 50.

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sential for and specific to the SV being managed. Luxembourg SVs may have to register for Luxembourg VAT purposes.[160]

H. Regulated Venture Capital Companies and Partnerships

1. In General

Regulated venture capital companies and partnerships are governed by the SICAR Law of June 15, 2004, relating to the investment company in risk capital (SICAR).

2. Legal Form, Object Clause and Investors

A SICAR is a vehicle whose object is to invest its funds in risk-bearing securities (shares, bonds, warrants, etc.) issued by domestic or foreign enterprises with the aim of having the investors benefit from the results of the management of these assets. It is understood that a SICAR may also grant risk-bearing loans to enterprises and have funds available for future investments.

A SICAR can take the form of one of the following Luxembourg legal persons that provide investors with limited liability:

(i) Public limited liability company, i.e., SA;

(ii) Private limited liability company, i.e., S.à r.l.;

(iii) Partnership limited by shares, i.e., SCA;

(iv) Limited partnership, i.e., SCS; or

(v) Cooperative public limited liability company, i.e., SCSA.

A SICAR must be subject to the SICAR Law according to its articles of association, and its statutory seat and central administration must be located in Luxembourg.

No requirements exist as regards the number of investors or the transferability of shares. A SICAR may only offer its shares or units to "well-informed" investors. Such "well-informed" investors are professional investors, institutional investors or any investor who has confirmed in writing that he or she adheres to the status of a well-informed investor and either invests a minimum of 125,000 euros in the company or obtains an appraisal from a credit institution, a qualifying investment enterprise, or a management company certifying the investor's expertise, experience and knowledge justifying his or her adequate appraisal of an investment in risk capital.

These conditions do not apply to the directors and other persons who intervene in the management of the SICAR.

To enable it to check the status of investors, it is likely that a SICAR will have only registered shares.

3. Minimum Capital and Quotation on Stock Exchanges

The subscribed share capital of a SICAR must be at least 1 million euros,[161] which must be attained within 12 months following the approval of the SICAR regime by the CSSF (see IV.H.6., below). No debt-to-equity ratio applies to SICARs. It is possible to have the shares of a SICAR traded on a stock exchange.

4. Investment Policy

The SICAR law is liberal regarding the investment policy of a SICAR, only stating that investment in risk-bearing capital means the direct or indirect contribution of funds to enterprises with the purpose of their launching, development or introduction on the financial market. A SICAR may, for example, invest all its funds in one company or in one commercial or industrial sector and is not prohibited from taking a majority of the votes in a company. No requirements are imposed regarding the country of residence of an enterprise or the tax regime applicable to an enterprise in which a SICAR may invest.

5. Capital Contributions and Repayments, Legal Reserves, and Dividend Distributions

The share capital must be fully subscribed and each share must be paid-up to the extent of at least 5% by a contribution in cash or in kind. The assets of the SICAR are valued on the basis of fair value. This value must be determined in accordance with the rules set forth in the articles of incorporation. A SICAR is not required to maintain a legal reserve, and capital repayments and (interim) dividends will be subject only to the terms and conditions mentioned in the SICAR's articles and the minimum capital requirements.

6. Custodianship

The receipt of contributions by investors, the receipt of the sales price of alienated assets, the supply of assets acquired and the nature of the income received by a SICAR must be guarded by a depository, which should be a regulated Luxembourg financial institution that has its registered office in Luxembourg, or that is established in Luxembourg if its registered office is in another EU Member State. The depository's liability is not affected by the fact that it has entrusted all or some of the assets in its custody to a third party.

7. Approval and Supervision

The CSSF verifies whether a SICAR and its managers/directors comply with the applicable legal provisions and agreements.

The CSSF must approve the articles of association as well as the choice of the depository before a SICAR can commence its activities. It further reviews the draft prospectus and checks whether the investment can be qualified as venture capital or private equity. The managers/directors of a SICAR as well as its depository must be reliable and experienced in the financial field and their identity must be notified to the CSSF. Any changes in these elements are also subject to prior approval. The promoters and administrators are not subject to CSSF approval. The details of approved SICARs are published in the Official Gazette.

8. Publication of Prospectus and Annual Report

A SICAR must establish a prospectus as well as an annual report concerning its investment policy, performance and expectations for each financial year. A prospectus must contain a clear description of the SICAR's envisaged investments as well

[160] Registration is not compulsory for an SV that only performs VAT-exempt activities, does not acquire goods from EU Member States other than Luxembourg for more than 10,000 euros per year and does not receive invoices for services rendered to it by foreign entrepreneurs.

[161] Law of June 15, 2004, Art. 4.

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as the risks related thereto. The annual report includes the annual accounts and must be published within six months following the year end. The annual accounts must be audited by a certified Luxembourg statutory auditor, and the statutory auditor is required to inform the CSSF of any violation of the SICAR Law governing the SICAR and any notified irregularities. The SICAR is required to spontaneously transmit the statutory auditor's report and commentaries. A SICAR that has the majority of the votes in a company is exempt from the obligation to draw up consolidated accounts.

9. Tax Aspects of a SICAR Company

A SICAR company is subject to income tax on its worldwide profits and, therefore, qualifies as a tax resident for purposes of Luxembourg's tax treaties.

Profits (losses) realized in connection with investments in securities (shares, bonds, warrants, etc.) are exempt from income tax (nondeductible). Management fees and attendance fees, for example, are fully subject to income tax. The same applies to interest income on, for instance, bank accounts or loans, unless the funds are invested in risk-bearing capital within 12 months following the contribution of cash by the investors.

A SICAR company is exempt from the annual 0.5% net wealth tax except, as of January 1, 2016, for the minimum net wealth tax (see VI.C.4., below).

Nonresident investors are not subject to Luxembourg income tax, by either withholding or assessment, on dividends received from a SICAR company or capital gains realized on the disposal of SICAR shares.

A RAIF (*fonds d'investissement alternatif réservé*) company that opts for being taxed as a SICAR is taxed in the same way (see IV.D., above).

10. Tax Aspects of a SICAR Partnership

A partnership is treated as a tax transparent entity for Luxembourg corporate income tax and net wealth tax purposes. However, for municipal business tax purposes (rate for the city of Luxembourg: 6.75%), a partnership is a taxable entity. To prevent having nonresident investors deemed to have earned business income through a SICAR partnership (i.e., a Luxembourg PE), the law states that a SICAR partnership is deemed not to carry on a commercial enterprise in Luxembourg.

Nonresident investors are not subject to Luxembourg income tax, by either withholding or assessment, on profits derived from a SICAR partnership or capital gains realized on the disposal of SICAR units.

A RAIF partnership that opts to be taxed as a SICAR is taxed in the same way (see IV.D., above).

11. VAT

A SICAR is considered to be a VAT entrepreneur under Luxembourg VAT law, but performs only VAT-exempt activities, without being entitled to any input VAT deduction right. Fund management services provided to a SICAR located in Luxembourg are VAT-exempt under the Luxembourg VAT law. In line with decision C-275/11 GfbK of the CJEU, the fund management services exemption also covers fund investment advisory services to the extent they form a distinct whole and are essential for and specific to the SICAR being managed. Luxembourg SICARs may have to register for Luxembourg VAT purposes.[162]

I. Intellectual Property Companies

1. The Intellectual Property Tax Regime

The BEPS-compliant intellectual property (IP) tax regime has been in force since 2018.[163] Under the IP tax regime, up to 80% of net income and capital gains derived from eligible IP assets is exempt from Luxembourg corporate income tax and municipal business tax, and eligible IP assets are fully exempt from net wealth tax. Marketing-related IP assets (for example, trademarks, domain names, designs and models) are excluded from the scope of the regime.

a. Eligible Intellectual Property

The 80% exemption applies to:

(i) Patents;

(ii) Utility models;

(iii) Supplementary protection certificates for patents for medicine and plant protection products;

(iv) Extensions of a supplementary protection certificate for pediatric medicines;

(v) Plant variety certificates;

(vi) Orphan drug designations; and

(vii) Software protected by copyrights.

Eligible assets must have been constituted, developed or improved after December 31, 2007. The filing date for registration is decisive.

b. Determination of the Exempt Amount

The income and gains qualifying for the 80% income tax exemption equal the net eligible income (subject to certain specific adjustments) deriving from the eligible assets (see IV.I.1.a., above), multiplied by a specific ratio. The ratio is equal to the eligible costs (with an uplift of 30% but capped at the total costs) divided by the total costs.

This ratio implements the modified nexus approach, i.e., only R&D activities having a nexus with the Luxembourg taxpayer can benefit from the IP tax regime. The calculations are as follows:

(i) Net eligible income: royalties, income embedded in sold products or services, capital gains and certain indemnities, all in relation to the eligible assets, minus all costs directly and indirectly linked to them;

(ii) Eligible costs: the costs (excluding the acquisition cost of the eligible assets, financing costs and real estate costs) in direct relation to the R&D for the constitution, develop-

[162] Registration is not compulsory for a SICAR that only performs VAT exempt activities, does not acquire goods from EU Member States other than Luxembourg for more than 10,000 euros per year and does not receive invoices for services rendered to it by foreign entrepreneurs.

[163] Law of April 17, 2018, relating to the IP tax regime in Luxembourg, introducing LIR, Art. 50 *ter* and BewG, Art. 60 *ter*.

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ment or improvement of an eligible asset conducted by the taxpayer (including expenses incurred by a PE of the taxpayer and attributable to the taxpayer under a tax treaty, as long as the PE is located in either the EEA or a country with which Luxembourg has concluded a tax treaty, provided the PE does not benefit from a similar IP regime in the country in which it is located, the PE is operational at the time of the realization of the eligible income, and the IP rights and revenues resulting from the R&D activity performed in the foreign jurisdiction are allocated to Luxembourg based on the applicable treaty) or outsourced to third parties;

(iii) Total costs: the eligible costs plus the acquisition cost of an eligible asset and the costs of R&D outsourced to related parties in relation to an eligible asset.

c. Tax Treatment

Based on the IP tax regime, if a company incurs all of the costs involved to develop an eligible IP asset, all income derived from the commercialization of that IP will qualify for the tax benefits of the IP tax regime, leading to an effective income tax rate of just below 5% (2023).

2. The 2008 Intellectual Property Tax Regime

The former IP tax regime (the "2008 IP Regime") provided for an 80% exemption[164] with respect to net income and capital gains derived from eligible IP assets, as well as a full exemption from net wealth tax.

The 2008 IP regime was abolished with effect from July 1, 2016.[165] However a five-year grandfathering period applied with respect to eligible IP rights created or acquired before July 1, 2016. As an anti-anticipation rule, the grandfathering period was reduced for an eligible IP right acquired from a related entity after December 31, 2015, unless it was already eligible for the special IP regime or a corresponding foreign IP regime in the hands of the transferor prior to the acquisition. The reduced grandfathering period ended on December 31, 2016, for the 80% income tax exemption, and on December 31, 2017 for the net wealth tax exemption.

To improve transparency, the mandatory spontaneous exchange of information provided for by the OECD was introduced regarding the identity of Luxembourg taxpayers that benefited from the 2008 IP Regime.[166] The Luxembourg tax authorities had to exchange information on IP rights with the competent authority of another country on the earlier of:

(i) Three months after the date on which they became aware of the information; or

(ii) One year after the filing of the tax return for the relevant tax year by the Luxembourg taxpayer.

a. Eligible Intellectual Property

The 80% exemption applied to the use of, or the right to use, rights derived from copyrights on software, patents, trademarks, domain names, designs and models.

b. Requirements

The 80% exemption applied if the following conditions were fulfilled:

(i) The IP rights were acquired or created after December 31, 2007;

(ii) The IP was not acquired from a related company of the taxpayer. For this purpose, a related company was defined as a company that: directly owns at least 10% in the capital of the taxpayer; is at least 10% directly owned by the taxpayer; or is at least 10% directly owned by a third company that also holds directly an interest of at least 10% in the taxpayer; and

(iii) Where the IP right is a patent, the patent is registered.[167]

c. Valuation

The general methods of valuation are available for the valuation of IP but the taxpayer must prove that the method applied is adequate for the purpose. However, small and medium-sized enterprises may opt to use a valuation equal to 110% of the aggregate amount of expenses incurred if they have developed the IP they own.

The expenses and amortizations taken before the date of application for registration must be capitalized as of that date and thus added to taxable profit of the relevant fiscal year.

d. Tax Treatment

Net income consists of the gross income reduced by costs directly economically connected with the income (including interest deriving from the financing of IP rights, depreciation and amortization, if any, and potential write-offs recorded with respect to each particular item of IP).

Net capital gains from the alienation of such IP are also 80% exempt, although net losses deriving from the alienated IP in the year of alienation or previous years are "recaptured," i.e., the exemption is not applicable to the extent of such losses. Furthermore, the 80% exemption does not apply to the extent previous capital gains were rolled over into the alienated IP.

The 80% exemption with respect to net income and capital gains derived from IP, results in an effective tax rate of 5.844% (2016). Negative income derived from eligible IP rights is fully tax deductible. Any resulting tax loss may be offset against other types of income. Foreign withholding taxes are fully creditable up to the amount of the Luxembourg tax allocable to the income. Any excess foreign tax credits may be deducted.

Qualifying IP held by a Luxembourg company is 100% exempt for net wealth tax purposes.

[164] LIR, Art. 50 *bis*.

[165] Law for the State Budget for the year 2016 of December 18, 2015, Art. 5.

[166] Action 5 — Countering Harmful Tax Practices More Effectively, contained in the OECD's BEPS report suggests patent box regimes are preferential regimes that potentially give jurisdictions with such regimes an unfair tax advantage over those jurisdictions that have no equivalent.

[167] *Circulaire du directeur des contributions* L.I.R. no. 50*bis*/1 of March 5, 2009, para. 5.1.

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IP companies are regarded as VAT entrepreneurs, with no specific VAT exemption applying to their activity. They are usually entitled to recover their input VAT.

J. Insurance and Reinsurance Companies

All insurance companies and reinsurance companies must be licensed by the Minister of Finance. Insurance and reinsurance companies benefit from the fiscal neutralization of exchange gains referred to in IV.F.2., above.[168]

Allocations to technical reserves are fully deductible for tax purposes. Furthermore, licensed reinsurance companies are allowed an additional deductible allocation to a provision for claims fluctuations (*provision pour fluctuation de sinistralité*).[169] To be a licensed reinsurance company, a company must be in the form of an SA, an SCA, a *société cooperative*, a *société européenne*, or, subject to certain conditions, an *association d'assurance mutuelle* or a State reinsurance company, and must have a minimum guarantee fund of 3.9 million euros (in the case of a reinsurance company) or 1.3 million euros (in the case of a reinsurance captive).[170] An application for a license must be recommended by the *Commissariat aux Assurance* (CAA) and decided on by the Minister of Finance. Licensed reinsurance companies are subject to the ongoing prudential supervision of the CAA, which cooperates with the CSSF and must notify the European Insurance and Occupational Pensions Authorities (EIOPA) about any new agreement, any rejection of an agreement request and the approval of cross-border activities. The accounts of a licensed reinsurance company must be audited by an auditor that is approved by the CAA. That auditor must, in addition, report on the solvency ratio of the licensed reinsurance company.

The rationale behind the provision for claims fluctuation is to equalize the accounts and the taxable profit of a reinsurance company during a period in which it engages in important reinsurance activities. As a result, the taxable income is normally substantially reduced during such a period.

The total amount that can be set aside for the provision for claims fluctuation is determined by application of a multiple of the average net premium income in the current and four previous years, net of cancellations, commissions, and reinsurance ceded. The multiple applied depends on the risk category to which the CAA has assigned the reinsurance company and is equal to six times the standard deviation of the ratio of losses and premiums, determined by the CAA in accordance with the criteria set out in Article 12 of the Grand-Ducal Decree of December 5, 2007.[171] The minimum multiple for each category is 2.5, except in the case of risk categories for which the creation of a provision for claims fluctuations is not justified, where the multiple is set at zero.

The provision for claims fluctuation may not exceed 17.5 times the average annual premiums in the current and four previous years.

Tax-deductible additions to the provision for claims fluctuation amounting to the taxable income for the year — before addition — of the reinsurance company are mandatory as long as the catastrophe provision has not reached 30% of its maximum. Thereafter, until the maximum is reached, every year the technical balance and part of the income from investments of the reinsurance company, excluding capital gains or losses on investments in related undertakings, may be allocated to the reserve for claims fluctuation. This allocation is tax deductible. The allocable part of the investment income is equal to a "technical rate" applied to the aggregate technical provisions as per the balance sheet of the company for the last fiscal year. The technical rate, set each year by the CAA, cannot be higher than 60% of the return on long-term state bonds in the currency in which the financial accounts of the company are established. As of January 1, 2021, the technical rate is set at 1.25% if the annual accounts of the company are drawn up in euros.[172]

As long as a reserve for claims fluctuation is in place, the reinsurance company may not have a loss in its annual accounts. It should be noted that because of the possible application of, for example, the participation exemption, tax losses may nevertheless occur despite the existence of a provision for claims fluctuation. Such losses may be carried forward in accordance with the loss carry forward rules. Any reduction of the catastrophe provision is taxable at the usual tax rates.

The provision for claims fluctuation is considered a liability for the purposes of net wealth tax.

The 4% tax on insurance premiums does not apply to premiums paid for reinsurance.

Insurance companies are regarded as VAT entrepreneurs with a specific VAT exemption usually applying to their activity and are therefore usually not entitled to recover their input VAT.

As from 2018, the fund management VAT exemption is extended to the management services received by collective internal insurance funds of life insurance companies. These insurance funds must be subject to the supervision of the Luxembourg Insurance Commission or of the CSSF. This exemption also applies to similar insurance funds established within other Member States, to the extent that these funds are subject to the supervision of a similar supervisory body of the respective Member State.

K. Private Wealth Management Companies (SPFs)

1. In General

To comply with EU competition rules, the law of May 11, 2007, relating to the creation of a private wealth management companies, introduced a regime for private wealth management companies (*sociétés de gestion de patrimoine familial* or SPFs), following the repeal of the noncompliant traditional "1929" holding company regime.

An SPF is a regime that has as its sole objective the acquisition, holding, management and realization of financial assets, without undertaking any commercial activity. An SPF must reserve its shares for certain categories of shareholders only, such

[168] Law of December 7, 2015, on the insurance sector, as amended by Laws of May 21, 2021.

[169] Grand-Ducal Decree of December 5, 2007, last amended by Grand-Ducal Decree of November 14, 2012.

[170] Regulation CAA No 15/03 of December 7, 2015, Art. 52, para. 2.

[171] Grand-Ducal Decree of December 5, 2007 specifying the conditions under which reinsurance companies may be licensed and operate.

[172] Circular letter 23/4 of the CAA dated March 13, 2023.

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as individuals and trusts. No company may hold shares in an SPF.

2. Form of a Société de Gestion de Patrimoine Familial

An SPF must adopt the form of a public or private limited liability company (SA or S.à r.l.), a corporate partnership limited by shares (SCA) or a cooperative company organized in the form of a public limited company (SCSA).

The articles of incorporation of an SPF must state explicitly that the company is subject to the provisions of the SPF Law. The abbreviation "SPF" is to be added to the abbreviation of the legal form of the company and thus mentioned in all correspondence.

3. Permitted Activities

a. Securities

An SPF may acquire, hold, manage and realize financial instruments, as defined in the law of August 5, 2005, on financial collateral arrangements. These are securities in the broadest sense, such as shares (whether portfolio or constituting participations), bonds, options, derivatives and structured financial products.

As such, an SPF is allowed to hold participations in other companies, and even majority holdings, provided, however, that the SPF is not involved in the management of companies. An SPF's involvement in other companies may not go beyond the exercise of its rights as a shareholder (for instance, rating and receiving dividends).

b. Cash and Other Assets Held in Accounts

An SPF may hold any assets held in an account with a professional financial service provider, such as cash, foreign currency, gold, crypto, etc.

4. Prohibited Activities

An SPF is prohibited from engaging in any of the following activities:

(i) Any commercial activity, including trading in the assets it may acquire, hold and realize;

(ii) Acquiring or holding real property, whether directly or indirectly via a partnership or an FCP,[173] regardless of where the property is located;

(iii) Providing financial services;

(iv) Granting interest-bearing loans (interest-free advances are, to a limited extent, possible); and

(v) Engaging in the management of companies it holds shares in.

5. Eligible Shareholders of a Société de Gestion de Patrimoine Familial

Only the following investors may hold shares in an SPF:

(i) Individuals acting within the framework of the management of their private wealth;

(ii) Entities acting exclusively in the interest of the private wealth of one or several individuals (*entité patrimoniale*), such as trusts, foundations, etc.;

(iii) Intermediaries acting for the account of investors referred to above under (i) or (ii). Such intermediaries must declare in writing to the domiciliary agent, or, in the absence thereof, to the managers of the SPF, that they are acting as such.

An SPF is furthermore open to only a restricted circle of investors. Its shares may not be the object of any public offering or be listed on a stock exchange.

6. Taxation

a. Exemption from Income Taxes

An SPF is exempt from income tax, municipal business tax, and net wealth tax.

b. Withholding Tax

Dividends distributed and interest paid on bonds or other borrowings of an SPF are exempt from withholding tax.[174]

Interest or deemed interest paid by an SPF to Luxembourg resident individuals or to certain residual entities for the effective benefit of such resident individuals, is subject to a 20% withholding tax under Relibi (see XIV.C.3.b., below). Proceeds that are subject to such withholding tax are exempt from Luxembourg income tax in the hands of the individuals.

c. Subscription Tax (Taxe d'Abonnement)

An SPF is subject to an annual subscription tax levied at the rate of 0.25%, subject to a minimum levy of 1000 euros and a maximum of 125,000 euros per annum. The basis for the subscription tax is the amount of the nominal paid up capital increased by share premium issued, plus the amount of debt issued by the SPF to the extent the amount of debt exceeds eight times the amount of nominal capital plus share premium.

The annual subscription tax must be declared by the SPF on a form distributed by the competent tax authority every quarter. The SPF must pay the amount declared each quarter (i.e., a self-assessment system). In the year of an SPF's constitution and the year of its liquidation, the quarterly subscription tax is calculated *pro rata* to the number of days the SPF existed in the quarter concerned.

d. VAT

An SPF will generally not be considered as an entrepreneur for VAT purposes.

e. Revocation of Tax Benefits

The director of the Registration & Domain Administration (*Administration de l'enregistrement et des domaines)* may revoke the direct tax exemption if an SPF does not abide by the conditions laid down in the law or its articles of association.

[173] The prohibition on indirect investment in real property via tax-transparent vehicles and FCPs was introduced by Budget Law 2021, Art. 11 and is in force from January 1, 2021, as confirmed by Circular n°804 *bis*, dated February 17, 2021.

[174] LIR, Art. 147(3).

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The revocation takes effect from the day of notification of the director's decision to the SPF.

This rule was cited in three decisions rendered by the administrative tribunal on September 15, 2021.[175] In substance, the administrative tribunal held that the SPF law of May 11, 2007 is a derogatory law that provides that the competent authority for the supervision of SPFs is the *Administration de l'enregistrement et des domaines*. Thus, as long as this authority has not revoked an SPF's status, it retains such status and benefits from the derogatory tax regime. Consequently, until an SPF's status is revoked, the *Administration des Contributions Directes* is not competent to supervise it and cannot require it to file tax returns.

Each year, the domiciliary agent or, in the absence of a domiciliary agent, an auditor of the SPF, certifies that only eligible investors hold shares in the SPF.

Prior to January 1, 2016, the domiciliary agent or, in the absence of a domiciliary agent, an auditor, had to certify that the SPF met its obligations as paying agent pursuant to the domestic withholding tax legislation on savings interest and the Luxembourg implementation of the Savings Directive. The Savings Directive, however, was repealed by Council Directive (2015/2060/EU). Accordingly, the Law of July 23, 2016, abolished Luxembourg's implementation of the Savings Directive, thereby rendering obsolete the certification previously required pursuant to the Savings Directive.

As of 2025, the director of the Registration and Domain Administration can:

- Impose fines of up to 10,000 euros for issues such as non-compliance with naming requirements or failure to submit the requisite compliance certificate or subscription tax return;
- Impose fines of up to 250,000 euros for more serious breaches, such as where an SPF has non-qualifying investors or engages in unauthorized activities like commercial activities, managing a subsidiary, or directly holding real estate assets in a non-compliant manner; and
- In cases of serious breaches, request the SPF to rectify the non-compliance within a six-month period. If the director deems that the SPF has failed to comply after this period, the benefit of the SPF status can be permanently withdrawn, meaning that the company will be fully taxable as from the day of the withdrawal decision notification. Furthermore, if an SPF continues to use the "SPF" denomination after status withdrawal, further fines of up to 5,000 euros per month of non-compliance may be imposed.[176]

f. Taxation of Nonresident Shareholders

Nonresident shareholders in an SPF are not subject to Luxembourg income tax on distributions received from the SPF. Nor are such shareholders subject to Luxembourg income tax on capital gains realized on the alienation of shares in an SPF.

g. Tax Treaties

The Luxembourg government has stated that an SPF is not entitled to any tax treaty benefits, nor may an SPF invoke the benefit of the EU Parent-Subsidiary Directive. Nevertheless, a certificate of residence certifying that an SPF is a resident of Luxembourg can be obtained by motivated request pursuant to circular LIR 159/2 dated June 4, 2024. The request needs to indicate the reason for which the certificate is requested and must reference the foreign legal provision underlying that reason.

L. Shipping Companies

In 1990, Luxembourg set up a maritime shipping register that offers specific benefits to Luxembourg shipping companies,[177] including the following tax advantages:[178]

(i) Exemption from municipal business tax (since the business of a shipping company is not carried out in a Luxembourg municipality);

(ii) Investment tax credits (*bonification d'impôt pour investissement*) of up to 13% with respect to vessels and other movable assets as if the assets were physically used in Luxembourg for licensed shipping companies operating vessels in international traffic;[179]

(iii) A flat rate of income tax of 10% on salaries (minus 10%, minus a tax allowance of 1,800 euros per month or 72 euros per day) paid to crew members who are not resident in Luxembourg employed by a licensed shipping company aboard a ship operated in international traffic;

(iv) Rollover relief for capital gains realized on the sale of a vessel, provided the proceeds are used to purchase a new vessel within two years of the sale of the old vessel and that the company has held the vessel for at least five years before selling her; and

(v) Depreciation on a straight-line basis or accelerated depreciation on a reducing balance basis within the limits of (i) three times the depreciation on a straight-line basis and (ii) 30%, based on a normal useful life of 12 years.

M. Venture Capital

The venture capital investment certificates regime was introduced in 1993[180] and abolished with effect from January 1, 2021.[181]

For tax years before 2021, taxpayers could receive a tax credit equal to 30% of the nominal value of the certificates they held. The tax credit could not, however, exceed 30% of their taxable income. The tax credit may be set off against income tax due for the same year as that for which the certificate was awarded. Excess credits were neither refunded nor carried forward. Certificates were awarded for investments in enterprises that introduced new products or new technologies that were not

[175] Administrative Tribunal, September 15, 2021, n°43169, n°43170, and n°43171.

[176] Circular nº823 of December 27, 2024.

[177] Law of November 9, 1990, as amended, creating a public maritime register in Luxembourg.

[178] RGD of December 24, 1990, Arts. 107 to 110; LIR, Arts. 53, 54 and 152 *bis*.

[179] LIR, Art. 152 *bis*.

[180] Law of December 22, 1993, Art. VI, as amended.

[181] Law of December 19, 2020, Arts. 20 and 58.

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yet commercialized. The regime was subject to the following conditions:

(i) The enterprises that were invested in had to be engaged in the development of a product, the launch of the product, or the initial marketing of the product;

(ii) The investment had to be made by way of a contribution in cash to a company;

(iii) The aggregate nominal value of the certificates awarded for a qualifying investment could not be lower than 100,000 euros or exceed 5 million euros; and

(iv) The shares issued had to be registered shares in an SA or an S.à r.l. resident and normally taxable in Luxembourg.

The shareholder(s) of the company had to make a request to the authorities before the investment is made. Awarded certificates could be transferred — once — to other resident companies, so that the acquiring company could obtain the tax credit instead of the original investor. Venture capital investment certificates could not be combined with a subsidy granted under the Law of July 27, 1993 (see II.A.2.a.(1), above).

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V. Principal Taxes

A. Sources of Authority in Tax

1. Legislative

a. Organization of the Tax Law

Luxembourg tax law is organized in a set of separate tax laws, the most relevant being the following:

(i) The Constitution of October 17, 1868 (the "Constitution"), as amended;

(ii) The General Tax Law of May 22, 1931 (*Abgabenordnung — Loi générale des impôts*).

The General Tax Law provides the legal basis for Luxembourg's procedural framework regarding direct tax matters;

(iii) The Tax Adaptation Law of October 16, 1934 (*Steueranpassungsgesetz — Loi d'adaptation fiscale*).

The Tax Adaptation Law provides for several definitions and principal concepts in tax law, most notably the general anti-abuse rule (§ 6) and the attribution of ownership for tax purposes (§ 11), often said to be the source of the concept of economic consideration of facts in direct taxes in Luxembourg;

(iv) The Valuation Law of October 16, 1934 (*Bewertungsgesetz — Loi sur l'évaluation des biens et valeurs*), providing valuation rules for, most notably, the net wealth tax and succession taxes;

(v) The Net Wealth Tax Law of October 16, 1934 (*Vermögenssteuergesetz — Loi concernant l'impôt sur la fortune*);

(vi) The Municipal Business Tax Law of December 1, 1936 (*Gewerbesteuergesetz — Loi concernant l'impôt commercial communal*);

(vii) The Income Tax Act of December 4, 1967 (*Loi de l'impôt sur le revenu*), providing the principles related to personal income tax in its Title 1, and corporate income tax in its Title 2;

(viii) The Pillar Two law of December 22, 2023 (*Loi du 22 décembre 2023 relative à l'imposition minimale effective en vue de la transposition de la directive (UE) 2022/2523 du Conseil du 15 décembre 2022 visant à assurer un niveau minimum d'imposition mondial pour les groupes d'entreprises multinationales et les groupes nationaux de grande envergure dans l'Union*), providing for top-up taxes under (a) the Income Inclusion Rule (IIR), (b) the Qualifying Domestic Minimum Top-up Tax (QDMTT) and (c) the Undertaxed Payments Rule (UTPR);

(ix) The November 7, 1996 law regarding the organization of the administrative jurisdiction;

(x) The June 21, 1999 law on the procedure before the administrative jurisdiction;

(xi) The VAT Law of February 12, 1979;

(xii) A bundle of registration duty laws including the Law of 22 Frimaire an VII (December 12, 1798).

Each of these laws has been amended over time.

b. Other Legislative Documents that Can Be Used to Interpret the Law

Luxembourg parliamentary documents have a significant role in interpreting laws when the terms used are subject to different interpretations. Among these documents, the explanatory memorandum (*Exposé des motifs*) of bills may serve to portray the real intent of lawmakers by adopting a teleological interpretation. Courts may also refer to these documents to give a judgment.

Several Luxembourg tax laws are (partly) based on German tax laws introduced during the Second World War. Therefore, next to the Luxembourg's parliamentary documents, doctrine and case law, German doctrine and case law may be referred to in certain cases.

c. Notion of Abuse of Law

The legislator has codified a general anti-abuse rule that allows the tax authorities to ignore a non-genuine arrangement implemented by a taxpayer, if the main purpose — or one of the main purposes — of the arrangement is to obtain a tax benefit contrary to the intent of the law. This rule is usually referred to as the General Anti-abuse Rule (GAAR).

The notion of abuse of law provided for in § 6 of the Tax Adjustment Act (StAnpG) had been unchanged since 1944. As a result of the transposition into domestic law of ATAD[182] in 2018,[183] the legislator has amended the GAAR. Under the amended version of the relevant text, characterization of an arrangement as an abuse of law requires the presence of all three of the following features:

(i) The arrangement is carried out using forms and institutions of law;

(ii) The main purpose — or one of the main purposes — of using the chosen legal path is to circumvent or reduce the tax burden, this being contrary to the intent of the law; and

(iii) The legal arrangement used by the taxpayer is not genuine having regard to all relevant facts and circumstances.

However, to the extent possible, the criteria established by case law in relation to the previous version of the GAAR should still be applicable under the new version of the law. According to these criteria, the presence of four cumulative features was required for an arrangement to be characterized as an abuse of law:

(i) The use of private law forms and institutions;

(ii) Tax savings resulting from the circumvention or reduction of the tax burden;

(iii) The use of an inappropriate legal path; and

[182] Directive (EU) 1016/1164 of July 12, 2016.
[183] Law of December 21, 2018.

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(iv) The absence of valid non-tax reasons that could justify the path chosen.

If the tax authorities characterize an arrangement as an abuse of law, the inappropriate path used by the taxpayer is ignored for tax purposes and the taxable base is assessed as if the taxpayer had used the appropriate path to carry out the operation in question.

The Luxembourg implementation of Pillar Two provides that, unless provided otherwise in the Luxembourg Pillar Two Law, the provisions of the Tax Adjustment Act are applicable, which means that the GAAR should also extend to top-up taxes imposed as a result of the application of the Income Inclusion Rule (IIR), the Qualifying Domestic Minimum Top-up Tax (QDMTT) or the Undertaxed Payments Rule (UTPR).

d. Legislative Process

Article 116 of the revised Constitution provides for the principle of legality in tax matters. Tax laws need to be confirmed by an annual law reconfirming budgetary authorizations and can be amended through separate laws.

The drawing-up of the tax legislation and the budget is the responsibility of the Government. The Ministry of Finance prepares the budget bill/tax legislation which is reviewed by the General Inspectorate of Finance before being passed by the Government Council and finally being submitted to the Chamber of Deputies. The latter can either adopt or reject it. Ahead of the vote, the bill is submitted to the State Council (*Conseil d'Etat*), the relevant parliamentary committee and professional chambers (e.g., *Chambre de commerce*). Pursuant to the Constitution, once the deputies have approved the draft bill, the Chamber of deputies must vote a second time on the bill. A three-month period must be respected between each vote. The State Council may, however, decide to dispense with this second vote. Ultimately, the law enters into force through publication in the official journal (*Memorial A*).

e. Constitutional Challenges

A party to a civil or administrative trial can raise a question on the constitutionality of a law before the court, including a tax law. The court is then obliged to refer the case to the Constitutional Court, unless it considers that:[184]

(i) A decision on the question raised is not crucial to its being able to deliver a judgment;

(ii) The question is completely unfounded; or

(iii) The Constitutional Court has already given judgment in a case where the issue at stake was the same.

The court may also *ex officio* refer a case to the Constitutional Court if it considers that a decision of the latter is crucial to its being able to deliver a judgment.

The final step is the Constitutional Court's decision given by way of judgment on the conformity of the law at issue.

The major tax-related principle contained in the Luxembourg Constitution[185] is the principle of legality: only the legislator can create a tax.[186] The Constitution also provides for the principle of equality[187] in taxation — i.e., that there will be no difference in treatment between taxpayers in a similar situation, so that no exemption or tax relief can be granted unless prescribed by law.

2. Administrative

The head of the Luxembourg indirect tax authorities and the head of the direct tax authorities (both referred to as *Direction*) issue guidelines to the administration by way of circulars that give the tax administration's interpretation of tax rules, which may take the form of either *Circulaires* or *Notes de service*. The LTA must comply with these guidelines. These guidelines are not binding on taxpayers, although a position taken against a circular will most likely be challenged by the tax authorities, in which case the taxpayer could in turn challenge the position of the authorities in front of the court.

3. Advance Tax Rulings

Taxpayers can also request from the Luxembourg tax authorities an advance tax clearance. The legal procedure for advance tax clearances derives from the Law of December 19, 2014 on the implementation of the future package. This law has been further supplemented by a grand ducal regulation of December 23, 2014 on the procedure applicable to advance tax rulings.

Under Article 29a of the General Tax Law inserted by the law of December 19, 2014, an advance decision is defined as a confirmation of the application of the tax law to a specific situation that a taxpayer envisages implementing. Each ruling is subject to prior payment of an administrative fee ranging from 3,000 euros to 10,000 euros.

The Grand-Ducal regulation of December 23, 2014, specifies the conditions for filing a request. In particular, the request must be made in writing and contain at least information relating to the applicant, the intended structure, and a tax analysis of the issue(s) at hand.

An advance tax ruling does not by itself create an exemption or a tax reduction. The tax authorities are bound by the decision for a period of a maximum of five years in relation to a ruling issued under Article 29a of the General Tax Act. The issued clearance can cease to have effect if one of the following events occurs:

(i) Information provided by the taxpayer appears to be incomplete or incorrect;

(ii) The structure finally implemented differs from what was described in the request; or

(iii) The decision no longer complies with Luxembourg domestic legislation, EU legislation or international law.

The Law of December 20, 2020 added Article 29b of the General Tax Act. Under this provision, all tax rulings issued prior to January 1, 2015 are no longer binding for the tax authorities as of January 1, 2020. In relation to matters covered by such rulings, a new request to the tax authorities is needed in order to maintain legal security.

[184] Law of July 27, 1997, on the organization of the Constitutional Court.

[185] *Constitution du Grand-Duché de Luxembourg*, dated October 17, 1868, as amended.

[186] *Constitution du Grand-Duché de Luxembourg*, Art. 99.

[187] *Constitution du Grand-Duché de Luxembourg*, Art. 101.

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Requests for advance tax clearance are transmitted to a tax ruling commission (*Commission des decisions anticipées*). The latter gives its position which is executed by the head tax inspector of the relevant tax inspectorate and this position cannot be appealed by the taxpayer.

It should be noted that decisions issued by the Luxembourg tax authorities can be published in the annual activity report of the direct tax administration in the form of anonymous summaries.

The European Commission, in particular the Directorate-General for Competition, has been scrutinizing the tax ruling policies underlying specific tax rulings issued by the tax authorities of the EU Member States. Certain tax rulings issued by the Luxembourg tax authorities had been found by the European Commission to contain elements of illegal state aid. Both Luxembourg and the taxpayers concerned have challenged a number of these decisions of the Commission before the courts of the European Union. The Court of Justice of the European Union's (CJEU's) decisions in *Fiat, Engie* and *Amazon*[188] confirm that it is the tax authorities of the Member States, and not the European Commission, that are suitably equipped and competent to interpret domestic tax legislation relied on in tax rulings. As such, findings of state aid can only be made if tax rulings contain advantageous decisions based on the manifestly erroneous interpretation of domestic tax provisions. Note, however, that in a particular constellation of facts the outcome may be different, as was ruled by the CJEU in the *Apple* case.[189]

Furthermore, in the field of exchange of rulings, both the OECD and the EU have developed a framework for a systematic exchange of information on such tax rulings. The OECD framework applies to specific categories of rulings (for example, rulings relating to informal capital, transfer pricing and PEs), whereas the EU framework applies to a wide range of cross-border tax rulings. Many countries, including Luxembourg, have started to exchange information bilaterally under the OECD framework in 2016. The EU Council Directive on advance cross-border pricing arrangements[190] was transposed into Luxembourg domestic legislation by the Law of July 13, 2016, which provides for the mandatory exchange of information on cross-border advanced tax clearances and advance pricing agreements (APAs). With effect from January 2017, the Luxembourg tax authorities have been exchanging this information with other EU Member States. The scope of mandatory exchange of information covers advance tax rulings issued, amended or renewed on or after January 1, 2012, provided they were still valid on January 1, 2014.

4. Courts

Tax litigation in Luxembourg is divided between civil jurisdictions and administrative jurisdictions, the allocation criterion being the tax concerned and the phases of taxation concerned. The process of taxation in Luxembourg is divided into three phases:

(i) Assessment of taxable basis;

(ii) Application of the applicable rate to the taxable basis; and

(iii) Collection.

Administrative jurisdictions are, in principle, responsible for phases (i) and (ii) for direct taxation,[191] while civil jurisdictions are responsible for indirect taxation (VAT, registration duties, etc.) and the collection of both direct and indirect taxes.

In both cases, as the Luxembourg legal system is based on a civil law system, legislation overrides case law. That said, court decisions do have precedential value in interpreting the law.

The dispute process can be split into two stages: the pre-litigation process (objection to tax assessments) and the trial process.

It should be noted that the pre-court process is mandatory for each claim filed that involves a direct taxation issue.[192]

a. Pre-litigation Process

With respect to income taxation, a taxpayer can file an objection against a decision issued by the tax authorities. Such a claim must be filed with the Director of the direct tax authorities within three months of the notification of assessment.[193] If the claim is partially or entirely rejected, the taxpayer can file an appeal against the rejection of the objection within a period of three months following the notice of decision. With respect to such decisions, the tax administration has no deadline within which it must respond. Nevertheless, a taxpayer can — after a six-month delay without a response or after a rejection — bring the case directly before the relevant court (the administrative court in the case of a direct tax issue).[194]

Objections relating to indirect taxation must be brought before the civil courts in accordance with the applicable civil procedure rules. However, in the case of VAT issues related to phases (i) and (ii), as explained above, the dispute process is almost the same as the process in the case of income tax issues, except that the objection has to be filed with the indirect tax authorities.[195] If the VAT office does not accept the objection, the objection is automatically transferred to the Director of the indirect tax authorities.

b. Trial Process

(1) Administrative Courts

Once the judicial appeal is introduced by the taxpayer, the government has a three-month period to establish a brief stating its response. Thereafter, the taxpayer has one month to provide its final argument to which the government can respond in another one-month period. The court then generally holds a pub-

[188] *Luxembourg and Fiat Chrysler Finance Europe v. Commission,* joined Cases C-885/19 P and C-898/19P, November 8, 2022; *Engie, Engie Global LNG Holding Sarl and Engie Invest International SA vs Commission,* case C-451/21 P, December 5, 2023 and *Amazon EU Sarl and Amazon.com, Inc vs Commission,* case C-457/21P, December 14, 2023.

[189] ECJ decision of September 10, 2024, in Case C-465/20 P, *European Commission v Ireland and Apple Sales International.*

[190] Directive (EU) 2015/2376.

[191] Law of November 7, 1996, Art. 8(1).

[192] Law of November 7, 1996, Art 8(3) sub. 1, subject to limited exceptions.

[193] General Tax Law (*Abgabenordnung*, AO), Secs. 144–145; Law of November 27, 1933, as amended by AGD of October 29, 1946, Art. 245 subpara. 1.

[194] Law of November 7, 1996, Art 8(3) subpara. 3.

[195] VAT Law, Art. 76.

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lic hearing, before rendering its judgment. While the burden of proof regarding facts that give rise to a tax obligation is borne by the tax authorities, it will be incumbent on the taxpayer to prove that it should be released from a tax obligation or that the taxes due should be decreased. With regard to procedural matters, the burden of proof is always borne by the tax authorities.[196]

The court of first instance is the administrative tribunal (*Tribunal administratif*). The judgment of the tribunal can be challenged within 40 days, in the last instance, before the administrative court (*Cour administrative*).

(2) Civil Courts

A judicial claim is introduced by means of a subpoena filed by a bailiff to which the defendant has 15 days to appoint a Luxembourg lawyer. Afterwards, the parties exchange briefs stating their positions. Finally, the parties will inform the judge that the case is ready to be decided.

The court of first instance is the district tribunal (*Tribunal d'arrondissement*). The decision of the district tribunal can be brought before the Court of Appeal (*Cour d'Appel*) within 40 days of the notification by bailiff (signification) of the decision. The decision rendered by the Court of Appeal can be challenged, in the last instance, before the Court of Cassation (*Cour de Cassation*).

B. Income Tax (Impôt sur le Revenu)

Income tax is imposed on the net income of resident and nonresident taxpayers, whether individuals or companies, at progressive rates of up to 42% in the case of individuals, and up to 16% in the case of companies (2025).

It should be noted that, for companies, the rate is generally stated inclusive of municipal business tax (*impôt commercial communal sur le benefice*, MBT) (see V.C., below) and the employment fund contribution (7% on the amount of corporate income tax due), which results in a combined rate of 23.87% (2025, from 24.94% in 2024) for companies established in Luxembourg City. Resident taxpayers are, in principle, subject to Luxembourg tax on their worldwide income. Nonresidents are subject to Luxembourg tax only on specified income from Luxembourg sources.[197]

The tax year runs from January 1 to December 31; however, for companies with a financial year that does not coincide with the calendar year, the basis of assessment is the financial year of the company. If, for example, tax rates are reduced as of January 1, 2019, companies with a financial year that starts in 2018 and ends in 2019 will benefit from the lower rate also for the 2018 period that falls in that financial year.

Income tax credits may be granted on the purchase by companies, or by individuals engaged in business, of certain depreciable fixed assets, other than real property. (See II.A.2.a.(2), above.)

Income tax is payable by way of quarterly prepayments,[198] and by way of tax withheld at source on, most importantly, wages,[199] directors' fees,[200] dividends[201] and some forms of profit-dependent interest.[202]

Income tax is increased by an unemployment fund contribution of 7% or 9% of the personal income tax due (depending on the level of taxable income and family status) or 7% of corporate income tax due.[203] The effective marginal rate is therefore 45.78% for individuals (2024) and 17.12% (2025) for companies.

C. Municipal Business Tax (Impôt Commercial Communal sur le Bénéfice)

MBT is assessed and collected by the tax authorities on behalf of the municipalities.[204] The tax is based on business profits as computed for corporate income tax purposes,[205] subject to certain additions and deductions.

The base rate, as of January 1, 2002, is 3% of business profits multiplied by an appropriate municipal factor, which varies from 225% to 350%.

In Luxembourg City, the multiplying factor is fixed at 225%;[206] accordingly, the profit tax rate is 3% × 225% = 6.75%.

As a result, the aggregate effective income tax rate for companies located in Luxembourg City is 23.87% (2025, 24.94% in 2024), where taxable income exceeds 200,000 euros.

D. Net Wealth Tax (Impôt sur la Fortune)

Companies are subject to net wealth tax (NWT),[207] levied at the rate of 0.5% on their net wealth up to 500 million euros, valued in accordance with the principles prescribed by the Valuation Law. The rate is 0.05% on net wealth above 500 million euros. The tax is paid in four quarterly installments and is subject to a minimum, depending on the value and composition of total assets.

The NWT includes a minimum, which ranges from 535 euros and 4,815 euros, based on the company's total balance sheet, as detailed below in V.E.4.b.

In general, assets are taken into account at market value, except for local real property, which is valued at a standard value as determined by the Building Valuation Department of the tax administration. In general, this standard value represents between 5% and 10% of market value.

[196] Law of June 21, 1999 on administrative courts, Art. 59.
[197] LIR, Arts. 2 and 160.
[198] LIR, Art. 135.
[199] LIR, Art. 136.
[200] LIR, Art. 152.
[201] LIR, Art. 146.
[202] LIR, Art. 146.
[203] Law of June 30, 1976, for the creation of an unemployment fund, as amended.
[204] Municipal Business Tax Law of December 1, 1936 (*Gewerbesteuergesetz*, GewStG), Sec. 1, and Decree on the Collection of the Municipal Business Tax (*et Verordnung über die Erhebung der Gewerbesteuer in vereinfachter Form*, GewStVV).
[205] GewStG, Sec. 7.
[206] Ministère des Affaires intérieures — Impôt comm. — Legilux (public.lu) — Mémorial n°815, December 21, 2023.
[207] Net Wealth Tax Law of October 16, 1934 (*Vermögensteuergesetz*, VStG).

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E. Withholding Taxes

Directors' fees (*tantièmes*)[208] are subject to a withholding tax of 20%, in the case of both resident and nonresident beneficiaries. Nonresidents receiving directors' fees of no more than 100,000 euros per year and no other Luxembourg-source professional income[209] do not need to file an income tax return: the 20% withholding tax is a final tax.

Taxes are also withheld on:

(i) Dividends, as well as all other proceeds paid on shares — standard rate: 15%;[210]

(ii) Certain forms of profit-participating interest — standard rate: 15%;[211]

(iii) Income of a nonresident derived from the carrying on of an independent literary or artistic activity or the carrying on of a professional sports activity in Luxembourg — standard rate: 10%;[212] and

(iv) Interest payments or assimilated income from debt instruments made or deemed to be made by or attributable to paying agents established in Luxembourg to or for the benefit of an individual resident in Luxembourg — rate: 20% under the Relibi Law (see XIV.C.3.b., below) (prior to 2017: 10%).[213]

F. Value-Added Tax

For a discussion on VAT, see VI.C.5., below.

G. Payroll Tax

All salaries and wages are subject to withholding tax,[214] which constitutes a prepayment of the personal income tax or, in certain circumstances, a final tax.

H. Other Taxes

The central government and the municipalities levy various other taxes that are not discussed in this Portfolio, such as customs duties, bar-keeping taxes, insurance taxes, various stamp duties, dog tax, and gambling and betting tax.

1. Excise Duties

Excise duties[215] are levied by the Custom and Excise Agency (*Administration des douanes et accises*) on the production and importation of alcohol, beer, wine, petroleum products, gas and tobacco.

Under the Budget Law 2021, a "carbon tax" was instituted in the form of an additional autonomous excise duty on oil and gas products.[216] While the law lays down maximum rates, the actual rates are fixed by way of Grand Ducal Decree. The maximum rates are set so as to allow for an increase in excise duties[217] equivalent to 25 euros per ton of CO2 in 2022, 30 euros per ton in 2023[218] and 35 euros per ton in 2024. The carbon tax will continue to increase annually until it reaches 45 euros per ton of CO2 in 2026.[219]

2. Vehicle License Tax

Motor vehicles are subject to an annual tax payable by the owners of the vehicles.[220]

In the case of passenger cars, the tax is computed based on the number of grams per kilometer of emissions of carbon dioxide; the higher the emissions, the higher the tax. A minimum tax of 30 euros applies.[221] For example, in the case of passenger petrol cars with emissions equal to 145 grams of carbon dioxide per kilometer, the annual tax amounts to 95 euros, which amount is increased by about 50% in the case of diesel-engine cars. In the case of passenger cars registered before January 1, 2001, or for which the quantity of carbon dioxide emission per kilometer cannot be determined, as well as in the case of motorcycles, the tax is based on cylinder capacity. In the case of minibuses (passenger cars with nine seats) and autobuses weighing up to 5,000 kg, the tax is set at 150 euros. In the case of autobuses weighing more than 5,000 kg, the tax is set at 250 euros.

In the case of passenger cars powered exclusively by an electric motor or fuel cell, the tax is fixed at 30 euros. No special rates apply with respect to cars powered by a combination of an electric motor and a combustion engine.

In the case of vans and trucks weighing less than 12,000 kg, the tax is based on weight and amounts to up to 425 euros per annum. In the case of trucks weighing more than 12,000 kg, the tax is based on the number of axles and the type of suspension and amounts to up to 530 euros. In the case of trailers, the tax can be up to 700 euros per annum depending on size and weight.[222]

A number of exemptions and rate reductions may apply.

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[208] LIR, Art. 152.

[209] I.e., business income, income from agriculture and forestry, income from a liberal profession, employment income or pension and annuities from a Luxembourg source.

[210] LIR, Arts. 147 and 148.

[211] LIR, Art. 146(1) 3°.

[212] LIR, Art. 152.

[213] Under the law of December 23, 2005, as amended by the law of December 23, 2016, and Circular Relibi n°1, dated February 27, 2017. Before January 1, 2015, interest paid by Luxembourg paying agents on debt claims held by or for the benefit of individuals resident in the European Union or certain dependent or associated territories, was subject to withholding tax levied at a rate of 35% pursuant to the implementation of the EU Savings Directive (2003/48/EC), unless the individual granted authorization for the exchange of information in relation to the interest and debt claim. As of January 1, 2015, the automatic exchange of information applies in this respect. As a consequence of the Council Directive (2015/2060/EU) repealing the EU Savings Directive, the law dated July 23, 2016 abolished the law of June 21, 2015, with effect from January 1, 2016. The Circular Relibi n°1 dated February 22, 2023 provides that a paying agent within the meaning of the Relibi Law must be a financial sector professional who pays interest in the course of his or her normal economic activity.

[214] LIR, Art. 136.

[215] Excise duties are governed by Belgian laws.

[216] Law of December 19, 2020, Art. 8.

[217] Commentary on the bill of law n° 8290.

[218] Grand Ducal Regulation of December 23, 2022; Mémorial A n° 655/2022.

[219] Law of December 22, 2023 and Grand Ducal Regulation of the same date.

[220] Law of December 22, 2006 (as amended), *inter alia,* replacing the Vehicle License Tax Law of March 23, 1935 (*Kraftfahrzeugsteuergesetz*, KraftStG).

[221] RGD of December 22, 2006, applying the law of December 22, 2006, as modified by RGD of December 18, 2009, and RGD December 21, 2012.

[222] RGD of December 22, 2006, applying Law of December 22, 2006, as modified by RGD of December 18, 2009.

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3. Real Estate Tax

The main local tax, apart from the municipal business tax, is the real property tax (*impôt foncier*),[223] which is levied by the municipalities on real property located in their areas.

The taxable base derives from standard real property values determined by the tax administration.

The basic rates are:

(i) 0.7% to 1% for a single family house;

(ii) 0.9% to 1% for other buildings; and

(iii) 0.8% to 1% for land.

These rates are multiplied by municipal factors that vary from municipality to municipality, depending on the type of real property concerned. For the municipality of Luxembourg, the multipliers (for the tax year 2025) are as follows:[224]

(i) 750% for industrial and commercial buildings;

(ii) 500% for agricultural and forestry land;

(iii) 250% for single-family houses and houses divided into flats;

(iv) 500% for mixed-use buildings;

(v) 250% for buildings for other uses;

(vi) 500% for property not built on, other than residential building plots; and

(vii) 500% for residential building plots.

Note: The Bill of October 10, 2022, was introduced in parliament with the aim of reforming Luxembourg's land tax, mainly by restructuring the system of valuation of all land for tax purposes and by introducing both a land mobilization tax and a tax on non-occupied housing. [225]

4. Estate, Gift, Inheritance, and Succession Taxes

An individual is deemed to be living in Luxembourg (i.e., to be an inhabitant of Luxembourg) when:

(i) His or her domicile is in Luxembourg (determined on a factual basis: this is where the person has his/her actual home and where he/she lives on a permanent basis), or

(ii) When the "seat of his or her wealth" is located there ("seat of wealth" does not refer to the location of the assets but to the place out of which the owner manages them or oversees their management).

Inherited property is subject to:

(i) Inheritance tax (*droit de succession*) due on the value of all property inherited from a Luxembourg inhabitant; and

(ii) Transfer tax (*droit de mutation*) due on the value of real property located in Luxembourg that is inherited from a non-inhabitant. Applicable rates range from 2.5% to 49.06% depending on the degree of kinship.

Gifts, when registered before a Luxembourg notary, are subject to registration tax at rates ranging from 1.8% to 14.4%, depending on the degree of kinship.

5. Registration Duties

Registration duties apply to a number of documents registered with the registration authorities. Registration is compulsory in some cases and voluntary in others. Many registration duties are relatively low, fixed amounts, mostly 12 euros. In the case of some documents, for instance loan agreements, a rate proportional to the value of the contract concerned applies[226] (a rate of 0.24%, on registration).

A proportional rate used also to apply to real estate leases that were not subject to VAT (a rate of 0.6% applied on the cumulative amount of rents, on registration). However, with effect from 2017, rental agreements registration is no longer compulsory.

It should be noted that, according to the *théorie de l'usage* (or "referencing theory"), contracts referred to in detail in a deed that is registered were deemed to be registered themselves, giving rise to the corresponding levy of registration duties. From January 1, 2017, the application of this referencing theory is restricted only to documents for which registration is compulsory within a certain period of time.

Since January 1, 2009, a fixed registration duty of 75 euros has been levied on the incorporation, and subsequent amendments of the articles of incorporation, of a company.

6. Chamber of Commerce Membership

A commercial company is required to be a member of the Luxembourg Chamber of Commerce and, as such, is subject to a fee levied on business profits at a rate of 2%. For business profits exceeding 49,500,000 euros, the rate decreases in stages from 1.5% to 0.25%.

Business profits for this purpose mean the taxable profits for corporate income tax purposes that a company reported in the penultimate financial year. It should be noted that for purposes of the Chamber of Commerce levy, no loss carry forward can be applied.

However, a 350 euro fixed fee applies in the case of companies holding mainly financial assets and registered as such under n°64.202 of NACELUX.[227]

Contributions are due on the first day of the month following the date of issuance of the Chamber of Commerce fee assessment.[228] A Chamber of Commerce fee that is not paid may be collected by the Chamber of Commerce itself or by the LTA in the same form and subject to the same privileges and obligations as those applicable in the case of direct taxes.[229]

[223] Real Property Tax Law of December 1, 1936 (*Grundsteuergesetz*, GrStG).

[224] Ministère des Affaires intérieures — Taux impôt. — Legilux (public.lu).

[225] Bill of law (No. 8082/00) of October 10, 2022.

[226] Note that, in general, the registration of loan agreements is not compulsory.

[227] Law of October 29, 2010, Art. 18; Chamber of Commerce Regulation of November 12, 2010, Art. 4.

[228] Grand Ducal Regulation of November 4, 2010, Art. 6.

[229] Law of October 29, 2010, Art. 16.

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VI. Taxation of Domestic Corporations

A. What Is a Domestic Corporation?

Domestic companies are defined as corporate bodies that have their statutory seat or principal establishment in Luxembourg.

The statutory seat of a company is the place so designated in its articles of incorporation. If no such place is expressly designated, the seat is deemed to be located at the company's principal establishment.[230]

The principal establishment is defined as the center from which the activities of a company are directed. As companies organized under Luxembourg law are required to designate a statutory seat in their articles of incorporation, all such companies are domestic companies and thus domestic taxpayers. Consequently, subsidiaries of foreign companies having their statutory seat in Luxembourg are considered to be resident in Luxembourg. A permanent establishment of a foreign company is not considered to be a domestic company, provided the statutory seat of the foreign company, as well as its principal establishment, remains outside Luxembourg.

B. Corporate Income Tax

1. Taxation of Worldwide Income

Under Articles 158–174 of the Luxembourg Income Tax Law (LIR), domestic companies and foreign companies resident in Luxembourg (such as companies with their statutory seat abroad and their principal place of management in Luxembourg) are taxable on their profits and realized capital gains on a worldwide basis, unless otherwise provided under the terms of one of Luxembourg's tax treaties.

Article 159 LIR subjects the following entities to corporate income tax:

(i) Public limited liability companies (SAs) and simplified public limited liability companies (SAS);

(ii) Private limited liability companies (S.à r.l.s) and simplified private limited liability companies (S.à r.l.-S);

(iii) Corporations limited by shares (SCAs);

(iv) Cooperative companies (*sociétés coopératives*) and cooperatives organized as public limited liability companies;

(v) Agricultural associations (*associations agricoles*);

(vi) Mutual insurance companies (*associations d'assurances mutuelles*) and pension funds; and

(vii) Estates (*patrimoines collectifs*).

Certain Luxembourg holding companies, investment funds, professional organizations, organizations established for the public benefit, mutual insurance companies established for the benefit of employees, non-profit organizations and the national lottery are exempt from corporate income tax.[231]

General and limited partnerships are not as such subject to corporate income tax. Such entities are fiscally transparent, so that the profit share attributable to the partners is subject in their hands either to corporate income tax or income tax, depending on whether they are organized as corporations. Foreign partners may be subject to Luxembourg tax, if they are considered to have a permanent establishment (PE) in Luxembourg through which they conduct part of their business.

The rules that apply to individuals also apply to companies. Corporate income tax is levied on eight categories of income specifically listed in Article 10 LIR:

(i) Income from agriculture and forestry;

(ii) Income from business and trade;

(iii) Income from independent personal services;

(iv) Income from employment;

(v) Pensions or annuities;

(vi) Income from capital assets;

(vii) Rental income; and

(viii) Other income.

Basically, however, all income derived by companies is deemed to be "income from trade or business."

For tax year 2025, the corporate income tax rates are as follows:

- Taxable income up to 175,000 euros: 14%;
- Taxable income between 175,000 and 200,001 euros: 30% (on the tax base above 175,000 euros), plus 24,500 euros;
- Taxable income above 200,000 euros: 16%.[232]

In addition, there is a surcharge of 7% of the tax levied by way of contribution to the unemployment fund.[233]

Furthermore, a municipal business tax (see XI.C.2., below)[234] on profits from a trade or business is levied by the different municipalities. The rate varies depending on the municipality, but it is often 6.75% (for instance, in the case of Luxembourg City).

The total maximum effective tax rate on income for a company located in Luxembourg city is 23.87% (2025), calculated as follows:

[230] Tax Adaptation Law of October 16, 1939 (*Steueranpassungsgesetz*, StAnpG), Art. 15(3).

[231] LIR, Art. 161.

[232] Law of December 20, 2024, Art. 12. For the year 2024, the corporate income tax rates were one percentage higher, i.e.,: 15% (if the corporation's taxable worldwide income was 175,000 euros or less), 26,250 euros plus 31% of income over 175,000 euros (if taxable income was between 175,000 euros and 200,001 euros) or 17% (if taxable income was more than 200,000 euros).

[233] Law of June 30, 1976, on the creation of an unemployment fund, as amended by Law of December 17, 2010, on tax measures related to the financial crisis.

[234] GewStG.

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Profit	100.00
Basis for Corporate income tax	100.00
Corporate income tax of 16%	(16.00)
7% employment fund surcharge	(1.12)
Municipal Business Tax on Income	(6.75)
Income after taxes	76.13
Total income taxes	(23.87)

Nonresident companies are subject to income tax only on income from Luxembourg sources. If the income is derived from a trade or business carried on through a Luxembourg City PE, the rate is 23.87%.

Constructive dividends must be added back to a corporation's taxable income. A constructive dividend is any benefit a company makes available to its shareholders that it would not have granted to a third party[235] (for example, excessively high salaries paid to shareholder employees, excessive rental payments for assets belonging to shareholders and excessively high interest on loans granted to the company by shareholders).

Liquidation gains are taxed at the same rate as ordinary income. A liquidation gain, which is the difference between the liquidation proceeds made available to the shareholders and the book value of the assets at the beginning of the liquidation, is determined and taxed at the end of the liquidation unless the liquidation period exceeds three years, in which case the liquidation gain is taxed annually.[236] Liquidation proceeds are not subject to any withholding tax.[237] This is a very important feature of Luxembourg tax law for tax planning purposes.

Fundamental changes to the international tax system proposed by the OECD (in particular, Pillar One, involving the reallocation of taxing rights and Pillar Two, concerning introduction of a global minimum corporate tax rate) may have a significant impact on the taxation of Luxembourg resident entities going forward. The implementation of Pillar Two in Luxembourg law is effective as from December 31, 2023, and is described in VI.C.3., below. In October 2023, the OECD released the new Multilateral Convention to Implement Amount A of Pillar One. The aim of the new Multilateral Convention is to update the international tax framework to coordinate a reallocation of taxing rights to market jurisdictions, improve tax certainty and remove digital service taxes. The schedule for the implementation of Pillar One remains uncertain.

2. *Accounting*

a. *In General*

Entrepreneurs, including companies, must prepare annual accounts each year, including a balance sheet, a profit and loss (P&L) account, and notes to the accounts.[238] Companies are thus required to maintain proper accounting records in accordance with generally accepted accounting principles (GAAP). They should, in principle, adhere to a predefined accounts system design known as the *plan comptable normalisé*.[239]

If certain conditions as to the balance sheet total, net turnover and average number of employees are met, the accounts must be audited by an independent auditor approved by the government. Small companies may rely on a statutory auditor who need not be a professional (see III.B.2.g., above). The annual accounts and the auditors' report, as well as the management report, must be approved by the shareholders and partners.

The requirements set forth by commercial law must be complied with for the purposes of computing taxable income. The commercial balance sheet, as adjusted in accordance with the specific requirements of the tax law, is the basis for drawing up the fiscal balance sheet that is used for the computation of taxable income.[240] Because of the link between the fiscal and commercial balance sheets, in principle, assets should not appear on the fiscal balance sheet at a lower value and liabilities should not be shown at a higher value than on the commercial balance sheet. This means, for example, that accelerated depreciation of assets allowed under the tax law is only recognized if the depreciation has also been taken in the commercial balance sheet.

However, if the company decides to apply the fair value accounting option under Luxembourg GAAP (Lux GAAP) or decides to prepare stand-alone annual accounts under International Financial Reporting Standards (IFRS),[241] the deviation from specific tax valuation rules becomes so significant that a separate set of accounts will be required. In such a case, commercial accounts may show assets and liabilities at their fair values, while for tax purposes the company will still be obliged to report values in line with tax valuation rules (see VI.B.2.d., below).

Accounting records must be maintained for a reasonably short period following the completion of transactions in order to benefit from the presumption of accuracy under § 208(1) AO. Excessive delays in preparing annual accounts can call into question their accuracy and completeness, thereby invalidating the presumption of regularity. However, even irregular accounts retain limited probative value and may still be considered by the tax authorities and courts to grant tax credits under their discretionary power of evidence assessment.[242]

From January 1, 2012, all entities required to file their accounts with the Trade Register are required to do so electronically.[243]

Corporate income tax returns must be filed by December 31 each year. Extensions are available on request. Penalties apply in the case of late filing. The returns must be supported by the commercial and fiscal balance sheets and a number of other documents.

[235] LIR, Art. 164(3).

[236] LIR, Art. 169.

[237] LIR, Arts. 97 and 147.

[238] Law of December 19, 2002, on the register of commerce and companies and the annual accounts of undertakings, Title II, Chapters II and IV.

[239] Commercial Code, Art. 12; *Règlement grand-ducal* dated June 10, 2009, on the *plan comptable normalisé*.

[240] LIR, Art. 40.

[241] Law of December 19, 2002 (as amended by Law of December 10, 2010, on the introduction of International Financial Reporting Standards for undertakings), Title II, Chapter II, Sec. 7 *bis* and Chapter II *bis*.

[242] Administrative tribunal, March 28, 2025, n°49601.

[243] This mandatory procedure was introduced by the Grand Ducal Decree of December 14, 2011.

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b. Accounting Period

The accounting period generally coincides with the calendar year. On request, companies may be allowed to close their business years on a date other than December 31.[244] Although the first commercial year may last for more than 12 months, a tax year cannot be longer than one year.

If the tax year does not coincide with the calendar year, the income of the tax year that ends during the calendar year will be reported as taxable income (or loss) of that calendar year.[245]

The corporate income tax return of a company in liquidation may cover a period of up to three years. Annual returns must be filed if the liquidation period exceeds three years.[246]

Comment: Despite the possibility for the corporate income tax returns to cover a period of up to three years, in practice, returns tend to be on an annual basis. This is, among other things, due to the fact that net wealth tax returns have to be filed annually, regardless of whether the company is in liquidation or not.

c. Accounting Methods

Two comprehensive methods of accounting are recognized in Luxembourg: Lux GAAP and IFRS. IFRS is compulsory for banks, insurance companies, and companies that have issued listed securities. Other entities in Luxembourg may choose to adopt either Lux GAAP or IFRS (as adopted by the European Union) as their accounting framework.[247]

Lux GAAP is provided for in the Law of December 19, 2002, regarding the commercial registry and the financial accounts of undertakings. The commercial accounts must be kept in such a way as to give a true and fair view of a company's assets, liabilities, financial position and results.[248]

The items to be shown in the annual accounts are valued in accordance with the following general principles:[249]

(i) The company must be presumed to be carrying on its business as a going concern;

(ii) The methods of valuation must be applied consistently from one financial year to another;

(iii) Valuation must be made on a prudent basis, in particular:

- Only profits made at the balance sheet date may be included; account must be taken of all liabilities arising in the course of the financial year concerned or of a previous one, even if such liabilities become apparent only between the date of the balance sheet and the date on which it is drawn up; and
- Depreciation must be taken into account, whether the result of the financial year is a loss or a profit;

(iv) Income and charges relating to the financial year must be taken into account, irrespective of the date of receipt or payment of such income or charges;

(v) The components of asset and liability items must be valued separately; and

(vi) The opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year.

Besides the liabilities referred to in item (iii) above, the company also has the option to take into account all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up.

Departures from these general principles are permitted in exceptional cases. Any such departures, as well as the underlying motive, must be disclosed in the notes to the accounts together with an assessment of their effect on the assets, liabilities, financial position, and profit or loss.

In accordance with the principles listed above and to ensure the proper recognition of income and expenses, the accrual method must be used. This means that only those costs and revenues that relate to the accounting year are to be included; those that relate to future years must be deferred.

Where costs are prepaid or income is pre-collected for several years in advance, only the part of the costs or income that is properly allocable to the financial year may be taken into account. Unrealized gains may never be recognized, but unrealized losses must generally be taken into account.

For the sake of simplicity, fixed assets acquired during the first six months of the year may be depreciated over the full 12 months; those acquired during the second part of the year may be depreciated over the full six months.

d. Valuation Methods

For purposes of the preparation of commercial accounts, the valuation method will depend on the accounting framework chosen by the company concerned. If Lux GAAP is used, the valuation will be based on either:

(i) Acquisition price or cost of production;[250] or

(ii) Fair value (if this option is chosen by the company).[251]

If the company decides to prepare annual accounts under IFRS (as adopted by the European Union), the valuation rules established by IFRS will apply.[252]

For tax purposes, all assets and liabilities of a company must be valued at the end of each fiscal year. Each item must be valued separately, except for groups of assets that are sufficiently similar to allow verification on an average price basis.[253] As a rule, assets are valued at the lower of cost or market value.[254]

[244] LIR, Art. 17.
[245] LIR, Art. 163.
[246] LIR, Art. 169.
[247] The Law of December 10, 2010 made it possible for undertakings to prepare annual stand-alone accounts under IFRS by inserting Title II, Chapter II *bis* into the Law of December 19, 2002.
[248] Law of December 19, 2002, Art. 26.
[249] Law of December 19, 2002, Art. 51.
[250] Law of December 19, 2002, Art. 52.
[251] Law of December 19, 2002, Title II, Chapter II, Section 7 *bis.*
[252] Law of December 19, 2002, Title II, Chapter II *bis.*
[253] LIR, Art. 22.
[254] LIR, Art. 23.

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Depreciable assets, including land and inventory, are valued at the lower of cost of acquisition or going-concern value. The term "cost" means the cost of acquisition or the manufacturing cost. It includes the purchase price as well as all related expenses.[255]

If the going-concern value of an item in a subsequent year exceeds the value attributed in the balance sheet of a previous year, the item may be revalued at going-concern value, provided the new value does not exceed the original cost.

If the going-concern value of a participation that was shown on the balance sheet of the previous year exceeds the value attributed at that date, going-concern value must be used, provided the new value does not exceed the original cost.[256]

If the values in the commercial accounts do not comply with the above tax valuation rules, a separate fiscal balance sheet must be prepared for purposes of the preparation of tax returns.[257]

e. Group Taxation

Group companies may claim "fiscal integration"[258] and file a combined income tax return. Nevertheless, the taxable income of each company is determined on a stand-alone basis and only subsequently are the taxable results of the various companies added together. Intragroup transactions are, thus, fully recognized.

To qualify, a fully taxable resident company, or a Luxembourg PE of a foreign company that is subject to a tax comparable to the Luxembourg corporate income tax, must hold, directly or indirectly, at least 95% of the share capital of another fully taxable resident company. In exceptional cases, subject to the agreement of the Ministry of Finance and the Ministry of Economy, fiscal integration may be granted if the participation is at least 75%. The fiscal integration must be requested jointly by all integrated companies from the competent tax administration before the end of the first year of fiscal integration, the accounting year of the group companies must be the same, the 95% threshold must be met at the first date of the accounting year for which the fiscal integration is requested, and the fiscal integration must be maintained for at least five years. It is not required that all Luxembourg group companies be part of the fiscal integration.

As of January 1, 2016, the fiscal unity regime is available for Luxembourg resident group companies that neither have a Luxembourg resident parent company, nor a nonresident parent company with a Luxembourg PE, to which the shares in the resident companies can be allocated (horizontal integration). In such case, the foreign parent company of the Luxembourg group companies has to be a corporation that is resident in the EEA or a PE in the EEA of such corporation. The foreign parent company and the foreign PE must be fully subject to a corporate profit tax that is comparable to Luxembourg corporate income tax. Horizontal integration is also possible if the parent company is a Luxembourg resident company or a Luxembourg PE of a nonresident company that is fully subject to a corporate profit tax that is comparable to the Luxembourg corporate income tax. If the shares in the subsidiary that is integrated are held indirectly by the parent company, any intermediary company must be fully subject to a corporate income tax that is comparable to Luxembourg corporate income tax.

As a response to case law of the CJEU,[259] the Budget Law 2021[260] introduced a temporary measure allowing the formation of a horizontal fiscal unity with companies that are already vertically integrated without triggering the potentially adverse effects of the dissolution of the vertical fiscal unity within the five-year minimum period. This is possible only if the integrating company remains the same and the switch merely leads to an extension of the fiscal unity. Groups wishing to benefit from this special rule had until the end of the 2022 tax year to implement it.

There is no fiscal integration for net wealth tax purposes.

Luxembourg implemented the EU Anti-tax Avoidance Directive (ATAD)[261] into domestic law and introduced interest deduction limitation rules (the "IDL Rules") with effect from January 1, 2019. See VI.B.4.e., below. These rules cap the deductibility of "excess borrowing costs" (i.e., the positive difference between borrowing costs and interest income) at the higher of 30% of EBITDA or 3 million euros.

The implementation law did not offer the option to apply the IDL Rules at the level of the fiscal unity. However, this has been introduced with retroactive effect as of January 1, 2019 by the Budget Law, enacted on April 25, 2019.

Taxpayers in a fiscal unity have the option of maintaining the application of the IDL Rules at individual entity level or to apply them at the level of the fiscal unity. Once made, the option is binding for the whole duration of the fiscal unity.

f. Reserves

Provisions that are intended to cover losses or debts, the nature of which is clearly defined and that, at the balance sheet date, are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will be incurred, may be established in the accounts.[262] Liabilities that are definite as to the existence of the obligation and to their amount must be shown as such in the financial statements.

3. Calculation of Gross Income

a. In General

Taxes are in principle assessed on the results as disclosed by a company's accounts. The profit is the difference between the net asset value at the beginning and that at the end of the accounting period, adjusted by capital contributions, which are

[255] LIR, Arts. 25 and 26.

[256] LIR, Art. 23.

[257] In a case where no separate fiscal balance sheet was drawn up even though a value impairment taken in the commercial accounts of a prior year was not taken into account in the tax return for that year, the commercial reversal of the impairment was to be ignored for tax purposes, on the grounds that such a taxable reversal would be conceivable only if the impairment itself lowered the taxable base in a prior year. *Cour Administrative*, case 32063C, September 4, 2013.

[258] LIR, Art. 164 *bis*.

[259] C-749/18, *B e.a. v. Administration des Contributions Directes*, May 14, 2020.

[260] Law of December 19, 2020, Art. 7.

[261] Directive (EU) 2016/114 on June 20, 2016.

[262] Law of December 19, 2002, Art. 44., as modified by law of December 10, 2010, and Law of December 18, 2015.

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deducted, and by distributions, which are added.[263] Certain exemptions may apply, most notably the participation exemption for dividends, as described under IV.A.3.a.(1), above.

b. Capital Gains

Capital gains are taxed as ordinary income. Capital gains on the transfer of shares in a company are exempt in the hands of a resident taxable capital company under the participation exemption[264] if the following requirements are met:

(i) The resident taxable capital company holds 10% or more of the nominal paid up share capital of the company or a participation with an acquisition price of six million euros or more;[265]

(ii) The company must be: a Luxembourg resident company that is fully subject to tax; a resident of an EU Member State and covered by the EU Parent-Subsidiary Directive; or a company subject in its country of residence to an income tax that is comparable to Luxembourg corporate income tax; and

(iii) At the time of the disposal, the minimum participation referred to above under (i) has been held by the resident taxable company for an uninterrupted period of at least 12 months or the taxable company commits to hold for the minimum participation for an uninterrupted period of at least 12 months.

Subject to certain conditions, a gain realized on the Islamic finance instrument Murabaha may be taxed on a deferred basis (excluding the margin corresponding to the remuneration of the financier for his or her intermediary activity), to be recognized on a straight-line basis over the period of the deferred payments, regardless of the actual reimbursement made by the buyer.[266]

The taxation of gains on the sale of immovable property or non-depreciable assets held for more than five years may be deferred if the proceeds are reinvested within two years in other comparable fixed assets. Non-depreciable assets include investments in other companies, both resident and nonresident.[267]

The deferred gain reduces the cost price of the new acquisition. The taxation of the gain may thus be deferred until the company is liquidated or there is no further opportunity to reinvest in another qualifying asset. If the new acquisition is a building, the annual depreciation will be lower because of the lower acquisition cost, thus effectively resulting in the recapture of the previously tax-exempt capital gain.

The relief also covers capital gains realized involuntarily, for example, on disposal by act of God or by way of compulsory sale. The asset acquired in replacement must approximately correspond to the original asset from both an economic and technical point of view. Tax on the deferred capital gain realized on the alienation of a participation cannot be avoided when the newly acquired participation qualifies for the participation exemption as specified in Article 166 LIR (see IV.A.3., above).

On the liquidation of a company, land and buildings, as well as the annual depreciation may be revalued at certain rates fixed by the tax authorities to reduce the effects of inflation. The resulting book value is then compared to the sale price to obtain the capital gain, which is taxed at the normal rate.[268]

Upon migration of a company or a PE, the assets and liabilities are to be revalued to fair market value and taxed, except for those that remain in a Luxembourg PE. Up until January 9, 2020, if the recipient country was a member state of the European Economic Area (EEA), the payment of exit tax could, on request, be deferred until such time as the assets concerned were alienated by the migrated company, or the company migrated to a jurisdiction outside the EEA. To align with ATAD 1,[269] this deferral of exit tax was changed to a payment in equal installments over a period of up to five years with effect from January 9, 2020, in the case of a new migration to a recipient country that is an EU Member State or an EEA Member State with which Luxembourg or the European Union has concluded a mutual assistance agreement for tax purposes.[270] No interest is charged and no security needs to be deposited for a company to benefit from the deferral or installment arrangement.

c. Exchange of Assets

The general principle is that an exchange of goods is considered a sale against the estimated realization value.[271] However, certain exchanges qualify for deferred taxation. In such cases, the book value as well as the acquisition date of the alienated goods can be retained.[272] The following transactions are deemed to be tax-neutral:

(i) The transformation of a share capital company into another kind of share capital company (for example, the transformation of an S.à r.l. into an SA);

(ii) Mergers or (partial) de-mergers of share capital companies or companies covered by the EU Merger Directive; and

(iii) Share for share mergers, whereby the contribute acquires the majority of voting rights, involving companies covered by the EU Merger Directive or companies that are subject to a tax comparable to the Luxembourg income tax.

It should be noted that, in the first five years following transactions (ii) – (iv), the income (including capital gains) derived from the shares received in exchange is not eligible for the (partial) participation exemption if the (partial) participation exemption would not have been applicable had the exchange not taken place.

Prior to January 1, 2019, the conversion of debt into shares in the debtor issued to the lender was also deemed to be a tax neutral event for Luxembourg tax purposes. However, this type

[263] LIR, Art. 18.

[264] See IV.A.3.a.(2), above.

[265] See Administrative Court case no. 46067C of March 31, 2022: account 115 contributions are not taken into consideration for purposes of the six million euro acquisition price condition. Account 115 is a general special equity reserve account under the Luxembourg chart of accounts to which shareholders can make capital contributions without new shares being issued.

[266] Circular L.G. — A no. 55 of January 12, 2010.

[267] LIR, Art. 54.

[268] LIR, Art. 169.

[269] EU Anti-Tax Avoidance Directive of July 12, 2016, 2016/1164 EU (ATAD 1).

[270] *Abgabenordnung*, §127, para. 2.

[271] LIR, Art. 22(5).i.

[272] LIR, Art. 22 *bis*.

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of transaction was removed from Article 22 *bis* LIR under the Luxembourg Law of December 18, 2018 implementing ATAD 1.

d. Transfer of Assets

A resident share capital company can claim rollover relief if it contributes its business enterprise, or an independent part of that enterprise, to another resident share capital company or a company resident in an EU Member State in exchange for shares.[273] If the acquirer is a qualifying resident company, it must maintain the book value of the transferor. Furthermore, the transferor must maintain a qualifying stake in the acquirer for at least 12 months in order to benefit from the participation exemption. In addition, the transfer of a business enterprise to a company resident in an EU Member State now only qualifies for rollover relief if that company has a Luxembourg PE through which the acquired business enterprise is continued.

Rollover relief also applies to the transfer by a resident company to a company resident in an EU Member State of a business enterprise located outside Luxembourg but in an EU Member State in exchange for shares.

Furthermore, the rollover relief also applies to the transfer of a business enterprise located outside Luxembourg but within the EU by a company resident in another EU Member State to a resident company in exchange for shares.

e. Mergers, Demergers and Conversions

Rollover relief is available in the case of mergers and demergers of resident companies,[274] as well as where a company is dissolved without going into liquidation.[275] Rollover relief is also granted in the case of EU cross-border mergers or de-mergers. However, it is required that the taxation of the deferred capital gain be secured.

Comment: In practice, this means, for example, that the nonresident acquirer must maintain a Luxembourg PE through which the transferred business enterprise is continued.

The transferor may also be partly remunerated in cash, provided the cash amount does not exceed 10% of the nominal value of the issued shares. In the case of a de-merger, the disappearing company must have at least two business enterprises (or two independent parts of a business enterprise) to divide. Furthermore, the transfer of a Luxembourg PE from one EU resident company to another in the context of a merger, de-merger or transfer of business assets will also qualify for rollover relief.

In the case of the transformation of a resident company (for example, the conversion of an S.à r.l. into an SA), the book value, tax losses and investment credits can be continued by the acquirer. This rule also applies to losses and investment credits related to a nonresident company that is transformed and maintains a PE in Luxembourg through which the transferred business enterprise is continued.

f. Dividends

Under Article 166 LIR, dividends (including liquidation profits) received by fully taxable Luxembourg resident companies are exempt from Luxembourg corporate income tax if the following requirements are met:

(i) The taxpayer must hold 10% or more of the nominal paid-up share capital of the subsidiary or the participation has an acquisition price of 1.2 million euros or more;

(ii) The subsidiary is must be (a) a resident of Luxembourg and fully subject to Luxembourg income tax, (b) a resident of an EU Member State and covered by the EU Parent-Subsidiary Directive or (c) the subsidiary is subject in its country of residence to an income tax that is comparable to the Luxembourg corporate income tax; and

(iii) At the time of the dividend/liquidation distribution, the minimum participation referred to above under (i) must have been held by the taxpayer for an uninterrupted period of at least 12 months, or the taxpayer must commit itself to continue to hold the minimum participation for an uninterrupted period of at least 12 months.

Furthermore, the application of the participation exemption regime also requires that the Luxembourg resident parent companies be:

(i) A fully taxable resident collective entity under a legal form listed in appendix to Article 166 LIR, paragraph 10;

(ii) A fully taxable resident capital company not listed in appendix to Article 166 LIR, paragraph 10;

(iii) A Luxembourg PE of a collective entity as mentioned in Article 2 of the EU Parent-Subsidiary Directive;

(iv) A Luxembourg PE of a capital company resident in a Luxembourg tax treaty state; or

(v) A Luxembourg PE of a capital company resident in a European Economic Area member state.

In March 2015, a common minimum anti-abuse rule and an anti-hybrid rule were introduced by way of the EU Parent-Subsidiary Directive to prevent abusive structuring and erosion of the tax base in European Union. These amendments were transposed into Luxembourg law as of January 1, 2016.

The anti-hybrid rule disallows the participation exemption on profit distributions received by a taxpayer that comes within the scope of the EU Parent-Subsidiary Directive if such distributions are tax deductible for the distributing EU subsidiary.

The common minimum anti-abuse rule disallows the application of the Participation Exemption based in the EU Parent-Subsidiary Directive, i.e., for subsidiaries meeting condition (b) in (ii), above, for profit distributions received from companies as meant in the EU Parent-Subsidiary Directive, in case of artificial arrangements, which have been put in place for the purposes of obtaining a tax advantage and not for valid commercial reasons reflecting economic reality.

A 50% exemption applies where the company does not meet the minimum threshold or minimum holding period.[276]

[273] LIR, Arts. 59 and 59 *bis*.
[274] LIR, Arts. 170, 170 *bis*, 170 *ter*, 171, 172 and 172 *bis*.
[275] Circular 170/1 dated 19 July 2024.
[276] LIR, art. 115(15a).

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Starting from the 2025 tax year, the taxpayer can choose to opt-out of the participation exemption for dividends. The default remains application of the participation exemption, thus, the choice to opt out must be exercised each tax year it is desired and must be done so individually for each shareholder.

g. Intellectual Property

Under the intellectual property (IP) tax regime, up to 80% of royalties, income embedded in sold products or services, capital gains and certain indemnities in relation to eligible IP assets is exempt from Luxembourg corporate income tax and municipal business tax, and the eligible IP assets are fully exempt from net wealth tax.

Eligible IP assets are:

(i) Patents;

(ii) Utility models;

(iii) Supplementary protection certificates for patents for medicine and plant protection products;

(iv) Extensions of a supplementary protection certificate for pediatric medicines;

(v) Plant variety certificates;

(vi) Orphan drug designations; and

(vii) Software protected by copyright.

The 80% exemption is available only with respect to income from IP assets that have a nexus with Luxembourg, in accordance with the "modified nexus approach." See IV.I.1., above.

h. Foreign Source Income

(1) Interest Income

Interest income is fully taxable. Foreign taxes withheld at source may be credited against Luxembourg income tax.[277] However, certain forms of profit-participating interest may qualify for a 50% exemption.[278]

(2) Income from a Permanent Establishment

A Luxembourg corporation deriving income from a PE abroad includes the amount of the foreign income in its corporate income tax return. Usually, however, Luxembourg's tax treaties provide for an exclusion for income derived through a PE located in a treaty partner country.[279]

To qualify, the PE must also be recognized by the foreign country in which it is located. Proof of the foreign position may be required and must be provided spontaneously in certain cases.[280]

If a taxpayer is able to demonstrate that a PE in a non-treaty partner country was liable to a foreign tax comparable to Luxembourg corporate income tax, a tax credit is granted to the extent of the Luxembourg income tax due on income derived from the PE.[281]

Separate accounting records must be kept for a foreign PE.

Foreign taxes not credited against Luxembourg income tax are deductible from foreign net income.[282]

(3) Royalties

Royalties received from abroad are fully taxable, but foreign taxes withheld with respect to such royalties may be set off against Luxembourg income tax.[283] Foreign taxes not credited against Luxembourg income tax are deductible from foreign net income.

(4) Capital Gains

Capital gains from the sale of foreign-situs real property or shares in a foreign company (unless exempt under the participation exemption, see VI.B.3.b., above) are taxable if not exempt under the terms of an applicable tax treaty. Comparable foreign income taxes paid may be credited. Foreign taxes not credited against Luxembourg income tax are deductible from foreign net income.

(5) Controlled Foreign Corporations

With effect from 2019, controlled foreign company (CFC) income attribution rules were introduced, to comply with ATAD. On June 17, 2022, the Luxembourg tax authorities (LTA) published a circular on the CFC rules to give further guidance and examples of the application of the CFC rules in Luxembourg.[284] The primary function of the CFC rules is to deter taxpayers from shifting profits to foreign low-taxed controlled entities or PEs. Under the CFC rules, a Luxembourg corporate taxpayer may be subject to corporate income tax on its share of a CFC's undistributed income.

Luxembourg chose to implement the Model B of the CFC rules in the ATAD, under which low-taxed income from a CFC is only included in the taxable income of the Luxembourg direct or indirect parent (the "Luxembourg Parent Company"), to the extent that income is related to significant people functions carried out by that parent in Luxembourg.

The CFC provisions are described in (a) to (e), below.

(a) Definition of a CFC Entity

A CFC can be a subsidiary entity (including a partnership) or a PE. Two cumulative tests need to be met for an entity to qualify as a CFC:

- The control test: if the taxpayer, alone or together with associated enterprises, holds directly or indirectly more than 50% of the participations or voting rights, or is entitled to more than 50% of the profits.
- The association threshold is set at 25%, directly or indirectly, by a virtue of participation in terms of voting rights, capital ownership or profit rights.
- Any shares owned by the CFC itself are ignored for the purpose of determining if the conditions of the control test are met.

[277] LIR, Art. 134 *bis*.
[278] LIR, Art. 115(15a).
[279] LIR, Art. 134.
[280] StAnpG, Art. 16, as amended.
[281] LIR, Art. 134 *bis*.
[282] LIR, Art. 1.
[283] LIR, Art. 134 *bis*.
[284] LIR, Art. 164 *ter* and Circular LIR n°164 *ter*/1 of June 17, 2022.

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• The effective tax rate test: if the corporate income tax paid on its profits by the controlled foreign entity or the PE is lower than 50% of that which would have been payable in Luxembourg. The comparable tax test previously found in Luxembourg law can be used as a basis. In other words, the tax rate paid by the controlled foreign entity or PE should correspond to at least 8.5% on a similar tax base (i.e., worldwide taxation without any material tax base deviations).

• For the purpose of the effective tax rate test, the profits of the CFC entity or CFC-PE must be recalculated in accordance with the tax laws of Luxembourg.

• Taxes paid by the CFC entity or the CFC-PE in a currency other than euro must be converted to euros based on the conversion rate of the European Central Bank (ECB) as per the closing date of the financial year of the CFC entity or CFC-PE.

(b) Definition of CFC Income

Undistributed income of a CFC arising from a non-genuine arrangement whose main purpose was to obtain a tax benefit, qualifies as CFC income. The CFC rules provide that an arrangement may not be genuine where the CFC would not own the assets or assume the risks that generate all or part of its income, were it not controlled by a Luxembourg parent company having significant people functions that are linked to the assets and risks, and that play an essential role in generating the CFC's income. In other words, for CFC income to be attributed to the Luxembourg parent company, the latter should have employees which perform functions that somehow or in some form relate to income being generated at the level of the CFC.

(c) Consequences of CFC Income Qualification

If the entity or PE meets the control test and the effective tax rate test, and the undistributed income results from a non-genuine arrangement (i.e., where significant people functions of a Luxembourg parent company can be attributed to a CFC), the undistributed income of the CFC is included in the Luxembourg parent company's taxable basis to the extent such income arises from such non-genuine arrangements.

(d) Exemptions from CFC Taxation

Excluded from the scope of the Article 164 *ter* LIR is a CFC entity whose:

(i) Accounting profits are less than 750,000 euros and whose non-trading income is less than 75,000 euros.

(ii) Accounting profits amount to less than 10% of their operating costs for the period concerned. The costs of goods sold outside the jurisdiction of the CFC entity or PE are not included as operating costs.

(iii) Significant people functions related to its assets and/or risks generating CFC income are performed in its jurisdiction of residence or, in the case of a PE, the jurisdiction in which the PE is located.

(iv) CFC income arises from arrangements put in place for non-tax related reasons.

(e) Extra Documentation Requirements

Any Luxembourg parent company with direct and indirect subsidiaries needs to keep an annually updated documentation in its files establishing to what extent each of these subsidiaries would give rise to CFC income inclusion. The Luxembourg parent company must list such direct and indirect subsidiaries in its annual corporate income tax return.

i. Other Income Inclusions

The following items must be included in taxable income:

(i) Allocations to provisions that, for tax purposes, are considered excessive or unacceptable (for example, excessive depreciation);

(ii) Allocations to reserves;

(iii) Profit distributions including hidden distributions;[285]

(iv) Non-deductible taxes including:

• Corporate income tax;

• Municipal business tax (which is non-deductible for companies subject to corporate income tax);

• Net wealth tax;[286]

• Other non-deductible taxes, such as VAT on goods and services unrelated to the company's business; and

• Interest on arrears of non-deductible taxes;

(v) Remuneration paid to members of the board of directors and the statutory auditor;

(vi) Losses of PEs in countries covered by tax treaties. It should be noted that in certain circumstances, this may be in violation of the freedom of establishment, as guaranteed by the Treaty on the Functioning of the European Union;

(vii) Within certain limits, foreign income taxes withheld (which may be credited against Luxembourg income tax);

(viii) Expenses (such as interest) related to tax-exempt income;

(ix) Profit-participating interest due on bonds;[287] and

(x) Capital gains realized on the disposal of a qualifying participation to the extent that in previous years impairments and directly related (interest) expenses incurred in relation to the qualifying participation have been deducted from taxable income, i.e., the recapture rule.

j. Other Income Exclusions

The following items must be excluded from the calculation of gross income:

(i) Dividends and capital gains that are exempt under the participation exemption;

[285] LIR, Art. 164.

[286] LIR, Art. 168.

[287] A profit participating interest bond is a bond that gives rise to remuneration in the form of a right to a share in the issuer's annual profit or its liquidation profit. LIR, Art. 164.

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(ii) Profits of a PE in a country covered by a tax treaty and recognized as such by the other country;

(iii) Other income excluded under the terms of an applicable tax treaty; and

(iv) Losses to be carried forward.

k. Digital Assets

While existing Luxembourg tax law does not include any specific provisions related to digital assets, they are covered by the general tax rules. Cryptocurrencies are not considered to be legal tender, whose value would be supported by a central bank. For tax purposes, they are therefore not considered currency, but rather intangible assets. The LTA does not allow a company to provide a balance sheet or a profit and loss (P&L) statement drawn up in a cryptocurrency.[288]

Income resulting from transfer transactions (i.e., disposals and exchanges) involving digital assets, including non-fungible tokens (NFTs), are considered "business profits" for tax purposes.[289] Correspondingly, losses and expenses related to such transactions may be deducted. The same treatment applies for income and losses or expenses related to digital "mining activity."

The taxpayer who is engaged in this industry is obliged to maintain a coherent and continuous record of acquisition dates (or creation dates, in the case of mining) and acquisition prices. In situations in which it is difficult or impossible to determine an acquisition price, the weighted average price method must be applied in determining the acquisition price.[290]

For purposes of Luxembourg net wealth tax, digital assets, like any other assets, must be valued by the taxpayer at their fair market value and net wealth tax is due on that value.

4. Business Expenses

a. In General

Gross income of an enterprise is reduced by all business expenses connected with or pertaining to the enterprise. However, the tax authorities will challenge expenses paid to related parties if arm's-length standards are not respected.

Certain expenses are specifically singled out as being non-deductible.

b. Organizational Expenses

Expenses in relation to the incorporation of a company may be written off, either in full in the year in which they occur or over a period of time that may not, however, exceed five years.[291]

Expenses incurred in connection with the acquisition of an asset that is to be depreciated over a period of time must be added to the purchase price and thus depreciated over the same period.

c. Travel and Entertainment Expenses

Travel expenses and entertainment expenses are deductible if they are incurred in connection with a business and if they are reasonable in amount. Excessive allowances paid to an employee by an employer for travel expenses, meals and boarding may have to be added to the employee's gross salary.

For entertainment expenses to be deductible, the name of the person entertained must be clearly stated on the relevant invoice and the amount must be charged to a separate account.

d. Penalties and Bribes

Penalties, fines, etc. are non-deductible, as are bribes and related costs paid to officials in or outside Luxembourg.

e. Interest and Royalties

As a rule, interest due is fully deductible, even if paid to a parent company or a group company, whether resident or non-resident, subject to the condition that it is fixed at market rates. If the rate is not fixed on an arm's-length basis, the excess amount may be treated as a profit distribution.[292] Expenses incurred in relation to tax-exempt income are deductible only to the extent they exceed the exempt income received in the same year.[293] Subordinated shareholder debt is usually respected for tax purposes. Certain forms of debt of profit-participating shareholders may result in the denial of an interest deduction.

The Islamic finance instrument *Sukuk* (plural of *sakk*, meaning legal instrument, deed or check) is treated as debt as in conventional finance. Although the yield is often profit participating, the payments under a *sukuk* transaction are nevertheless generally deductible.[294]

To implement the interest deduction limitation rules contained in ATAD 1, Luxembourg introduced Article 168 *bis* of the LIR with effect for fiscal years commencing on or after January 1, 2019.[295] The LTA has also issued circulars in this regard that provide some guidance on the interpretation of these rules.[296]

Article 168 *bis* LIR caps the deductibility of excess borrowing costs, i.e., the extent to which interest (and assimilated) expenses exceed interest (and assimilated) income, at the higher of 30% of EBITDA or 3 million euros. The rule does not distinguish among costs that are related to debts incurred domestically, in an EU Member State or in a third country, nor does it differentiate between interest owed to affiliates companies and to third-parties.

Regulated financial undertakings, including banks, UCITS and insurance companies, are excluded from the scope of the rule. However, a bill of law[297] has been introduced to remove

[288] Circular LIR no. 14/5 99/3, 99bis/3 of July 26, 2018.
[289] LIR, Art. 162.
[290] Circular LIR no. 14/5 99/3, 99bis/3 of July 26, 2018.
[291] Law of December 19, 2002, Art. 53.
[292] LIR, Art. 164.
[293] LIR, Art. 45(2).
[294] Circular L.G. — A no. 55 of January 12, 2010.
[295] Law 21 December 2018.
[296] Circular LIR n°168bis/1 of March 25, 2022, replacing LIR n°168bis/1 of July 28, 2021, which replaces Circular LIR n°168bis/1 of June 2, 2021, which replaces Circular LIR n°168bis/1 of January 8, 2021.
[297] Bill of law n°7974 of March 7, 2022. The parliamentary process for adopting this bill of law has experienced delays. Meanwhile, on July 14, 2023, the European Commission referred Luxembourg to the CJEU for a faulty transposition of ATAD on this point.

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securitization vehicles from the scope of financial entities entitled to the additional borrowing costs deduction.

In addition, and subject to certain conditions, where a company belongs to a consolidated group for financial accounting purposes, it may request the deduction of its additional borrowing costs incurred if it can demonstrate that the ratio of its equity to its total assets is greater than or equal to the equivalent ratio of the group to which it belongs and that group is headed by an entity that prepares consolidated financial statements. Article 168 *bis*, paragraph 6, (a) LIR provides that a company's ratio of equity to total assets is deemed to be equal to the consolidated group's ratio when the former is less than the latter by up to two percentage points. Thus, in practice, if the taxpayer company's ratio, increased by two percentage points, is equal to or higher than the consolidated group's ratio, the provision can be applied with the result that the cap does not apply. However, because of the derogatory nature of the provision, when a company avails itself of this option, no unused capacity can be carried forward to future years and no additional borrowing costs incurred and considered non-deductible in a prior year can be deducted. The same rule applies with regard to members of a fiscally integrated group that are all members of the same consolidated group for financial accounting purposes.[298]

For financial years beginning on or after January 1, 2024, a taxpayer who is a member of a "single-entity group" is allowed, upon request, to benefit from an exception to this rule. A "single-entity group" is a taxpayer who is not (i) part of a consolidated group for financial accounting purposes and (ii) who is not considered to be an autonomous entity.

In order to deduct all of its net borrowing costs, the taxpayer-member of the "single-entity group" must prove that the ratio of its equity to its total assets is equal to or greater than the equivalent ratio of the single-entity group. However, the ratio between the taxpayer's equity and its total assets is still considered to be equal to the equivalent ratio of the single-entity group if the ratio between the taxpayer's equity and its total assets is less than two percentage points.

In order to determine the single-entity group's equity-to-total assets ratio, the equity must be increased by the amounts likely to give rise to borrowing costs and which are owed by the taxpayer to associated companies (as defined in Article 168 *ter*, paragraph 1, 18, but for the purposes of this article, the 50% holding rate is replaced by 25%). An arrangement or a series of arrangements destined to avoid the increase of the aforementioned equity will be disregarded for the calculation of the ratio.[299]

Interest on borrowings taken out prior to June 17, 2016 benefits from a grandfathering rule and is therefore not affected by the IDL rules, to the extent the features of the borrowing instrument have not subsequently been modified. If the terms and conditions of a loan entered into before June 17, 2016 are modified on or after June 17, 2016, the grandfathering clause applies only to the borrowing costs incurred based on the original terms of the loan. In other words, the interest deduction limitation rule only applies to the additional excess borrowing costs arising as a result of the modification.

The Circular to Article 168 *bis* LIR provides a non-exhaustive list of amendments that are not considered to be "subsequent modifications" and that, therefore, do not affect the deductibility of the full amount of interest on a grandfathered loan:

(i) Amendments to the term or interest rate of a loan after June 17, 2016 that were contractually agreed before June 17, 2016 (and, as regards the term, provided the extension of the duration of the loan does not require the agreement of the parties);

(ii) Drawdowns under an existing credit facility after June 17, 2016, in accordance with terms and conditions contractually agreed before June 17, 2016;

(iii) A loan granted before June 17, 2016 to a company that subsequently migrates its registered office or central administration to Luxembourg, to the extent the terms and conditions of the loans are not modified.

The IDLR Circular[300] also provides a non-exhaustive list of amendments that are considered to be "subsequent modifications" and that, therefore, affect the deductibility of the full amount of interest on a grandfathered loan:

(i) Amendments to the term of the loan on or after June 17, 2016, when the amendments were not contractually provided for prior to June 17, 2016;

(ii) Amendments to the interest rate or interest calculation on or after June 17, 2016, when the amendments were not contractually provided for prior to June 17, 2016;

(iii) Amendments to the amount borrowed on or after June 17, 2016; and

(iv) Modifications of one or more of the affected parties on or after June 17, 2016, when the modification was not contractually provided for prior to June 17, 2016.

Interest on loans contracted to fund long-term public infrastructure projects, where the operator, borrowing costs, assets and income are all located in the EU, are also excluded from the application of the IDL rules.

Lastly, if the amount of the additional borrowing costs incurred by the taxpayer company exceeds the maximum deduction set out above, the taxpayer is entitled to deduct the excess part of the additional borrowing cost to the extent that it still has idle capacity that has not affected the limitation on interest deductibility at all, or has affected it only partially, in the last five years of operation. The oldest idle capacities are retained in priority, according to chronological order. Moreover, a taxpayer that has not fully used up its available deduction limit with respect to an operating year is entitled to deduct, in addition to the additional borrowing costs incurred in the current operating year, that part of the additional borrowing costs that has not been deducted in one or more previous operating years.

Royalty costs for the use of copyrights, patents, formulae, know-how, etc., are deductible if the royalty rate is determined at an arm's-length basis.

With effect from March 1, 2021, interest and royalties payable to a related company within the meaning of Article 56

[298] LIR, Art. 164 *bis*, para 9, (9).

[299] Budget Law of December 20, 2024, article 11.

[300] Circular of January 8, 2021 on LIR, Art. 168 *bis*.

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of the LIR that is established in a blacklisted jurisdiction are not deductible.[301] Such jurisdictions are jurisdictions on the EU list of non-cooperative jurisdictions for tax purposes.[302] A deduction is not denied if the taxpayer can prove that the operation giving rise to the interest or royalty payments is for valid commercial reasons that reflect economic reality. Furthermore, the valid commercial reasons must present a sufficient economic advantage beyond any tax benefit that is obtained.[303]

f. Hybrid Mismatches

Luxembourg implemented ATAD 1 by introducing Article 168 *ter* of the LIR, which contains anti-hybrid rules designed to counter the effects of "hybrid mismatches" between EU Member States with effect from January 1, 2019. With the implementation into domestic law[304] of the second Anti-Tax Avoidance Directive (EU) 2017/952 (ATAD 2), the scope of Article 168 *ter* of the LIR was extended to address hybrid mismatch situations arising between EU Member States and third countries, as well as to certain hybrid mismatch situations involving PEs and "reverse hybrids." The modified anti-hybrid rules entered into effect on January 1, 2020 and the taxation of "reverse hybrids" was applied from 2022.

Briefly summarized, under the anti-hybrid rules, deduction of an expense may be denied in the payor's jurisdiction if the instrument concerned or an interposed entity would be differently characterized by the actual or deemed recipient/payee causing the deducted payment not to be included in taxable profits at the level of the (deemed) recipient, or resulting in a double deduction.

ATAD 2's anti-hybrid rules are applicable if the two following conditions are fulfilled.

(1) Condition 1: The Presence of a Hybrid Mismatch

A hybrid mismatch can be found to exist where any of the following are present:

(i) A hybrid instrument;

(ii) A hybrid entity;

(iii) One or more PEs; or

(iv) Double deduction of one and the same payment.

A "hybrid instrument" means a financing instrument under which a payment made gives rise to a deduction for the payor without a corresponding inclusion in taxable income at the level of the payee or another person (i.e., "deduction/non-inclusion"), with the mismatch outcome being attributable to differences in the characterization of the instrument or the payment made under it.

A "hybrid entity" means any entity that is regarded as a taxable entity under the laws of one jurisdiction and whose income is treated as income of one or more persons having an interest in that entity under the laws of another jurisdiction, giving rise to the deduction/non-inclusion of a payment.

A hybrid mismatch also occurs if a payment to a PE gives rise to a deduction/non-inclusion because the PE is not being taken into account, or is made between a head office and a PE or between two or more PEs and results in deduction/non-inclusion because the payment is not recognized under the laws of the jurisdiction of the recipient.

The granting of a double deduction also represents a hybrid mismatch, but only to the extent the payment, expense or loss is deductible in the jurisdiction of the payor of income that is not subject to a double inclusion.

The identification of hybrid entities and instruments is essentially based on the classification of financing instruments and entities under the rules of the investors jurisdictions as compared to their classification in Luxembourg.

(2) Condition 2: A Hybrid Mismatch Arises Between a Taxpayer and an Associated Enterprise or Under a Structured Arrangement

For the hybrid mismatch rules to apply there must be some level of association between the payer and the recipient of the income concerned or the arrangement concerned must qualify as a structured arrangement. An associated enterprise can be identified where:

(i) An individual or entity holds directly or indirectly a participation of 50% or more, or is entitled to 50% or more of the profit, of the taxpayer. This 50% threshold is lowered to 25% in the case of a hybrid instrument;

(ii) The taxpayer has a noticeable influence on the management of an entity (or vice versa); or

(iii) An entity belongs to the same consolidated group as the taxpayer for commercial accounting purposes.

In determining the voting rights or capital entitlement in an entity, the interests of an individual or entity acting together with another individual or entity are added together for the purposes of measuring these thresholds (the "Acting Together Test"). An associated enterprise can also be found to exist where a structured arrangement exists.

A structured arrangement can be identified as an arrangement that is essentially tailored to achieve a hybrid mismatch outcome, its terms being contingent on the hybrid mismatch outcome or on any mechanism enabling the mismatch outcome, unless:

(i) It is not reasonable to expect that the taxpayer or associated enterprise(s) could be aware of the hybrid mismatch outcome; and

(ii) The taxpayer and/or the associated enterprise(s) did not obtain any tax benefit from the hybrid mismatch (the "Structured Arrangement Test").

Article 168*ter* of the LIR sets out the primary and secondary rules for the neutralization of hybrid mismatches:

(i) Under the primary rule, the deduction of a payment will be denied in the payer's jurisdiction (in this case, Luxembourg) to the extent the payment is not included in the taxable income of the recipient; and

[301] Law of February 10, 2021, introducing new para. 4 into LIR, Art. 168.

[302] Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes (6375/23 of February 14, 2023). The jurisdictions currently on the list are: American Samoa, Anguilla, the Bahamas, the British Virgin Islands, Costa Rica, Fiji, Guam, the Marshall Islands, Palau, Panama, Russia, Samoa, Trinidad and Tobago, Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.

[303] Circular LIR no. 168 *bis* of May 31, 2022.

[304] Law of December 20, 2019.

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(ii) Under the secondary/defensive rule, if (i) does not apply (i.e., where Luxembourg is the payee jurisdiction and the deduction is not included in the payer jurisdiction), Luxembourg will require the deductible payment that otherwise gives rise to a hybrid mismatch to be included in income.

Article 168 *quarter* of the LIR implements ATAD 2 and introduces anti-reverse hybrid rules into Luxembourg law (applicable as from January 1, 2022). See VIII., below.

g. Taxes

Except for municipal business tax due from individuals, excise taxes, property taxes and transfer taxes, taxes on income and wealth are not deductible. Non-deductible taxes include net wealth tax and income taxes. Interest payable for late payment of tax is deductible if the tax itself is deductible. Additional taxes for prior years are not deductible and reimbursements of former years' taxes are not included in taxable income. Foreign income taxes are deductible if they are not credited against Luxembourg corporate income tax.[305]

h. Depreciation and Amortization

The depreciation of fixed assets is deductible.[306] The straight-line depreciation method is usually used, i.e., the cost of an asset is written off in equal amounts over the useful life of the asset. The declining-balance method is also acceptable, except with respect to buildings and intangible assets, provided the owner of the asset concerned is also the user of the asset. Under this method, a fixed rate of depreciation is applied to the year-end book-value of the assets. This rate may not exceed either three times the rate that would have been applicable had the straight-line depreciation method been used, or 30%, whichever is less. In the case of equipment used exclusively for scientific and technical research, the limit is four times the straight-line rate, or 40%.

As of January 1, 2017, the linear depreciation of an asset for a given financial year can, upon request, be deferred until the financial year in which the useful economic life of the asset comes to an end at the latest. This optional deferral may be advantageous to use with investment tax credits or other credits that are about to expire because their carry forward period is about to expire or to credit the corporate income tax liability to the net wealth tax liability (see V.D., above).

Under Article 32*ter* of the LIR, accelerated depreciation at the rate of 6% used to be allowed with respect to buildings or parts of buildings used for rental accommodation, where the completion dates went back less than six years. Under the Budget Law 2021,[307] Article 32*ter* was modified to amend the rates and the period of accelerated amortization to 4% and five years after the construction of the real property asset used for rental accommodation, respectively. However, an accelerated depreciation rate of 6% is available for capital expenditure on sustainable energy renovations with respect to such buildings completed no more than nine years before January 1 of the tax year in question. For buildings used for rental accommodation, constructed or acquired before 2021, the same 6% remains available provided the construction was completed no more than six years before January 1 of the tax year in question. This also applies to renovation expenses with respect to such buildings, as long as these make up at least 20% of the total investment.

The useful life of plant and industrial buildings is generally estimated at 25 years. Residential buildings are expected to have a longer useful life.

Goodwill and intangibles are generally depreciated over at least 10 years, unless a shorter period can be duly justified.

Assets the purchase price of which does not exceed 870 euros may be completely depreciated during the year of acquisition.

i. Obsolete Equipment

Equipment no longer in use may be completely written off.

j. Charitable Contributions

Charitable contributions[308] are deductible only if they:

(i) Are paid to organizations recognized as charitable by Luxembourg; and

(ii) Do not exceed the lesser of: 20% of the company's income; or 1 million euros.

k. Casualty Losses

Casualty losses are deductible business expenses when incurred.

l. Reserve Accounts

Allocations to reserves for the purposes of equalizing certain business costs over a number of (future) years are non-deductible. Reserve allocations for future contingencies (for example, self-insurance against possible losses, and reserves for future business extension) are not permitted.

m. Bad Debts

Doubtful or uncollectible debts may be written off directly or via a reserve, depending on the judgment of the taxpayer. A flat depreciation on the total amount is generally not allowed, except in the case of banks.

n. Inventory Write-downs

Inventory is valued at the lower of cost of acquisition or going-concern value. If the going-concern value is below the acquisition cost, write-downs are acceptable.

o. Rents

Rental payments for premises used for business purposes are deductible. Expenses incurred to secure a lease, such as registration tax on the lease contract, and other expenses, such as leasehold improvements, must be amortized over the term of the lease.[309]

[305] LIR, Art. 13.

[306] LIR, Arts. 29 to 34.

[307] Law of December 19, 2020, Art. 3.

[308] LIR, Art. 168.

[309] To incentivize waivers or reductions of rent by real estate owners during the COVID-19 pandemic, for the year 2020, an allowance corresponding to double the amount of the rent waived (capped at 15,000 euros per building) was introduced by Budget Law 2021, Art. 5.

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p. Salaries and Wages

Salaries paid to employees for services rendered are deductible. Compulsory and voluntary contributions to pensions and sickness funds also are deductible. However, contributions to pension reserves are deductible only subject to certain conditions.[310] Unduly high salaries paid to shareholders who are also employees of the company concerned may be treated as hidden profit distributions to the extent they are excessive.[311]

q. Commissions and Fees

Commissions and fees are deductible only if the beneficiary is specified. Payments made to an unidentified beneficiary are in general nondeductible and, in addition, may be subject to the 15% withholding tax.

r. Other Deductions from Gross Income

Current expenses incurred to keep an asset in operating condition are deductible if they do not change the character of the asset. Expenses of a major repair may be capitalized. Insurance premiums paid for property and personal liability insurance are deductible.

5. Capital Expenditure

The acquisition price or manufacturing cost of fixed assets must be capitalized and, if the assets are depreciable, may be depreciated on a regular basis. Small fixed-asset items costing less than 870 euros or whose useful life is less than one year may be completely written off during the year of their acquisition.[312]

6. Loss Carryforward and Carryback

Trading losses may be offset against income or gain arising in the same period as that in which the losses are incurred. Losses incurred prior to January 1, 2017 can be carried forward indefinitely and set off against future profits. Tax losses incurred on or after January 1, 2017 can be carried forward for a 17-year period only, using a "first-in, first-out" (FIFO) method. No carryback is allowed.[313]

Only the company that incurs a loss may use it. Thus, in the case of, for example, a merger or demerger, the losses of the disappearing company or companies will evaporate. An exception is made in case of the transformation of legal form.

Following Luxembourg case law,[314] the tax administration has issued a circular[315] that sets out its policy regarding the availability of loss carryforward in the case of a change of ownership. According to the Circular, the following principles will be applied by the tax authorities:

(i) The right of the transferred company to carry forward prior losses will not be denied for the sole reason that the shareholders have changed, either partially or fully, and that the transferred company continues its economic activities or extends its corporate object; and

(ii) In contrast, the right of the transferred company to carry forward prior losses will be denied if the taxation office can conclude, based on the facts and circumstances, that the transfer of the company was abusive insofar as it was realized with the sole aim of using the loss carry-forward to offset future taxable income. Such facts and circumstances are, for example, the cessation of the prior activity carried out by the transferred company, the absence of assets having real economic value (shell company) or the transfer of the shares of the company with a simultaneous change of activity.

In a case where the tax administration sought to deny the right to carry forward losses of a company that had commenced a new, different activity after a number years without any activity, the Administrative Court unambiguously confirmed that in the absence of a change of shareholders, losses remain available for carryforward.[316]

7. Tax Credits

a. Foreign Tax Credits

A company resident in Luxembourg is entitled to claim relief for foreign taxes borne on its foreign income. The relief is given by crediting the foreign tax against the Luxembourg corporate income tax imposed on the same income where that income is not exempt under the terms of one of Luxembourg's tax treaties.[317] Under Luxembourg law, foreign taxes cannot be credited against the municipal business tax. Although certain treaties seem to override this principle, a Luxembourg court case[318] upheld the (opposite) position of the tax authorities under the Luxembourg-Spain tax treaty.[319]

Foreign withholding tax on dividends qualifying for the participation exemption received from a nonresident company, however, cannot be credited against Luxembourg tax. Generally, the tax credit is limited to the Luxembourg corporate income tax corresponding to the net income (i.e., after allocable expenses) from the foreign country concerned (per country method). However, provided certain conditions are met, the tax credit on passive income (dividends and interest) can be taken against tax on all foreign income (global method). Any foreign tax that cannot be credited is deductible as an expense in computing taxable profit.[320]

Some of Luxembourg's tax treaties (i.e., the Luxembourg-Brazil,[321] -Morocco[322] and -Spain tax treaties) contain tax-spar-

[310] LIR, Art. 24.
[311] LIR, Art. 164.
[312] LIR, Art. 34.
[313] LIR, Art. 114.
[314] CA, July 15, 2010, no. 25957.
[315] Circular 114/2 of September 2, 2010.
[316] Administrative Court, case 48917C dated April 25, 2024.
[317] LIR, Art. 134 *bis*.
[318] Case 20316C, of January 17, 2006.
[319] Convention between the Government of the Grand Duchy of Luxembourg and the Kingdom of Spain for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital and for the Prevention of Fraud and Fiscal Evasion, signed on June 3, 1986 (the "Luxembourg-Spain tax treaty").
[320] LIR, Art. 13.
[321] Agreement between the Federal Republic of Brazil and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital, signed on November 8, 1978 (the "Luxembourg-Brazil tax treaty").
[322] Convention between the Government of the Grand Duchy of Luxembourg and the Kingdom of Morocco for the Avoidance of Double Taxation and

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ing clauses providing for a deemed tax credit that is higher than the taxes effectively withheld.

b. Investment Tax Credits

(1) In General

Two types of investment tax credits are available for enterprises on application by the taxpayer: (i) as of 2024, an investment tax credit for investments in and operating expenses incurred with respect to digital transformation or ecological and energy transition; and (ii) a general investment tax credit.[323]

The investment tax credit described above was initially only available to taxpayers if the assets concerned were "put to use" in Luxembourg (except for vessels exploited in international traffic by licensed Luxembourg shipping companies). Following a CJEU decision of December 22, 2010,[324] the tax authorities issued a circular[325] stating that the investment tax credit applies to assets "put to use" not only in Luxembourg but in any Member State of the EEA. Under the Law of December 23, 2016, this extension is henceforth codified in Article 152 *bis* of the LIR.[326] It should be noted that the territorial requirement for benefiting from a tax credit does not apply for purposes of investments in "space objects."[327] A "space object" is defined as "any object launched or intended to be launched in outer space, the constituent part of such an object as well as its launcher and the parts of the latter."[328]

The investment tax credit is set-off against the corporate income tax due for the year during which the eligible investments are made and the eligible operating expenses are incurred. Unused investment tax credits may be carried forward for 10 years.

Qualifying assets that are subject to a leasing contract also may be eligible for a tax credit. The main principle is that the lessor is eligible for the tax allowances, provided the assets subject to the lease agreement are effectively used in an enterprise situated in Luxembourg.[329] However, Article 152 *bis* (9) of the LIR, in conjunction with the decree of August 27, 2024, allows the lessee instead of the lessor to claim the tax credit if certain conditions are fulfilled by the lessor and the lessee, as provided for under the decree.[330]

(2) Digital and Ecological and Energy Innovation

This tax credit is designed to stimulate both substantial innovations in production or distribution processes through the implementation and use of digital technology, and substantial changes in the production or consumption of energy or the use of resources that reduce the environmental impact. The credit is available as of the tax year 2024. The rate of the tax credit is 18% of the acquisition price of the investment and of qualifying operational expenses, except for amortizable assets, with respect to which the rate of the tax credit 6% of the acquisition price.

The tax credit is available with respect to the following investments and operating expenses:[331]

(i) Investments in depreciable tangible assets (other than buildings, livestock, and mineral and fossil deposits);

(ii) Investments in software or patents other than those acquired from related parties;

(iii) Expenses incurred to obtain, from third parties, the right to use patents or software;

(iv) The cost of consultancy, and diagnostic and technical support services provided by external service providers that are not related to the normal operating expenses of the company, such as regular tax or legal advisory services, or advertising;

(v) Expenses of staff directly assigned to the company's digital transformation or ecological and energy transition; and/or

(vi) Training expenses for staff directly assigned to the company's digital transformation or ecological and energy transition.

If the tax credit is certified for investments in, or operational expense for the acquisition or creation of, software or patents, the income from the software or patents is not eligible for the IP regime.

Assets that are amortized over less than three years and automobiles are excluded from the tax credit, as are investments made and operational expenses incurred in order to meet legal requirements.

For the tax credit for digital transformation or ecological and energy transition to be obtained, the eligibility of the investments and/or operational expenses concerned and their conformity with the conditions for the availability of this tax credit needs to be attested by the Minister of the Economy. To this end, the taxpayer needs to request, in advance, a statement of eligibility, setting out, among other things, the nature and goal of the project and how the project will achieve that goal, the beginning and end dates for the realization of the project (which may not span more than three consecutive financial years), the financing of the project and all elements necessary to evaluate the qualities or specificities of the project and its expected effect.[332]

Subsequently, for each fiscal year for which the taxpayer seeks to apply this tax credit, a certificate must be requested from the Minister of Economy, attesting to the genuineness of the investments made and operating expenses incurred during that year. The request for this certificate must be filed no later than two months after the end of the financial year in which the investments were made or the operational expenses incurred. The certificate can only address investments made and operational expenses incurred after the request has been made for at-

the Settlement of Certain Other Questions with Respect to Taxes on Income and on Capital, signed on December 19, 1980 (the "Luxembourg-Morocco tax treaty").

[323] LIR, Art. 152 *bis*.

[324] ECJ decision of December 22, 2010, in Case C-287/10 *Tankreederei*.

[325] Circular 152 *bis*/3 of March 31, 2011.

[326] Law of December 23, 2016, Art. 1-26°.

[327] LIR, Art. 152 *bis* (1a), introduced via the law of December 15, 2020 on space activities.

[328] Law of December 15, 2020, Art. 2-4°.

[329] LIR, Art. 152 *bis* (9).

[330] RGD of August 27, 2024, published in the Official Gazette No. A382 (replacing the RGD of October 29, 1987).

[331] LIR, Art. 152 *bis* §3.

[332] LIR, Art. 152 *bis* (5).

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testation as to the genuineness of the project concerned and its fulfillment of the conditions for the availability of the credit.

Further details concerning the modalities of the request and the contents of the certificate are contained in a decree of the Minister of the Economy.[333] Once obtained, the certificate must be annexed to the tax return for the fiscal year for which the tax credit is requested.

(3) General Investment Tax Credit

A general investment tax credit for investments in the assets listed below has been available for many years. As of 2024, the rate of the tax credit is 12% (up from 8% and 2% in previous years).[334]

The general investment tax credit can be obtained via a request for investments in:

(i) Tangible depreciable assets, other than buildings, livestock, and mineral and fossil deposits;

(ii) Sanitary and central heating installations in hotels;[335]

(iii) Buildings used for social activities;[336]

(iv) Assets eligible for special depreciation rules (which are assets designed to assist in, among other things, the protection of the environment and the realization of energy savings);[337] and

(v) Software purchased from unrelated parties, other than software for which the investment tax credit digital transformation or ecological and energy transition is obtained.

The following assets are, however, excluded from the general investment tax credit:

(i) Assets that are depreciable over less than three years;

(ii) Assets acquired via the wholesale integration of an undertaking or an independent part of an undertaking, and secondhand assets acquired in a different manner, except, subject to certain conditions, assets invested within three years from the date of establishment of a new enterprise, with the aggregate acquisition costs capped at 250,000 euros;[338] and

(iii) Automobiles, other than automobiles that are used exclusively for the commercial transportation of persons or goods, or form of the net assets of a car leasing enterprise, and certain other specified vehicles.

The general investment tax credit is calculated based on the acquisition cost of the qualifying assets. The rate is increased to 14% in the case of assets to which the special depreciation rules in Article 32 *bis* of the LIR apply. The general investment tax credit for investments in eligible software is capped at 10% of the taxable income for the fiscal year concerned. Moreover, if the general tax credit for software is requested, the income generated from the software is excluded from the IP regime.

A request for application of the general investment tax credit is made through the annual tax return, by adding an overview indicating, for each qualifying asset invested in, its name and function in the enterprise, its acquisition price reduced by any subsidy received from the state or any other public body and its usual period of utilization. If the asset concerned is software, its name, its version and its manufacturer must be included.[339]

(4) Investment Tax Credit Before 2024

Before 2024, the rate structure of the general investment tax credit described in VI.B.7.b.(2), above was as the follows:

(i) On the first 150,000 euros of qualifying investments: 8%; and

(ii) On the excess: 2%.

In the case of assets to which the special depreciation rules in Article 32 *bis* of the LIR apply, the 8% and 2% rates are increased to 9% and 4%, respectively.

Independently of the general investment tax credit, a complementary investment tax credit of 13% was granted for net added investments in tangible, amortizable assets other than buildings, livestock, and mineral and fossil deposits.[340] The tangible assets excluded from the general investment tax credit are also excluded from the complementary investment tax credit.

The amount of additional investments eligible for the first tax allowance is equal to the difference between the book value of all qualifying assets at the end of the tax year less the "reference value" (*la valeur de référence*) of those assets. The reference value is the higher of the average value of all the qualifying assets as of the end of the five preceding tax years or 1,850 euros. The difference is subsequently increased by the amount of current year depreciation of eligible assets. The amount of additional investments is, however, capped at the actual value of the investments made in qualifying assets throughout the current tax year.

(5) Leased Equipment

The investment tax credit for eligible investments in equipment made by way of leasing is granted to the lessee, not the lessor. The asset to be invested in must not have been the subject of a previous lease.[341]

c. Other Credits

No other general tax credit is available.

[333] RGD of August 27, 2024, published in the Official Gazette No. A380.
[334] LIR, Art. 152 *bis* (7).
[335] Grand-Ducal Regulation (RGD) of October 29, 1987 provides further clarification.
[336] As defined in RGD of July 30, 1960.
[337] I.e., assets referred to in LIR, Art. 32 *bis.*
[338] LIR, Art. 152 *bis* (7a).
[339] RGD of October 29, 1987 as amended by RGD of August 27, 2024, published in the Official Gazette No. A381, art. 5.
[340] LIR, Art. 152 *bis* (2) to (4) before amendment by the law of 22 December 2023.
[341] LIR, Art. 152 *bis* §10, Decree of August 27, 2024 nº382.

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8. Tax Rates and Calculation of Taxable Income

Resident companies are subject to corporate income tax at the following rates:[342]

(i) 14% if total taxable income does not exceed 175,000 euros;

(ii) 24,500 euros plus 30% of the income exceeding 175,000 euros if the total taxable income is between 175,000 euros and 200,001 euros; and

(iii) 16% if total taxable income exceeds 200,000 euros.

These rates are increased by a surcharge of 7%,[343] resulting in a maximum effective rate of 17.12%, not including the municipal business tax.

9. Assessment and Filing

a. Tax Returns

Following a legislative change introduced by the Budget Law 2023, with effect from the fiscal year 2022, the deadline for filing tax returns has been extended from May 31 to December 31 of the year following the relevant fiscal year.[344] While the Luxembourg tax authorities have typically extended the filing deadline to December 31, without imposing any penalties, this change clarifies the administrative practice and provides more legal certainty to taxpayers. Where returns are filed late, a penalty of up to 10% of the tax payable may be levied. Alternatively, a fine of up to 25,000 euros may be levied if a filing reminder issued by the tax inspector is not heeded on a timely basis. An intentionally incomplete or inaccurate tax return may also be sanctioned with a fine of up to 5% to 25% of the avoided taxes.[345]

Together with its return, a company must submit the commercial and fiscal accounts, the audit report, and the management report, as well as copies of shareholder's resolutions concerning approval of financial statements and distributions of profits.

As of fiscal year 2017, tax returns must be filed electronically.[346]

b. Tax Assessments

The tax authorities issue a tax assessment after assessing the tax return. However, the authorities may also issue a tax assessment based on the tax return without conducting a review under § 100a of the General Income Tax Law (*Abgabenordnung* or AO). (In Luxembourg, this is referred to as "self-assessment.") If so issued, the tax assessment must indicate that it is made based on § 100a., AO. Such tax assessments may be revised by the tax authorities within five years from the end of the calendar year in which the tax liability arose, following a review of the tax return.

Objection to the tax assessment can be filed within three months from the date of its issuance (see V.A.4.a., above).

c. Payment of Tax

Taxes become due on the day of an assessment by the tax inspector. However, on receipt of a preliminary assessment, companies are required to make quarterly prepayments on March 10, June 10, September 10 and December 10 of each year.[347] Such payments are fixed by the tax office based on the tax assessment for the previous financial year unless a substantial increase or reduction in taxable income is anticipated.

When a newly organized company registers with the tax authorities, it is required to submit, on request, information on its estimated future profit on which basis tax prepayments are fixed.

The tax due according to the final assessment must be paid within one month after the assessment notice is received.[348]

On request, a the deferral of a tax payment may, in the discretion of the tax authority, be granted for a maximum of three years. Such deferrals are rare. Overpayments of tax are refunded or credited against other tax liabilities.

As of 2025, taxpayers can also request to pay their tax liability through multiple installments.[349] However, before such a request will be approved, several conditions must be met as follows:

- The full payment of the tax liability, if made up front, would cause considerable financial hardship to the taxpayer;
- The extension, if granted, would not jeopardize the payment of the full tax liability, bearing in mind that the tax collector may require the taxpayer to provide guarantees to protect the rights of the Treasury before granting a payment plan;
- A written and reasoned request must be addressed to the tax collector, tighter with supporting documents;
- The taxes concerned are the personal income tax for individuals, corporate income tax, net wealth tax or municipal business tax (excluding withholding taxes and advances set in accordance with Article 135 LIR).

In the event of the sale of immovable property by a debtor, the payment schedule does not prevent the Treasury from enforcing its mortgage rights.

The payment schedule also does not suspend the accrual of statutory interest for late payment in the event of a failure to settle the Treasury's claim when it is due.

d. Tax Audits

A tax audit may be initiated by the tax authorities if there is doubt as to the accuracy of the return submitted. Usually, an audit is initiated by a request for written information or an explanation of the company's business or its income and expenses.

[342] LIR, Art. 174.

[343] Law of June 30, 1976, on the creation of an unemployment fund, as amended.

[344] 2023 Budget Law, Art. 3.

[345] General Tax Law (*Abgabenordnung*, AO), Sec. 166 (3) and Circular L.G. — A n°67 of July 28, 2021.

[346] Law of December 23, 2016, Art. 7-4°.

[347] LIR, Art. 135.

[348] LIR, Art. 154.

[349] Law of November 27, 1933, Art. 12a, as introduced by Law of December 20, 2024; *Règlement grand-ducal* dated December 20, 2024, executing Art. 12a.

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e. Statute of Limitations

The statute of limitations for assessments and the collection of corporate income tax is, in principle, five years from the end of the calendar year in which the tax liability arose.[350] If a postponement of payment has been granted, the running of the five-year period for the collection of taxes may be delayed. In the case of non-filing or incomplete filing of tax returns, the statute of limitations is 10 years (instead of five years).

If a deferral for the payment of a tax liability is granted under the application of an exit tax, the statute of limitations is suspended. This ensures that the exit tax liability remains enforceable and is not nullified by the statute of limitations before its payment within the prescribed timeframe.[351]

f. Interest

Interest for late payment of taxes is imposed at the rate of 1% per month.[352] Where an extension for late payment has been granted, the following interest rates apply:[353]

(i) 0%, if payments are made within four months of the due date;

(ii) 0.1% of the total tax liability per month, if payments are made more than four months but less than 12 months after the due date; and

(iii) 0.2% of the total tax liability per month, if the extension granted is for more than 12 months but not more than 36 months.

C. Value Added Tax

1. In General

Value added tax (VAT) is essentially a consumer tax. It is generally borne by the final consumer of goods and services (who is not a VAT taxable person). For further research on Luxembourg's VAT system, see also the VAT Navigator.

VAT is levied on:[354]

(i) Supplies of goods and services within the territory of the Grand Duchy of Luxembourg by a taxable person in the course of that person's business;[355]

(ii) Intra-EU acquisitions of goods and of new means of transport,[356] in these circumstances, goods are subject to tax only in the state of destination and are exempt in the state of departure; and

(iii) Imports of goods from non-EU countries.[357]

Transfers of businesses (i.e., "going concerns") may fall outside the scope of Luxembourg VAT.

VAT is calculated on the total price charged for the supply of goods or services. Ancillary expenses, commissions, packaging expenses, interest relating to the supply, and customs duties are part of the acquisition price. If the total price is not expressed in currency, VAT is charged on the total value of the consideration. If the amount received is greater than the amount invoiced, VAT is payable on the amount received.

VAT borne by a taxable person on the supply of goods and services (input VAT) may normally be credited against VAT due on the taxable person's own sales (i.e., output VAT) or refunded. This relief ("VAT deduction right") may not apply, however, if the goods and services are used to carry on operations that are exempt from VAT or fall outside the scope of VAT.

VAT is administered by the *Administration de l'Enregistrement et des domaines et de la TVA*, with which a taxpayer must register before it engages in a business activity in Luxembourg.[358] Nonresident taxpayers must also register if they are doing business in Luxembourg. Some VAT registration exemptions exist.

As from January 1, 2015, the place of taxation, for VAT purposes, of electronic services supplied to private consumers, by EU providers, is the country of usual residence of the private consumers, regardless of the country of establishment of the supplier. This constitutes a reversal of the previous rule, under which electronic services were taxable in the country of establishment of the supplier, regardless of the usual place of residence of the private consumers. To avoid the potential excessive compliance burden that would result from this change in the place of taxation, the European Union has implemented a (mini-) One Stop Shop System (MOSS)[359] that enables each supplier of electronic services to have a single contact point for purposes of VAT identification, submitting VAT returns and paying the VAT due in all EU Member States.

The MOSS regime was extended from July 1, 2021, becoming the "One Stop Shop" (OSS). The OSS allows taxpayers to avoid multiple VAT registrations in different EU Member States in which they supply goods (through distances sales) and services in B2C (business-to-consumer) transactions, where those transactions are by law taxable in the Member State of the consumer. In addition, again with effect from July 1, 2021, specific rules were introduced for marketplaces, making them liable for the collection and remittance of VAT in specific B2C supplies of goods involving non-EU sellers.

Other simplification mechanisms, considered "quick fixes," that entered into effect on January 1, 2020, are:

(i) A call-off stock simplification regime has been introduced (the transfer of goods from one EU Member State to another without a transfer of ownership is not to be considered an intra-EU supply of goods, relieving the entrepreneur of the obligation to register it in the second Member State as an intra-EU acquisition). The availability of this regime is subject to specific conditions;

[350] AO, Secs. 144–145; Law of November 27, 1933, as amended by AGD of October 29, 1946, Art. 10.

[351] AO, Sec. 127, as amended by Law of December 20, 2024.

[352] LIR, Art. 155.

[353] RGD of December 28, 1968, Art. 6.

[354] Law of February 12, 1979, concerning the Value Added Tax (the "VAT Law"), as amended.

[355] VAT Law, Art. 2 a).

[356] VAT Law, Art. 2 b) and c).

[357] VAT Law, Art. 2 d).

[358] VAT Law, Art. 61.

[359] Directive EU 2017/2455 of December 5, 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.

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(ii) The supply of a valid VAT number of the purchaser and appropriate filing of the European Sales Listing (ESL), which is a reporting obligation that must be submitted when a transaction involving services or goods takes place between EU Member States, became mandatory conditions for benefitting from the intra-EU supply of goods rules;

(iii) The proof of transport condition is clarified for intra-EU supply of goods purposes (i.e., two non-contradictory items evidence from the list set out in the EU Regulation, and, if the client is in charge of delivery, a written statement must be communicated to the supplier); and

(iv) The chain transaction rules are clarified (i.e., if the middle party is in charge of the delivery of the goods, the supply between a supplier and a middle party will generally be treated as exempt from VAT).

2. VAT Registration

Depending on the activities of the company, it may be required to register for Luxembourg VAT purposes under either the simplified or normal VAT regime. For resident taxpayers, the VAT registration threshold is 35,000 euros, for nonresidents it is nil, and for distance sellers with businesses in other EU countries it is 10,000 euros. The VAT taxable person should file a VAT registration request within 15 days following the commencement of the activity requiring such registration.

Independent directors, other than foreign independent directors, realizing an annual turnover of less than 30,000 euros are required to register for VAT purposes in Luxembourg, despite the fact that their services remain exempt, and must declare annually the turnover they realize.

3. VAT Returns

Depending on the activities performed, a VAT taxable person is required to file VAT returns on a monthly, quarterly or annual basis.[360]

A company registered under the simplified VAT regime is required to file only one simplified annual VAT return per year. In contrast, a VAT taxable person registered under the normal VAT regime must file VAT returns as follows:

(i) Annual turnover of 112,000 euros or less: one single annual VAT return;

(ii) Annual turnover above 112,000 euros but no more than 620,000 euros: quarterly returns and one annual recapitulative VAT return;

(iii) Annual turnover above 620,000 euros: monthly returns and one annual recapitulative VAT return.

Generally, payments must be made when the corresponding VAT return is filed.[361]

With effect from January 1, 2017, all VAT returns must be filed electronically via a platform called eCDF.[362]

4. Compliance and Penalties

Infringements of the Luxembourg VAT law or non-communication of documents or information may lead to the imposition of penalties. The penalties applicable to the late filing of VAT returns, late VAT registrations, the filing of incomplete VAT returns or the issuing of non-compliant invoices may result in fines ranging from 250 euros to 10,000 euros.

Furthermore, if the intent or result of any failure to comply with the above obligations is to avoid the payment of, or obtain the illegal reimbursement of, VAT, a penalty tax of 10% to 50% of the amount of VAT in question may apply.[363]

The managers or directors in charge of the day-to-day management of a company must ensure that the related company fulfills all of its VAT obligations and, specifically, the payment of the VAT due. The managers or directors may be held personally and jointly liable in the case of non-payment of VAT due to the extent the non-payment is the result of the wrongful non-performance of their obligations.

5. Independent Directors

In Luxembourg, independent directors have the status of taxable persons for VAT purposes, thus director fees are in principle subject to Luxembourg VAT. Consequently, Luxembourg resident directors must register for VAT in Luxembourg and, in principle, must send invoices including Luxembourg VAT to the companies paying their fees.

However, on April 26, 2022, the lower administrative court of Luxembourg requested a preliminary ruling from the CJEU[364] on the question of whether a natural person who is a board member of a company carries out his or her activity independently and, thus, being subjected to VAT. In its decision rendered on December 21, 2023, the Court rejected the existence of an independent economic activity of members of a board of directors who, it held, do not act under their own responsibility and do not bear the economic risk associated with the activities of the company. As such, a natural person who is a member of a governing body of a company (required by law), and who receives remuneration for that activity as a member of that body, cannot be regarded as carrying out an independent economic activity.

Comment: Given the decision of the CJEU, a revision of this rule is to be expected.[365]

However, subject to the conditions below, director fees are not subject to Luxembourg VAT:

(i) Employees acting as company directors in representation of their employer do not act independently and are, therefore, not considered VAT taxable persons, meaning in these circumstances the employer is the VAT taxable person supplying the directors' services;

(ii) The refund of reasonable travel and accommodation expenses falls outside the scope of Luxembourg VAT; and

(iii) Fees paid to directors of investment funds should continue to be VAT exempt in accordance with the "man-

[360] VAT Law, Art. 64, and RGD of December 23, 1992, on the declaration and payment of the Value-Added Tax, Art. 1.

[361] VAT Law, Art. 64.

[362] VAT returns relating to prior periods can still be filed electronically on a previous platform called e-TVA.

[363] LTVA, Arts. 77–80.

[364] Request for a preliminary ruling, April 29, 2022, NºC-288/22.

[365] CJEU, Case C-288/22, December 21, 2023.

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agement of investment funds" rules, provided the services concerned relate to management services of a qualifying investment fund.

6. Credits and Refunds

If a VAT credit in favor of the taxable person results from an official statement by the Luxembourg VAT authority, a refund for the amount may be applied for. Otherwise, excess VAT payments are carried forward to the next taxable period and can then be deducted.

The refund procedure has been modified effective January 1, 2016. Interest is now granted to the taxpayer in case the Luxembourg VAT authority take an excessive time to proceed with the refund of outstanding VAT credits.

7. VAT Rates

VAT is generally charged at the following rates (2024):[366]

(i) Standard rate: 17% (all VAT taxable transactions not included in any other category);

(ii) Intermediate rate: 14% (some services of depositories, publication services, etc.);

(iii) Reduced rate: 8% (electricity, gas, etc.); and

(iv) Super-reduced rate: 3% (essential goods and services, such as food, transport, books,[367] residential construction (in certain circumstances),[368] and solar panels).[369]

8. Exemptions

A number of supplies of goods and services are exempt from VAT.[370] Examples of the main exemptions are:

(i) Exemptions with credit for input VAT (zero-rated transactions) include in particular:[371]

- Intra-EU supplies of goods;
- Exports of goods outside the EU;
- Financial and banking services, as well as insurance and reinsurance services supplied to non-EU clients;
- Work and repairs performed for the account of a foreign client on goods to be exported outside the European Union;
- The sale and leasing of ships and aircraft engaged in international trade or professional fishing;
- Repairs, conversions and maintenance performed on ships and aircraft engaged in international trade or professional fishing;
- The international transportation of persons or goods.

(ii) Exemptions without credit for input VAT:[372]

- Medical care or services provided by hospitals, doctors, dentists and laboratories;
- Transactions involving human blood, milk or organs;
- Educational services;
- Insurance and reinsurance transactions (except when rendered to clients outside the European Union);
- Management services, including specific and essential investment advice and investment research, to investment funds listed at Article 44, 1., d), of the Luxembourg VAT Law (i.e., SICAR, SIF and UCI, if regulated by the CSSF or a similar EU public body, as well as pension funds if regulated by the CSSF or the Commissariat aux Assurances, or by a similar EU public body, as well as securitization vehicles subject to the 2004 Securitization law performing activities in scope of Article 1, 2., of EU regulation 24/2009, and AIF regardless of any regulation);
- Financial and banking services (except when rendered to clients outside the European Union);
- The supply and leasing of real property (except when the taxpayer has opted to subject the lease to VAT);
- The supply of gold and silver; and
- Transactions involving company shares.

9. Customs and VAT-Free Zone

A customs and VAT-free zone has been in operation in Luxembourg since September 2014. The highly-secured Luxembourg free zone, which is located near the Luxembourg airport, enables the storage of goods originating from inside or outside of the EU, with no time limit, as well as the trading of these goods, without these goods and related transactions being subject to customs duties or VAT, as long as they physically remain in the VAT-free zone. Hence, the use of this VAT-free zone is particularly attractive for high-value goods (for example, art works), considering the great level of safety offered by the free zone and that the trading of these goods is exempt from customs duties and VAT, regardless of the parties involved or the number of transactions undertaken. Services supplied in connection with this VAT-free zone or within this free zone are also VAT-exempt.

[366] VAT Law, Art. 39. Before January 1, 2015, the standard, intermediate and reduced rates were 15%, 12% and 6%, respectively. Under a temporary measure, the rates for the year 2023 only were 16%, 13% and 7%, respectively.

[367] Circular no. 756 *bis*, taking note of the decision C-502/13 of the CJEU states that VAT is chargeable at the standard rate on e-books with effect from May 1, 2015.

[368] The Grand Ducal Regulation dated December 21, 2012, sets the maximum amount of VAT charged at the reduced rate of 3% applicable to the construction and refurbishment of private dwellings at 50,000 euros. Further to a Grand Ducal Regulation dated December 19, 2014, this super-reduced rate is limited to housing premises intended to be the owner's domicile.

[369] Circular n°816, December 28, 2022.

[370] VAT Law, Arts. 43 and 44.

[371] VAT Law, Art. 43.

[372] VAT Law, Art. 44.

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10. VAT Groups

On July 31, 2018, Luxembourg implemented a VAT consolidation regime — the VAT group.

A VAT group is the virtual grouping of different persons — legal or natural, with or without legal personality — sharing financial, economic, and organizational links as a single VAT taxable person. Services and goods supplied between the members of the group are deemed to fall outside the scope of VAT because they are considered to have been made within a single taxable person. Transactions with third parties remain subject to the general VAT rules.

Members of the VAT group are held jointly liable for the VAT debt, as well as for the payment of interest, fines, and costs relating to the period during which they were part of the VAT group.

Comment: Even though the VAT group regime provides for administrative simplification and potentially reduced VAT leakage, its implementation requires specific attention, notably regarding the conditions and potential drawbacks.

11. Deductible Input VAT for Partially Taxable Persons

On June 11, 2018, the Luxembourg VAT Authorities released a VAT circular[373] regarding the computation of deductible input VAT for partially taxable persons. The new rules apply, in particular, to active holding companies.

The new rules require the use of the direct allocation method to allocate costs between the different activities (i.e., outside the scope of VAT, inside the scope and taxable, or inside the scope and exempt), to be then completed with a pro rata allocation (either general or tailor made).

12. VAT Base of Certain Transactions

Under a 2019 Circular[374] issued by the Luxembourg VAT authorities, the taxable base for certain transactions between related parties must be determined based on their normal value, i.e., must be at arm's length.

The Circular treats as related parties all natural or moral persons having any family, organizational, ownership, financial affiliation, or legal links.

The rule means that the VAT authorities may adjust or ask to adjust the price of certain transactions when the underestimation or overestimation of the remuneration between related parties has an impact on the amount of deductible VAT.

13. VAT and Digital Assets

The CJEU has found that the "exchange of traditional currencies for units of 'bitcoin' virtual currency and vice versa" are transactions exempt from VAT within the meaning of the VAT Directive.[375] This exemption should also apply to an exchange from one virtual (crypto) currency to another. However, it cannot be assumed that it would also apply with respect to non-fungible tokens (NFTs), since they do not function as a means of payment.

[373] Circular No. 765-1.

[374] Circular No. 790 issued on 18 January 2019.

[375] VAT Directive, Art. 135(1)(e). Case C-264/14.

14. Modernization of VAT Mechanisms

On December 8, 2022, the European Commission published a legislative proposal (ViDA) regarding VAT in the digital age.[376] This package aims to improve VAT efficiency and minimize VAT fraud. It revolves around three subjects: digital reporting obligations; the VAT treatment of the platform economy; and the single VAT registration. ViDA was finally adopted by the EU Council on March 11, 2025. As the next step, Member States will have to implement this legislation.

Regarding the digital reporting requirements, as from January 1, 2024, Member States may require businesses to issue e-invoices. As from January 1, 2028, intra-EU business-to-business transactions must be reported to the relevant tax authorities electronically within two working days from the invoice date.

As from January 1, 2025, a new VAT liability will be introduced for platforms facilitating services relating to short-term accommodation rental and passenger transport. It will be applicable in the case where the supplier is not liable to VAT, for example, due to the small businesses scheme.

Also, as from January 1, 2025, a mandatory VAT reverse charge mechanism will be introduced for all B2B (business-to-business) supplies of goods and services where the supplier is not established in the EU Member State in which VAT is due and its customer maintains a VAT registration in that Member State.

D. Global Minimum Tax

1. In General

The Pillar Two framework imposes a minimum effective tax rate ("ETR") of 15% on multinational enterprises or large domestic groups with annual consolidated revenues of at least 750 million euros in any two or more of the four fiscal years ("MNE Group").[377] This threshold is assessed based on the MNE Group's ultimate parent entity's ("UPE") consolidated financial statements.

Pillar Two has been implemented in several large jurisdictions, including the European Union. The EU implementation ("Pillar Two Directive")[378] is based on the OECD's Inclusive Framework agreement on the Global Anti-Base Erosion rules ("GloBE Rules"). These rules, issued in December 2021, establish a coordinated global tax framework to ensure that large MNE groups pay a minimum level of tax in every jurisdiction where they operate.

The minimum ETR of 15% for a jurisdiction is achieved through the imposition of top-up taxes levied under two new rules applicable to parent entities of MNE Groups in scope of Pillar Two. These are the income inclusion rule ("IIR") and the undertaxed payments/profits rule ("UTPR"). Countries may also decide to implement domestic minimum top-up taxes in

[376] VIDA Initiative.

[377] For the purposes of this discussion, all references to MNE Groups are references to MNE Groups in-scope of Pillar Two.

[378] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

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reaction to Pillar Two through a qualified domestic minimum top-up tax ("QDMTT").

The Pillar Two framework also includes a subject to tax rule ("STTR"), which will permit source jurisdictions to impose limited withholding taxes on low-taxed related party payments, creditable against the GloBE Rules tax liability. The STTR is to be implemented through bilateral tax treaties and is not included in GloBE Rules (nor in the Pillar Two Directive or the Pillar Two Law (as defined below)).

2. Current Status of Legislation and Regulations

In December 2022, the EU adopted the Pillar Two Directive, aligning broadly with the GloBE Rules, albeit with some deviations. EU Member States, including Luxembourg, were required to implement the directive in 2023. Luxembourg did so through the law of December 22, 2023 (the "Pillar Two Law"), which transposed the Pillar Two Directive into national law. Under the Pillar Two Law, the IIR and the Luxembourg QDMTT apply to fiscal years starting on or after December 31, 2023, and the UTPR applies to fiscal years beginning on or after December 31, 2024.

To align more closely with OECD administrative guidance and to enhance legal certainty, the Luxembourg government submitted a draft amendment on June 12, 2024. The resulting "Amending Law" was approved on December 19, 2024, and retroactively applies from the initial effective date of the Pillar Two Law.

The Amending Law incorporates key elements from four sets of OECD administrative guidance issued in 2023 and June 2024. These updates clarify multiple aspects of the GloBE Rules, including the scope of application (e.g., excluded entities and turnover thresholds), practical issues such as mismatches in accounting and tax periods, income/loss calculations, and the treatment of top-up taxes. The amendments also refine transitional measures like country-by-country reporting (CbCR) safe harbours and deferred tax handling, and introduce detailed rules on tax allocation across jurisdictions, including for flow-through and securitization entities. As further OECD administrative guidance is issued, additional updates to the Pillar Two Law may be necessary to maintain consistency with evolving global standards. To the extent that further OECD administrative guidance merely has a guiding impact, new legislation (e.g., in the form of a new amending law) may not be necessary, while changes to the rules or additions to them would in general require an amendment of the Pillar Two Law.

To support the implementation of Pillar Two in Luxembourg, a Grand-Ducal regulation has been adopted to clarify the application of certain technical provisions,[379] including the treatment of functional currency, tax credits, and qualified holdings. According to the regulation, all calculations under the Pillar Two Law must be carried out in the entity's functional currency. Where taxes are assessed in a currency other than the euro, the exchange rate on the final day of the fiscal year must be used to convert amounts. In addition, when assessing whether the revenue thresholds under the Pillar Two Law are met, the average exchange rate for the month of December must be applied. These provisions aim to ensure consistency and accuracy in reporting, though they remain subject to change prior to final adoption.

While this section attempts to give insight into the mechanisms of Pillar Two, and in particular the Luxembourg implementation, it should be noted that the rules are highly complex, and that the below includes simplifications and does not try to cover every potential scenario.

3. Application of the IIR and UTPR

a. Income Inclusion Rule (IIR)

Under Pillar Two, Luxembourg parent entities are subject to the IIR,[380] which imposes a top-up tax proportionate to their ownership in low-taxed constituent entities. The IIR is the primary mechanism for enforcing the global minimum ETR that Pillar Two targets.

In effect, however, a QDMTT in a (low-tax) jurisdiction takes precedence over the IIR in the parent entity's jurisdiction. If a low-tax jurisdiction has implemented a QDMTT, the top-up tax due to meet the minimum ETR is collected locally. In such case, in the IIR jurisdiction in relation to the QDMTT jurisdiction that QDMTT safe harbour would apply, and no additional top-up is assessed under the IIR (or the UTPR) in the parent entity's jurisdiction in relation to that QDMTT jurisdiction.

b. Undertaxed Payments/Profits Rule (UTPR)

The UTPR serves as a fallback to the IIR. It should be noted that the GloBE Rules implement the UTPR as a denial of deduction (or equivalent adjustment), while the Pillar Two Directive implements the UTPR as either a denial of deduction or a top-up tax. The Luxembourg implementation of Pillar Two implements the UTPR as a top-up tax.

If top-up tax is not fully captured under the IIR (and relevant QDMTTs), such as when no IIR exists in a parent jurisdiction, the responsibility to levy tax to reach the minimum ETR shifts to the jurisdictions where the MNE Group operates. In contrast to the IIR, which assigns the tax liability to the parent entity, the UTPR shifts it to all jurisdictions that have implemented the UTPR, where constituent entities of the MNE Group are located.

If the UPE is not subject to an IIR (or equivalent), and the MNE Group has an effective tax rate below 15% in any jurisdiction, Luxembourg constituent entities of the MNE Group may be subject to UTPR top-up tax.

This UTPR top-up tax is allocated within the MNE Group using a formula based on local substance (only between constituent entities in jurisdictions that have implemented a UTPR):

- 50% based on the share of employees in the jurisdiction,
- 50% based on the share of tangible assets located in the jurisdiction.

[379] *Règlement grand-ducal du 20 décembre 2024 relatif à la détermination des règles concernant la monnaie fonctionnelle à utiliser aux fins d'application de la loi du 22 décembre 2023 relative à l'imposition minimale effective pour les groupes d'entreprises multinationales et les groupes nationaux de grande envergure.*

[380] See below the discusstion on entities covered by Pillar Two.

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The Pillar Two Law includes the optional UTPR safe harbor outlined in the OECD's July 2023 administrative guidance. This measure applies to tax years beginning before January 1, 2026 and ending before December 31, 2026 and effectively sets the UTPR top-up tax to zero in relation to MNE Groups where the UPE is located in a jurisdiction where the nominal corporate tax rate is at least 20%. According to parliamentary comments, Luxembourg qualifies for this safe harbor.[381]

c. Covered Taxes

Luxembourg's corporate income tax (including the unemployment fund surcharge), municipal business tax, and net wealth tax all qualify as "covered taxes" under Pillar Two. Additionally, if a Luxembourg fund vehicle forms part of an MNE Group, any subscription tax it pays should, in principle, also be treated as a covered tax. Luxembourg dividend withholding tax is in principle a covered tax, and is in general allocated to Luxembourg (i.e., counts as a covered tax for Luxembourg, increasing the Luxembourg ETR).

d. Covered Entities

The Pillar Two Law applies to "constituent entities" located in Luxembourg that belong to an MNE Group.

The Pillar Two Law includes detailed rules to define which entities are within scope:

- A "constituent entity" is any entity or permanent establishment forming part of the group;
- A "group" consists of entities included in the consolidated financial statements of the UPE, including those excluded for size, materiality, or being held for sale.

Certain investment fund vehicles (e.g., RAIFs, SIFs, and SICARs) benefit from consolidation exemptions under Luxembourg law similar to the IFRS 10 investment entity exception. These entities:

- Are not subject to the "deemed consolidation" test;
- Are not considered parent entities under Pillar Two; and
- Are generally treated as excluded entities for the purposes of Pillar Two, although their turnover still counts toward the 750 million euros threshold.

The "deemed consolidation" test determines if an MNE Group would exist if a qualifying financial accounting standard had been mandatorily applied. However, if an entity is not required to consolidate under applicable standards, this test does not create a consolidation obligation.

Each Luxembourg constituent entity within an MNE Group must:

- Register with the Luxembourg tax authorities within 15 months (18 months for the initial year when the MNE Group is in scope) after the end of the fiscal year;
- File a Pillar Two Information (and top-up tax) return (this can be done by one designated entity for the MNE Group), unless another MNE Group entity files the return in a jurisdiction with which Luxembourg has an agreement on the sharing of Pillar Two information.

Luxembourg aligns with the June 2024 OECD administrative guidance to classify flow-through entities based on how they are treated in the jurisdiction of their direct owner.

A Flow-Through Entity can be:

- A Tax Transparent Entity to the extent its owner(s) jurisdiction(s) treat it as transparent for tax purposes; or
- A Reverse Hybrid Entity to the extent its owner(s) jurisdiction(s) treat it as opaque for tax purposes.

Special rules determine income allocation when owners are not part of the group or hold interests through transparent structures, aiming at ensuring top-up tax is not applied to income not allocated to the MNE Group.

In case of a Flow-Through Entity, the GloBE Income and Covered Taxes of the Flow-Through Entity are reduced to the extent that such items are allocable to owners that are not Constituent Entities of the MNE Group (and to the extent that the Flow-Through Entity does not give rise to a permanent establishment), the remaining GloBE Income and Covered Taxes are in principle allocated to the owner(s). To the extent that an entity is a Reverse Hybrid (and to the extent that the Flow-Through Entity does not give rise to a permanent establishment), the remaining GloBE Income and Covered Taxes are allocated to the Flow-Through Entity (it being a Constituent Entity in its jurisdiction).

4. Computation of the ETR

A fundamental component of the Pillar Two rules is the ETR calculation, which must be performed for each jurisdiction in which a group operates. This rate is then assessed against the 15% global minimum tax threshold.

$$\text{ETR} = \frac{\text{Adjusted Covered Tax}}{\text{GloBE Income}}$$

However, this comparison is not possible without first determining two critical inputs:

- The GloBE income, and
- The corresponding GloBE taxes (referred to as Adjusted Covered Taxes).

The Pillar Two calculations (including GloBE income, adjusted covered taxes, effective tax rate, and top-up tax) are typically based on the consolidation accounting standard of the UPE.

However, for purposes of the Luxembourg QDMTT, Luxembourg GAAP can be used — provided all local constituent entities apply it and align their fiscal year with that of the UPE. Luxembourg's combined tax rate (e.g., 23.87% in Luxembourg City as of 2025) generally results in an ETR above the minimum ETR of 15%.

Nonetheless, certain fact patterns may materialize whereby the Pillar Two ETR differs from the "Luxembourg domestic" ETR, for instance:

[381] It should be noted that in case an MNE Group has a Luxembourg UPE, in first instance top-up tax would be levied under the IIR.

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• Participation exemptions apply symmetrically to both gains and losses for Pillar Two (unlike Luxembourg tax rules, which only exempt gains);

• Losses from exempt participations could reduce the effective tax rate below 15%, triggering a top-up tax charge under the Luxembourg QDMTT.

To address this, Luxembourg has opted to implement the 'equity investment inclusion election,' as included in the OECD administrative guidance, to largely align the Pillar Two treatment of gains/losses linked to exempt participations with local (Luxembourg) tax rules (e.g., an impairment expense, which would normally be an excluded item in the determination of the GloBE income would become included if the election is made).

a. GloBE Income Computation

At its core, calculating the GloBE income involves a two-step approach:

1. Starting with the net income or loss reported in the applicable financial accounts of each constituent entity of the MNE Group; and

2. Applying a series of specific adjustments to align the financial result with a standardized measure of taxable income under Pillar Two.

While the formula appears straightforward, the complexity lies in the details. The goal is to produce a consistent and neutral income measure that aligns with common international tax principles, even though the starting point is the accounting profit or loss under the applicable financial reporting standard. To prevent inconsistencies across financial reporting standards, the Amending Law standardizes the definition of "revenue" and clarifies that it must be determined based on the UPE's consolidated profit and loss account.

The GloBE Rules require adjustments to the financial accounting net income or loss in order to neutralize differences that might otherwise distort the global minimum tax analysis. These adjustments are inspired by, but are not identical to, conventional tax rules in various domestic systems.

Examples of adjustments include the exclusion of dividends from qualifying shareholdings, participation exemption treatment for capital gains and losses, and arm's length adjustments for intra-group transactions.

To enhance administrative efficiency and ensure greater consistency, Pillar Two offers a set of elections that MNE Groups can apply in calculating their jurisdictional GloBE income. These elections are typically designed to simplify compliance, stabilize the ETR over time, or align the Pillar Two position with domestic tax treatment where appropriate. By leveraging these elections, MNE Groups may be able to reduce complexity and avoid volatility in their top-up tax outcomes.

b. Adjustment of Covered Taxes

The starting point is the concept of "covered taxes," which are taxes recognized under Pillar Two. These are further refined through specific adjustments to produce the "adjusted covered taxes," which are used in the ETR computation.

As with GloBE income, the calculation of adjusted covered taxes follows an entity-level approach, meaning each entity's adjusted covered taxes are assessed individually. However, the final ETR is determined on a jurisdictional level.

The process begins with the current tax expense as recorded in the constituent entity's applicable financial accounts with three categories of adjustments:

• Net additions (e.g., covered taxes accrued as an expense in the profit before taxation in the applicable financial accounts) and reductions (e.g., taxes related to income excluded from GloBE income) related to covered taxes;

• Total deferred tax adjustments; and

• Tax recorded in equity or other comprehensive income that relates to eligible income/loss and is subject to tax under Luxembourg law.

If a jurisdiction has no qualifying income and its adjusted covered taxes are negative and below the minimum threshold (e.g., as the result of a creation of a deferred tax asset for domestic tax purposes without a corresponding GloBe Loss), the "shortfall" in ETR becomes additional top-up tax unless the MNE Group opts to apply an administrative procedure which results in the shortfall being excluded for the year and instead carried forward to offset future taxes (in effect resulting in a postponement of top-up tax, or an effective nullification of top-up tax in case the ETR in the relevant future year is sufficiently above 15% that the decrease of the ETR as a result of the release of the carry-forward does not bring the ETR below 15%).

If the jurisdiction's top-up rate exceeds the minimum rate, the excess negative taxes are automatically treated as negative excess tax and carried forward (i.e., top-up tax in any given year is capped at 15%, even if the ETR for a jurisdiction would be negative).

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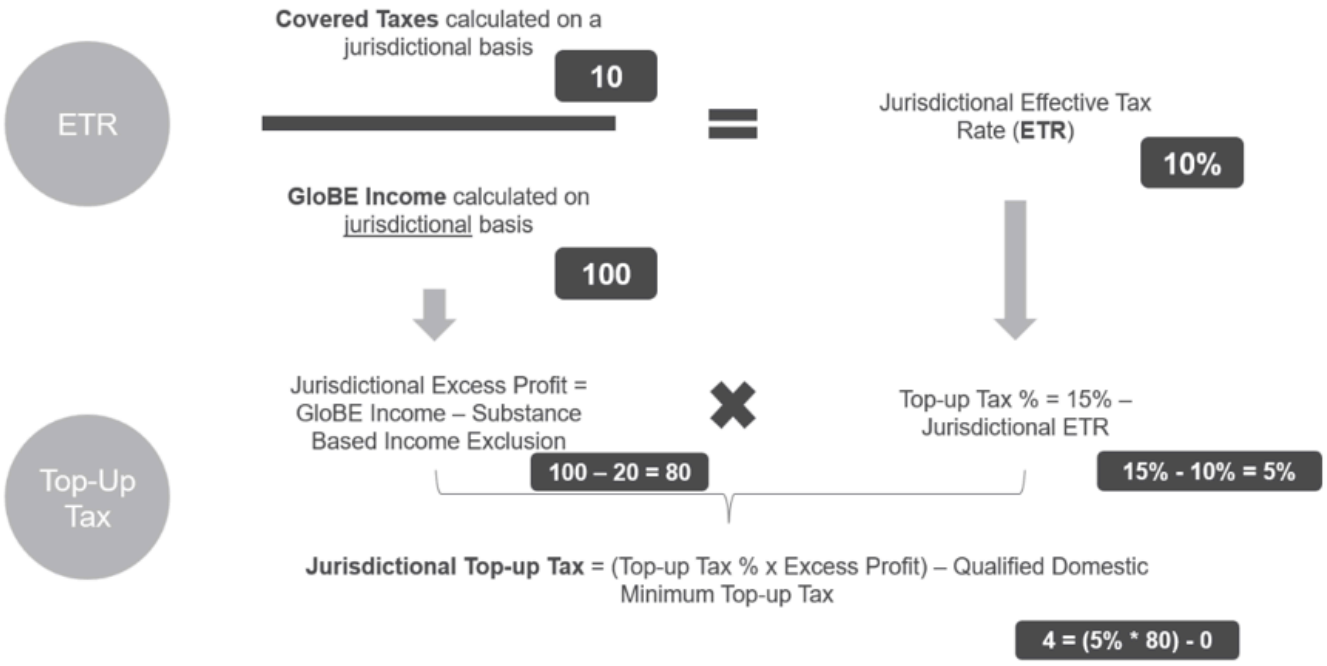

5. Qualified Refundable Tax Credits

The Pillar Two Law allows for the issuance of a Grand-Ducal regulation to specify the conditions under which tax credits that are negotiable and transferable are to be considered as a GloBE Income item. Such Grand-Ducal regulation was issued on December 20, 2024, and is in line with OECD Administrative Guidance. Luxembourg tax credits are not currently qualified refundable tax credits nor marketable transferable tax credits.

To the extent that carried forward tax credits generated before an MNE Group was subject to Pillar Two can and are recognized as a deferred tax asset (for Pillar Two purposes), an MNE group would effectively benefit from a "grandfathering" of such carried forward tax credits, despite the investment tax credit not being a qualified refundable tax credit.

6. Transitional Safe Harbour

The Luxembourg implementation of the Pillar Two framework incorporates the transitional country-by-country reporting (CbCR) safe harbour rules outlined in the OECD's December 2022 administrative guidance. These transitional rules are designed to ease the burden of compliance for MNE Groups by offering a temporary exemption from the detailed GloBE and QDMTT calculations. The relief applies to fiscal years beginning before December 31, 2026 and not ending after June 30, 2028. To qualify, MNE Groups must prepare and file a CbCR based on qualified financial statements and in accordance with both domestic and OECD requirements. These groups typically have consolidated annual revenues exceeding 750 million euros in the prior fiscal year (the same threshold for being considered in-scope under Pillar Two).

The CbCR safe harbours operate on a jurisdiction-by-jurisdiction basis, meaning each country where the MNE Group operates is assessed on a standalone basis. Each stateless entity is treated as a separate jurisdiction for this purpose. A jurisdiction qualifies for the CbCR safe harbour if it meets at least one of three tests: (i) the De Minimis Test: where revenue is below 10 million euro and profit or loss is below 1 million euros; (ii) the Effective Tax Rate (ETR) Test, which requires the simplified ETR to meet or exceed a transitional minimum rate (15% for 2024, 16% for 2025, and 17% for 2026); or (iii) the Routine Profits Test, where profit or loss does not exceed the amount excluded under the substance-based income exclusion rules (in principle, a loss-making jurisdiction qualifies for the Routine Profits Test by definition). When any of these tests are met, the jurisdiction is considered to have passed the CbCR safe harbour requirements, exempting it from top-up tax obligations for the year in question. The CbCR safe harbours operate on a "once out, always out" principle, whereby if a jurisdiction does not meet any of the three CbCR Safe Harbour tests in a given year, it cannot qualify for the CbCR safe harbour in a future year, irrespective of whether the jurisdiction would meet the requirements under a specific test.

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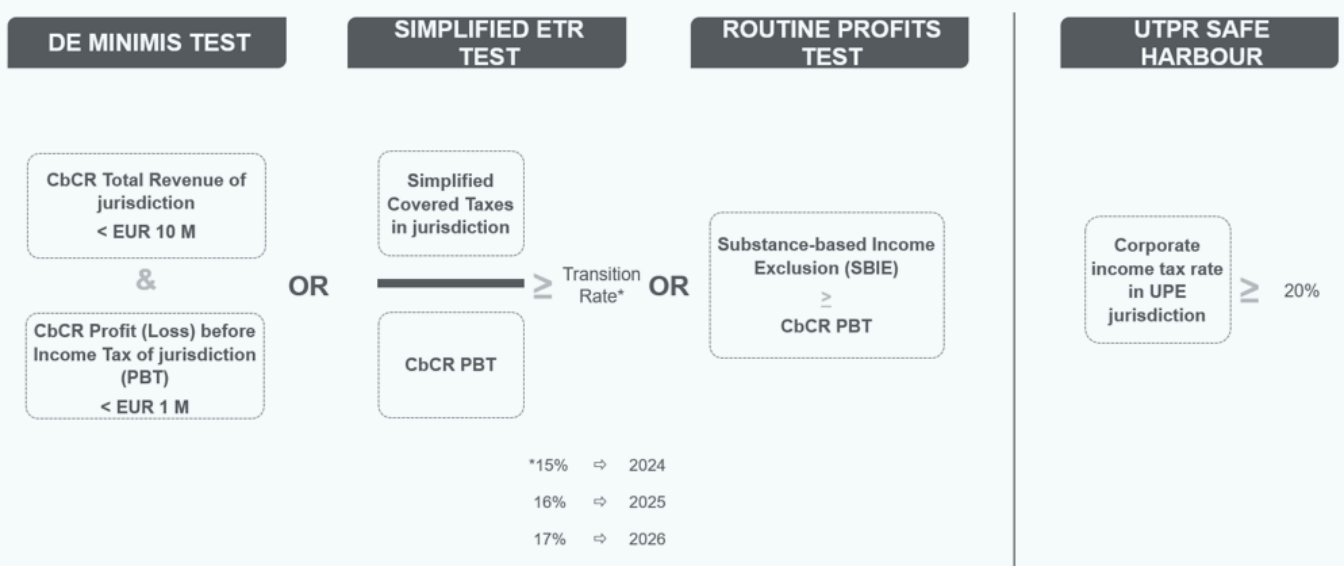

7. Compliance Framework

Luxembourg constituent entities (as well as any joint ventures and joint venture group subsidiaries) must register with the Luxembourg tax authorities. Registration, deregistration and notification of any changes must be made within 15 months of the end of the relevant fiscal year (18 months for the initial year) by way of electronic filing. The registration should include the name and national identification number of the constituent entity, the name of the MNE Group, the date of the MNE Group's fiscal year-end, the UPE's identity and jurisdiction, as well as information about any designated local (i.e., Luxembourg) entities for top-up tax return filing purposes and or top-up tax payment purposes. Failure to comply with the registration, deregistration or notification deadlines can lead to a fixed fine of 5,000 euros.

The Luxembourg QDMTT and (if applicable) IIR or UTPR tax returns must be filed within 15 months following the end of the relevant financial year, with a longer period of 18 months granted for the first year of applicability for an MNE Group. An MNE Group can designate a Luxembourg constituent entity to be the designated local entity (which will perform the filing obligations) or a foreign designated filing entity, provided that such entity is in a jurisdiction with which Luxembourg has an eligible exchange of Pillar Two information agreement.

The top-up tax return includes information on the group structure as well as details of each constituent entity. The top-up tax return further includes all the information required to compute the jurisdictional ETR and to determine any top-up tax due. A fixed fine of 5,000 euros applies for missed deadlines, while a fine of up to 250,000 euros applies for lacking or inaccurate filings.

Payment of any top-up tax due under the Luxembourg QDMTT, IIR or UTPR is due within one month of the filing of the tax return. For top-up tax due under the IIR, the relevant parent entity is (in first instance) the payor. For top-up tax due under the Luxembourg QDMTT or the UTPR, the MNE Group may designate a payor entity. Luxembourg constituent entities are in principle jointly and severally liable for top-up tax due.

In case of an absence of filing the top-up tax return, the Luxembourg tax authorities may determine the top-up tax amount *ex offficio*. Late payment interest applies similarly as for Luxembourg corporate income tax (0.6% per month). The Luxembourg tax authorities possess the same recovery enforcement rights as in relation to corporate income tax.

8. Qualified Domestic Minimum Top-up Tax (QDMTT)

a. In General

The Luxembourg QDMTT applies to MNE Groups for financial years starting on or after December 31, 2023 (provided that they do not qualify for a CbCR Safe Harbour in the relevant year).

The Luxembourg QDMTT ensures that Luxembourg entities forming part of an MNE Group with a Luxembourg ETR below 15% are subject to top-up tax in Luxembourg, taking precedence over the application of an IIR in a parent entity jurisdiction. Should the Luxembourg ETR be below 15%, the Luxembourg QDMTT equals the difference between 15% and the Luxembourg ETR.

b. Treatment of Securitisation Vehicles (SVs)

While OECD guidance allows exclusion of SVs from QDMTTs, Luxembourg does not exclude them but limits their impact. SVs cannot be top-tier QDMTT entities, meaning that if other Luxembourg MNE Group constituent entities exist, any top-up tax due under the Luxembourg QDMTT is shifted to such other constituent entities. If no other Luxembourg MNE Group constituent entities exist, the SV pays any Luxembourg top-up tax itself.

SVs are exempt from joint and several liability of any top-up tax liability due under the Luxembourg QDMTT, allowing Luxembourg to maintain QDMTT Safe Harbour eligibility and avoid foreign IIR or UTPR application in relation to the SV.

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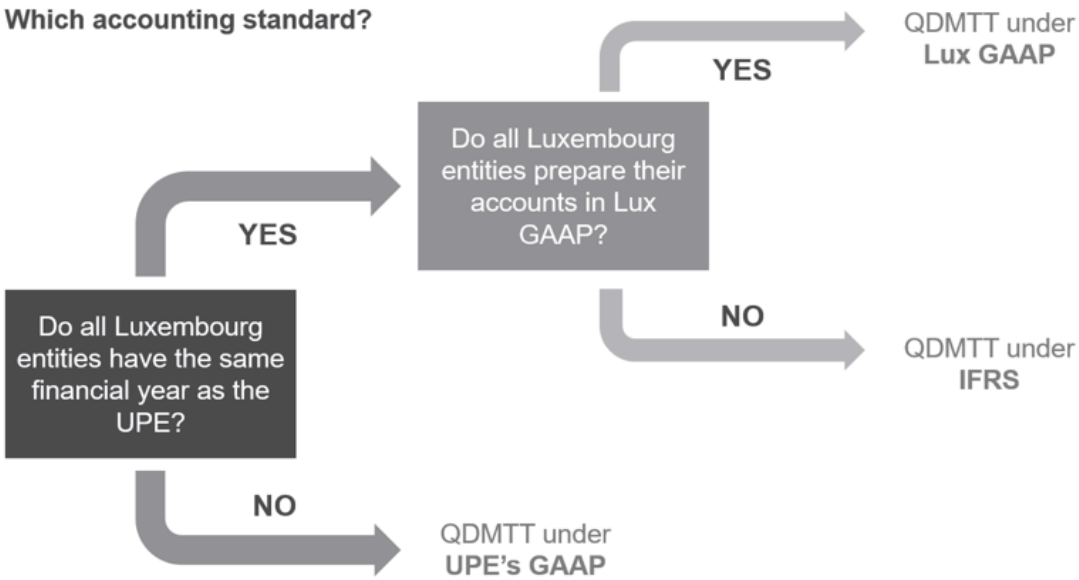
c. QDMTT Computation Rules

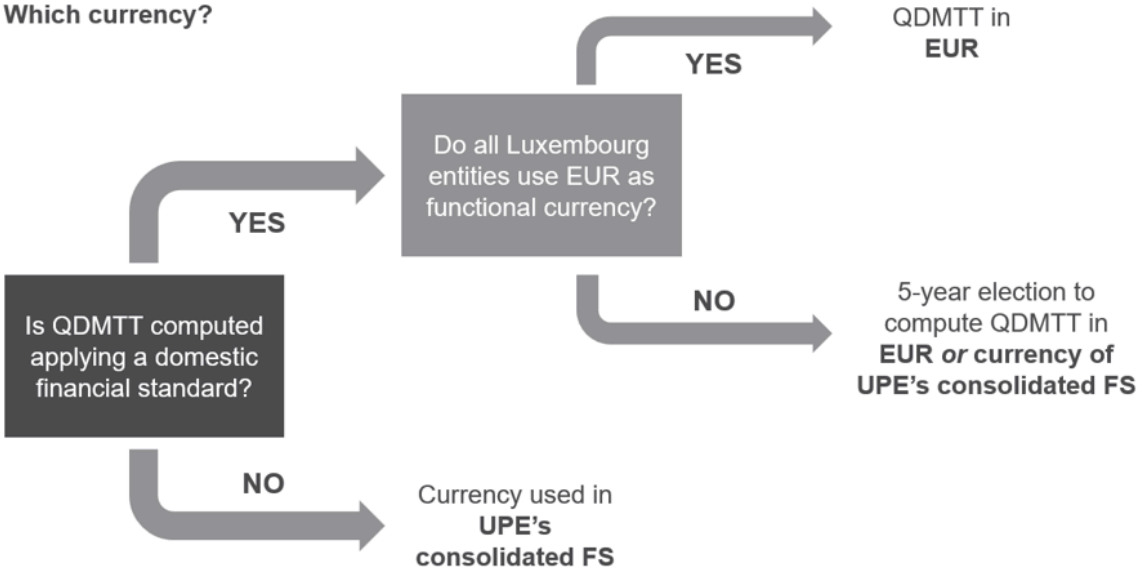
(1) Accounting Standards

Provided that all Luxembourg constituent entities of the MNE Group prepare their accounts in Luxembourg GAAP and have the same financial year as the UPE, Luxembourg GAAP is to be used for the Luxembourg QDMTT computations. If all Luxembourg constituent entities have the same financial year as the UPE, but not all of them prepare their accounts in Luxembourg GAAP, IFRS is used for the Luxembourg QDMTT computations. If there is one or more constituent entities with a diverging financial year from the UPE, the UPE's accounting standard is used for the computation of Luxembourg QDMTT.



(2) Functional Currency

The applied functional currency is either the euro or the currency used in the consolidated financial statements of the UPE. The below diagram depicts the decision-tree to determine the applied currency.



9. Differences in Interpretation and Application

The Luxembourg implementation of Pillar Two follows the Pillar Two Directive (which in turn is largely aligned with the OECD Model Rules). Where necessary, Luxembourg has issued clarification on the application of the rules, e.g., in relation to utilization of deferred tax assets and deferred tax liabilities, which are not per se included in Luxembourg GAAP accounts, and the accounting treatment required for correct recognition of such assets and liabilities for Pillar Two purposes.

The Luxembourg implementation of the Equity Investment Inclusion Election includes a "grandfathering" clause, to ensure that the neutrality that the election aims at is achieved, in relation to deferred tax assets related to equity losses or impairments in the interim period between November 30, 2021 and the beginning of the MNE Group's transition year.

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10. Future Developments

It is expected that more Luxembourg specific administrative guidance will be released (e.g., as an expansion of the published Pillar Two FAQ from the Luxembourg tax authorities and/or in the form of circulars). Further guidance by the Luxembourg Accounting Board is also to be expected, as Pillar Two develops.

To the extent that further administrative guidance is issued by the OECD, where necessary such guidance is likely to be implemented by way of new legislation.

E. Dividend Withholding Tax

Dividends and other profit distributions, as well as payments of certain forms of profit participating interest made by resident companies, are subject to withholding tax at the rate of 15%.[382]

The following distributions are exempt from withholding tax:[383]

(i) Distributions made by a *société de gestion de patrimoine familial* (SPF);

(ii) Distributions qualifying under the participation exemption;

(iii) Distributions made by a company governed by the Securitization Law;

(iv) Distributions made by a mutual investment fund (*fonds commun de placement* or FCP) or company (*société d'investissement à capital variable* or SICAV), or a specialized investment fund (SIF);

(v) Distributions made by a company governed by the Venture Capital Act (*société d'investissement en capital à risque* or SICAR); and

(vi) Distributions made by a company governed by the Reserved Alternative Investment Fund Act (*fonds d'investissement alternatif réservé*).[384]

F. Municipal Business Tax

Municipal business tax (MBT)[385] is levied on business profits by the tax administration on behalf of the communes. The basic rate is 3% of adjusted income. This amount is then multiplied by a rate that varies depending on the commune in which the company concerned operates. In the commune of Luxembourg, the rate is 225%, resulting in a total charge of 6.75%.

For companies subject to CIT, the tax base for MBT purposes is generally the same as that for CIT purposes. Companies not subject to CIT, such as partnerships, are still subject to MBT if they conduct or are deemed to conduct an enterprise.

Before computing the MBT, the taxable base is reduced by an allowance of 17,500 euros. For companies not subject to corporate income tax, such as partnerships, the allowance is 40,000 euros.

With effect from 2017,[386] paragraph 9 *bis* of the GewStG[387] is aligned with the loss carryforward provisions applicable to corporate income tax.[388] A Circular dated August 10, 2021[389] clarifies this paragraph. The Circular states that under subparagraph 1, the operating profits derived by a taxpayer are to be reduced by the amount of tax losses incurred in previous fiscal years in accordance with paragraphs 7 to 9 to the extent these losses could not previously be deducted. Subparagraph 1, however, restricts the deduction of losses by providing that only losses incurred in the previous 17 years may be deducted from a company's profit for a particular year, using a FIFO method.[390] By way of exception, losses incurred between January 1, 1991 and December 31, 2016 can be carried forward indefinitely.[391] Moreover, and in accordance with Article 172 *bis* of the LIR, in the case of a transformation of legal form, the loss carryforward is continued for the transformed company.[392] In addition, paragraph 9 *bis* makes the deduction of tax losses incurred conditional on the taxpayer having maintained regular accounts during the fiscal years in which the losses were incurred.

G. Net Wealth Tax

1. Tax Rates

A net wealth tax[393] of 0.5% is levied on the net asset value of a company, subject to certain adjustments. A minimum tax also applies (see below). Furthermore, as of January 1, 2016, taxable net wealth above 500 million euros is subject to a reduced tax rate of 0.05%. Immovable property located in Luxembourg is taken into account for this purpose at its standard value (*valeur unitaire*), as determined by the tax authority.[394] The standard value is approximately 5% to 10% of the fair market value. Shareholdings qualifying for the participation exemption, assets that are attributed to foreign PE operations in tax treaty partner countries, and assets that qualify as intellectual property within the meaning of Article 50 *bis* or Article 50 *ter* LIR are not included.

Luxembourg taxpayers are able, subject to conditions, to credit their corporate income tax, including solidarity surcharge and before any available tax credits, against their net wealth tax due.

The same applies in the case of fiscal unity: the overall corporate income tax can be credited against the overall net wealth tax due, with computations done on a company-by-company basis.

[382] LIR, Art. 146.

[383] LIR, Art. 147.

[384] RAIF Act of July 23, 2016 (*Loi modifiée du 23 Juillet 2016 relative aux fonds d'investissements alternatifs réservés*).

[385] GewStG and GewStVV.

[386] Law of December 23, 2016, implementing the 2017 Budget Law.

[387] Law of December 1, 1936 on municipal business tax.

[388] LIR, Art. 114.

[389] Circular ICC n°31 of August 10, 2021.

[390] § 9*bis* GewStG, subpara. 1 and 3.

[391] § 9*bis* GewStG, subpara. 5.

[392] § 9*bis* GewStG, subpara. 4.

[393] *Vermogensteuergesetz* dated November 16, 1934 (Net Wealth Tax Law, VStG).

[394] Note that not extending this valuation method to real estate located in other EU/EEA Member States is illegal under the Treaty on the Functioning of the European Union (TFEU).

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2. Minimum Net Wealth Tax

With effect from January 1, 2025, net wealth tax is levied in a minimum amount that ranges from 535 euros to 4,815 euros, depending on the volume of total assets, as follows:

Total Balance Sheet Value (EUR)	Minimum NWT (EUR)
< 350,000	535
≥ 350,000 and ≤ 2,000,000	1,605
> 2,000,000	4,815

The income from assets which would not be taxable in Luxembourg under a tax treaty (for example, real estate assets held through a PE in a country with which Luxembourg has signed a tax treaty (a "treaty partner country") are disregarded and excluded from the balance sheet for purposes of the determination of the minimum net wealth tax ("Disregarded Assets").

Securitization companies, SICARs, RAIFs opting for a tax regime similar to the SICAR tax regime, SEPCAVs and ASSEPs are liable to the minimum net wealth tax but remain exempt from net wealth tax as described under a., above.

Before January 1, 2025, the minimum net wealth tax was determined as follows:

(i) Financial companies: companies that have their statutory seat or effective place of management in Luxembourg and whose total assets (excluding Disregarded Assets) in their year-end commercial balance sheet exceed 350,000 euros and consist to the extent of more than 90% of financial assets were subject to a minimum tax of 4,815 euros; and

(ii) Other taxpayers: all other resident taxpayers, that have their statutory seat or place of effective management in Luxembourg are subject to a minimum net wealth tax that is linked to the commercial balance sheet of the relevant taxpayer as of the end of the financial year concerned. The minimum tax amounts are as follows:

Total Balance Sheet Value (excluding Disregarded Assets) in Euros	Minimum Tax in Euros
< 350,000	535
> 350,000 and < 2,000,000	1,605
> 2,000,000 and < 10,000,000	5,350
> 10,000,000 and < 15,000,000	10,700
> 15,000,000 and < 20,000,000	16,050
> 20,000,000 and < 30,000,000	21,400
> 30,000,000	32,100

The levying of the fixed amount of 4,815 euros on financial companies was held to be by the Constitutional Court to be unconstitutional to the extent the amount was higher than the minimum net wealth tax applicable to other taxpayers in the same position (i.e., in the case concerned, taxpayers that fell in the 350,000 to 2 million euros bracket). Based on the net wealth tax liability of such taxpayers under the progressive scale, financial companies in a similar position should only have been subject to 1,605 euros minimum net wealth tax. The tax authorities had reacted by issuing a circular that they apply this rate for all companies with a balance sheet in this bracket *ex officio* in all open years.

Comment: Although not the subject of the constitutional court case, there would equally be reverse discrimination where the minimum net wealth tax liability based on the balance sheet of a financial company was more than 4,815 euros.

In view of the decision of the Constitutional Court, the net wealth tax law was amended with effect of January 1, 2025 as described above. This amendment therefore has abolished the discrimination (in both directions).

3. Reduction of Net Wealth Tax

a. General Reduction

Net wealth tax of a given year can be reduced by an amount of corporate income tax due for the previous year and up to the amount of the minimum net wealth tax due for that given year. The reduction claimed is capped to the amount of corporate income tax (including solidarity surcharge) due for the previous year before deduction of any tax credits available. The conditions for benefiting from this reduction are as follows:

(i) The taxpayer is required, when allocating the profit for the year, to create a reserve in its balance sheet equal to five times the amount of the reduction claimed. In the absence of profit, the reserve may be formed out of other distributable reserves; and

(ii) Such reserve must be maintained during the five following tax years.

In the case where the corporate taxpayer is dissolved before the five-year requirement is met, the net wealth tax for the year during which the liquidation of the taxpayer is closed is increased with the previously reduced net wealth tax, except in the case of an asset transfer to another person in the context of a merger, demerger or change of legal form as well as in the case of a cross-border transfer of seat of the Luxembourg corporate taxpayer, provided that either the taxpayer following its transfer of seat abroad, or the taxpayer to which the assets have been transferred, maintains the reserve until the end of the required five-year period.

b. Minimum Tax Reduction

The minimum tax can be reduced by the corporate income tax (including solidarity surcharge) due for the previous tax year after deduction of any tax credits available. The minimum net wealth tax cannot be reduced below the amount of net wealth tax that would have arisen applying the 0.5% rate to taxable net wealth.

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H. Property Taxation

1. Transfer in the Mortgage Register

Changes in the ownership of real property are subject to a tax of 1% levied on the sale price or market value of the property concerned.[395]

2. Transfer Tax

A transfer tax is due on the sale of land and buildings. The tax is levied on the value of the land or building concerned. The rate is 6%,[396] increased by 3% in the case of real property other than residential property, situated in the commune of Luxembourg.[397] The sale of units in a partnership that owns Luxembourg real property triggers transfer tax in the same proportion as would be the case if the Luxembourg real property were owned and sold directly by the investors.

The contribution of Luxembourg real property to a civil or commercial company in exchange for shares in the latter is subject to a duty of 2.4%.[398]

3. Tax Credits with Respect to Registration and Transcription Duties

Taxpayers can benefit from a tax credit with respect to registration and transcription duties on the acquisition of real estate earmarked to serve as a principal private residence. The credit amounts to up to 30,000 euros per acquirer.[399] If the maximum credit is not used for the first purchase, a request can be made for the remainder to apply with respect to the second purchase of a principal private residence. In the case of such acquisitions occurring during the year 2024 (and documented by notarial deed), the amount is increased to 40,000 euros.[400]

Furthermore, in the case of purchases in the calendar year 2024 of real estate earmarked to serve as the private residence of a tenant for a period of at least two years, a tax credit with respect to registration and transcription duties amounting to up to 20,000 euros is available on request and subject to certain conditions.[401]

Both temporary measures were prolonged to June 30, 2025.[402]

4. Certain Investment Vehicles

As of 2021, certain investment vehicles that derive income or gains from Luxembourg situated real property are subject to a new real estate income tax, called the "real estate levy," at a flat rate of 20%. The investment vehicles within the scope of this new tax are specialized investment funds (SIFs), Part II undertaking for collective investment (UCIs) and reserved alternative investment funds (RAIFs), that are not, in essence, tax transparent limited partnerships or *fonds communs de placement* (FCPs). The real estate levy was provided for in the Budget Law 2021 and entered into force on January 1, 2021.[403]

The real estate levy applies to the following categories of income:

(i) Gross rental income (before VAT), derived from Luxembourg situated real property assets, received or realized directly, or proportionally if derived indirectly through a tax transparent entity or an FCP;

(ii) Capital gains resulting from the disposal of such real property assets, received or realized directly, or proportionally if derived indirectly through a tax transparent entity or an FCP; and

(iii) Gains resulting from the disposal of interests in tax transparent entities or units in FCPs, that hold such real property assets directly, or proportionally if derived indirectly through other tax transparent entities or FCPs.

For purposes of the real estate levy, "disposals" include not only sales, but also mergers, demergers, liquidations and other corporate restructurings, even when such transfers do not generate cash consideration (for example, intragroup restructuring).

Investment vehicles within scope of the real estate levy are required to file real estate levy returns annually, before May 31 following the financial year in question, and to pay the real estate levy declared to the Luxembourg tax authorities at the latest by June 10 following the financial year in question.

In January 2022, the Director of the Direct Taxation Authority issued a circular on the real estate levy[404] that introduced both a requirement that all tax-opaque investment funds submit a form declaring their (absence of) holdings of real estate for fiscal years 2020 and 2021, and an eventual restructuring to prevent such funds falling within the scope of the real estate levy.

I. Registration Duties

No registration duties are levied on the transfer of shares, bonds or other securities.

A registration duty[405] of 75 euros is due on the incorporation of a company and on subsequent changes to its articles of association. This registration duty is also due on the transfer of the place of effective management or statutory seat to Luxembourg.

Registration duties apply to several documents that are registered with the registration authorities. Registration is compulsory in some cases and voluntary in others. Many registration duties are relatively low, fixed amounts. For some documents, a rate proportional to the value of the contract concerned applies, for example, for loan agreements (generally noncom-

[395] Law of December 23, 1913, concerning the revision of the legislation governing the taxes whose collection is assigned to the Administration of Registration and Domains.

[396] Law of August 7, 1920 (par. 9), amended by Law of May 20, 1964 (Art. 7).

[397] Communal decision dated July 9, 2012. See publication REGLEMENT-TAXE of Luxembourg City, May 2021, Art. 1, Chapter A-5 on the Municipal surcharge on registration fees.

[398] Rate applicable as of January 1, 2021 (Budget Law 2021, Art. 10). Before that date, the rate was 1.2%.

[399] Law of July 30, 2002, chapter 2.

[400] Law of May 22, 2024, Art. 13.

[401] Law of May 22, 2024, chapter 1.

[402] Law of 4 April 2025, Arts. 5 and 6.

[403] Budget Law 2021, Art. 4.

[404] Circular PRE_IMM n°1 of January 20, 2022, of the Director of Direct Taxation regarding the real estate levy.

[405] Law of December 19, 2008, regarding modification of the registration duties on certain corporate deeds.

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pulsory registration tax at the rate of 0.24%) and, until 2017, for real estate leases that are not subject to VAT (0.6% of the value of all accumulated rents under the contract).

Note that, under the "referencing theory" (*théorie de l'usage*), contracts referred to in detail in a deed that is registered are deemed to be registered themselves, with the corresponding levy of registration duties. As of January 1, 2017, the referencing theory is restricted to documents for which registration is compulsory within a certain period of time.

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VII. Taxation of Foreign Corporations

A. What Is a Foreign Corporation?

A company is deemed to be nonresident if neither its "statutory seat" nor its "principal establishment" is located in the Grand Duchy of Luxembourg.[406] A company's "statutory seat" is the place indicated in the articles of association. A company's "principal establishment" is the place where its principal management activities are conducted.

B. Determination of Taxable Income

A nonresident company is taxable on its Luxembourg-source income.[407] To the extent a nonresident company with no permanent establishment (PE) in Luxembourg derives only income subject to withholding tax, the company's tax liability is deemed to be settled by payment of the withholding tax.

For the rates of source country taxation applying to investment income, services income and capital gains under Luxembourg domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

1. Business Income

In determining whether the Luxembourg-source income of a nonresident company is subject to tax in Luxembourg, the Luxembourg tax authorities (LTA) examine the nonresident company's activities in Luxembourg. Business income of a foreign entity is subject to taxation if it is realized or generated through a PE in Luxembourg or through the activities of a permanent representative based in Luxembourg. Business income includes income from the exploitation of natural resources located in Luxembourg, income from leasing, and income from capital assets.

The taxable income of a PE may be determined either:

(i) By means of separate accounts that include an appropriate portion of head office expenses; or

(ii) Based on a pro rata portion of the total profit of the nonresident company. This method is subject to the prior authorization of the tax authorities.

Income tax (with surcharge) is generally levied on nonresident companies at the rate of 17.12% (2025), (i.e., at the same tax rate as applies to resident companies) on income above a certain threshold. See VI.B.1., above, and Worksheet 5.

Municipal business tax is levied on business profits by the LTA on behalf of the communes. The basic rate is 3% of adjusted income. This amount is then multiplied by a rate that varies depending on the commune in which the company concerned is located. In the commune of Luxembourg, the rate is 225%, resulting in a total charge of 6.75%.

The same investment tax credits are available to a PE of a foreign company as to a domestic taxpayer (see VI.B.7.b., above).

All expenses relating to business income derived from Luxembourg sources are deductible, even if such expenses do not originate in Luxembourg. Royalties, interest, and similar payments made to the head office of a company are not allowed as deductions. In certain circumstances, the Luxembourg PE of a foreign bank may be able to deduct such interest. If a Luxembourg PE is unable to present adequate records, the LTA will estimate its tax liability based on any information available to them with respect to the foreign head office's annual financial accounts.

2. Dividends

Corporate dividends received by nonresidents from Luxembourg companies are subject to withholding tax only. Constructive dividends are taxed in the same way.

3. Interest

Interest from Luxembourg sources paid to nonresident companies is not subject to withholding tax or taxation by assessment, unless it constitutes profit participating interest, or the interest is considered not at arm's length. The imposition of withholding tax on such interest is, however, prohibited under the terms of certain of Luxembourg's tax treaties.

4. Capital Gains

Capital gains from the sale of land and buildings located in Luxembourg realized by a nonresident company are subject to tax, as are capital gains from the sale of immovable property rights registered in Luxembourg. Furthermore, capital gains from the disposal of shares in a Luxembourg company that represent more than 10% in the capital of that company, are taxable if they are realized within six months after acquisition. Capital gains on shares representing more than 10% of the capital of a SICAR, a Luxembourg corporate UCI or a SIF are exempt.[408] There is no loss carryforward for nonresidents with respect to capital losses on assets not held through a PE.

[406] LIR, Art. 160.
[407] LIR, Art. 156.
[408] LIR, Art. 156(8)(c), as amended by Law of December 17, 2010, on UCIs.

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VIII. Taxation of Partnerships

General partnerships and limited partnerships are regarded as separate taxpayers for both municipal business tax and value-added tax (VAT) purposes. For net wealth tax purposes and — generally — for corporate income tax purposes, partnerships are regarded as transparent entities. All partners are, therefore, taxed individually on their share of a partnership's profits, whether distributed or not.

A business conducted by a partnership is subject to municipal business tax to the extent it is conducted through a permanent establishment (PE) in Luxembourg. An activity does not amount to a business if it remains within the framework of passive wealth management, unless the partnership is deemed to conduct a business. A partnership having the legal form of a limited partnership is deemed to conduct a business, regardless of its activities, if its general partner is a capital company or itself a partnership that conducts a business and the general partner holds at least 5% of the partnership interests. A partnership having the legal form of a general partnership, an economic interest grouping (EIG), a European economic interest grouping (EEIG) or a civil company is deemed to conduct a business if the majority of its interests are held by one or more capital companies.

In general, activities in the context of private wealth management do not amount to a business. The characteristics for a business enterprise are that activities are carried out:

(i) Independently;

(ii) With lucrative intent;

(iii) With permanence; and

(iv) Through participation in general economic life.

The criteria for determining whether an actual business is conducted by a partnership are covered to some extent in a circular.[409] In particular, according to the Circular, a partnership in the form of an SCS or an SCSp that functions as an alternative investment fund, as defined in the Law of July 12, 2013, is not deemed to conduct a business.[410] Furthermore, following a judgment of February 8, 2018, of the Luxembourg Administrative Court of Appeal, the acquisition and alienation of securities are generally to be regarded as private wealth management. However, in particular circumstances, notably if there are indications that the taxpayer behaved as a dealer (*commerçant*) taking into consideration the volume of the operations or the fact that the securities are offered to a wide public, this would not be the case.

Since 2022, it has been possible that partnerships and other tax-transparent entities may become subject to corporate income tax in some respects as a result of the anti-reverse hybrid rules in new Article 168 *quater* of the LIR, following the implementation of ATAD 2.[411]

A reverse hybrid entity is a transparent entity for Luxembourg tax purposes but that is regarded as an opaque (separate) entity in the jurisdiction(s) of (some of) its investors. Thus, absent the anti-reverse hybrid rules, the income of the reverse hybrid might be taxable neither in its jurisdiction establishment because the income is deemed to be allocated to the investor country nor in the investor's country of residence, because the income of an opaque entity is frequently not included in the taxable income of the investor.

Article 168 *quater* LIR, which entered into force on January 1, 2022, subjects such reverse hybrid entities to corporate income tax to the extent net income would otherwise remain untaxed for purposes of Luxembourg income tax or the income tax of any other jurisdiction, if the entity is controlled by an investor or related investors residing in a jurisdiction that treats the entity as opaque. "Control" for this purpose is defined as control of 50% or more of the rights to vote, the rights to capital or the rights to the profits of the entity concerned. Investors are "related" for this purpose if they are related within the meaning of Article 168 *ter* LIR (see VI.B.4.f., above). The rule requiring a reverse hybrid entity to be treated as a resident taxpayer applies only if the non-taxation results from the difference in qualification of the entity existing under Luxembourg law and the law of the investor's jurisdiction. The amendment explicitly excludes investors that benefit from a subjective exemption (irrespective of whether the investor jurisdiction considers the Luxembourg entity as opaque or transparent for tax purposes (such as tax-exempt pension funds) for the computation of the 50% control threshold.

Article 168 *quater*, paragraph 2, LIR exempts transparent entities that are regulated investment funds from the application of the anti-reverse hybrid rules provided that they:

(i) Are widely held;

(ii) Hold a diversified portfolio of securities; and

(iii) Are subject to investor-protection regulation in the country in which they are established (including AIFs subject to AIFMD).[412]

An entity benefiting from this exemption must be in a position to demonstrate that it satisfies the above criteria when asked to do so by the tax authorities.[413]

On June 9, 2023, the Luxembourg tax authorities released a circular (nº 168*quater*/1) providing guidance on the implementation of the anti-reverse hybrid rules. This circular clarifies the Luxembourg tax status of a reverse hybrid entity, the computation of the entity's net taxable result, and the applicable tax compliance obligations. The circular serves as valuable guidance for reverse hybrid entities, which were required to submit their first tax returns by December 31, 2023.

According to the circular, a reverse hybrid entity is not considered to be a fully-fledged resident corporate income taxpayer and is therefore subject to the tax rules applicable to individuals. Certain provisions specific to corporations, such as the Luxembourg participation exemption, the interest deduction limitation rule, and the ordinary anti-hybrid rules, do not apply. The circular also clarifies that profit distributions made by a reverse hybrid entity are not subject to withholding tax.

[409] Circular LIR no. 14/4 dated January 9, 2015.

[410] Circular LIR no. 14/4, issued on January 9, 2015.

[411] Law of December 20, 2019, Art. 2 para. 4, inserting Art. 168 *quater* into the LIR, effective January 1, 2022.

[412] LIR, Art. 168 *quater*, para. 2.

[413] LIR, Art. 168 *quater*, para. 2.

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Further, a reverse hybrid entity can earn income from movable capital, rental income and other net income, as defined in Articles 97–99 LIR. The taxable result of a reverse hybrid is therefore calculated using the cash accounting method, which involves subtracting cash expenses from cash receipts in a calendar year. As a result, accrual accounting does not apply to reverse hybrid entities. Thus, provided the reverse hybrid entity has not received any income, it should not be liable to pay corporate income tax.

Using the cash accounting method also means that a reverse hybrid entity is not entitled to a step-up in basis when becoming a reverse hybrid. On the other hand, the Luxembourg tax authorities will not treat the exit of a reverse hybrid from the scope of the anti-reverse hybrid rules as a taxable event. For the purposes of administrative simplification, the Luxembourg tax authorities will allow for cash receipts and expenses denominated in a foreign currency to be converted all at once.

Reverse hybrid entities are required to report their income annually using Form 205. This form, used by taxpayers that do not have business enterprises in Luxembourg, allows the reverse hybrid entity to indicate how its profits are going to be distributed.

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IX. Taxation of Other Business Entities

A. Noncommercial Company (Société Civile)

Each partner is taxed individually on his/her share in the profits of a noncommercial company. See VIII., above, however, for the position in the case of a deemed business, or the application of the anti-reverse hybrid rules.

B. Joint Ventures

A joint venture is treated like an ordinary partnership for tax purposes if it is not legally set up as a separate entity.

C. Economic Interest Groupings

The rules for economic interest groupings are the same as those for joint ventures (see IX.B., above).

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X. Taxation of Resident Individuals

A. Scope of Taxation

The Income Tax Law (LIR) distinguishes between resident and nonresident individuals. Resident taxpayers are taxed on their worldwide income, whether domestic or foreign-source (i.e., unlimited tax liability), unless the terms of an applicable tax treaty provide otherwise.[414] Nonresidents are taxed on their Luxembourg-source income only (i.e., limited tax liability).

B. Residence

The residence of an individual[415] is defined as the place where the individual uses accommodation in a way that shows his or her intent to stay there is not only temporary. Dual fiscal residence is not accepted. Where an individual has more than one place of abode, the individual's fiscal residence is deemed to be the place where the individual's family is living and/or where the individual has registered with the local commune. Residence is terminated when an individual leaves Luxembourg in circumstances indicating that he or she will not return.

C. Determination of Gross Income

Taxable income includes income from the following eight different sources:[416]

(i) Trade or business;

(ii) Agriculture and forestry;

(iii) Independent personal services;

(iv) Employment;

(v) Pensions and annuities;

(vi) Capital investment;

(vii) Letting and leasing; and

(viii) Miscellaneous services and capital gains on private assets.

Income outside these eight categories enumerated by law is tax free (for example, gifts, lottery and gambling winnings, state family and child allowances, and capital payments in settlement of policies of life insurance).

1. Income from Trade or Business

Business income includes:[417]

(i) Income from an individual undertaking of a commercial, industrial, mining or handicraft nature, including gains on the sale or discontinuance of such business;

(ii) Income (including salaries, interest, rents and other payments) accrued to the partner of a general partnership, a limited partnership or a similar business entity;

(iii) Income, including income listed above in (i) and (ii), accrued to the general partner of a partnership limited by shares; and

(iv) Income from the transfer of the shares in partnerships by such partners.

2. Income from Agriculture and Forestry

Income from agriculture and forestry[418] includes proceeds derived from agriculture, forestry and related activities, such as hunting, fishing, breeding, wine growing and horticulture, including proceeds from:

(i) Exploitation accessory to the main agricultural undertaking;

(ii) The letting of rights or assets invested in farming and forestry; and

(iii) The discontinuance or sale of part or the whole of such an undertaking.

3. Income from Independent Personal Services

Independent personal services are services rendered by:[419]

(i) Self-employed professionals such as lawyers, public notaries, doctors, veterinarians, architects, public accountants, interpreters, engineers, journalists, authors, artists, and persons carrying on comparable activities.

Comment: The income of artists and sportsmen from entertaining is deemed to be business income.

(ii) Directors acting as members of the board or statutory auditors of a Luxembourg company. Fees paid for performing these functions are subject to a special withholding tax of 20%. (See X.E.1.b.(1), below.)

Comment: The compensation of managing directors for carrying out the day-to-day management of a company is deemed to be employment income.[420]

4. Income from Employment

Employment income[421] includes any benefit received by reason of employment whether in cash or in kind, whether received periodically or in a lump sum, and regardless of whether there is a legal claim to the benefit. Salaries are subject to wage tax, and the employer is liable for correct withholding. (See X.E.1.a., below.)

Foreign-source salary is taxable in the hands of resident employees unless the terms of an applicable tax treaty provide otherwise. In the absence of a treaty, a tax credit is available for foreign income tax paid. Residents working in Luxembourg for a nonresident employer are liable to Luxembourg income tax. Such an employer may choose to be subject to the wage tax system (see X.E.1.a., below) but is not obliged to be subject to the system, unless it has a permanent establishment (PE) in Luxembourg. If an employer is not subject to the wage tax sys-

[414] LIR, Art. 2.
[415] StAnpG, Arts. 13 and 14.
[416] LIR, Art. 10.
[417] LIR, Arts. 14 and 15.
[418] LIR, Arts. 61 and 62.
[419] LIR, Arts. 91 and 92.
[420] LIR, Art. 95.
[421] LIR, Art. 95.

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tem, its local employees are responsible for declaring their employment income.

a. Salary in Cash

Cash from employment includes: salaries; wages; compensation; bonuses; overtime surplus; equalization allowances; allowances for foreign service, housing or tuition; flat payments for non-itemized expenses; dismissal indemnity; severance pay; pension contributions into a nonqualifying supplementary pension scheme, etc.

b. Carried Interests in Alternative Investment Funds

Since their inclusion in the LIR in 2013,[422] two specific categories of carried interest are distinguished in the hands of employees of an alternative investment fund (AIF)'s management company:

(i) Carried interest (*l'intéressement aux plus-values*) in general; and

(ii) Carried interest attached to a share or unit in the AIF held by an employee of its management company, which qualifies as capital gain for tax purposes.

Remuneration received by employees of an AIF is qualified as carried interest when the income is based on an incentive right granted to employees and is not attached to a share or unit in the AIF held by an employee of a management company. Employees of management companies may only be paid such carried interest if the other investors have recouped their initial capital contributions. Under the Income Tax Law such income will be considered miscellaneous income (Article 99 *bis* of the Luxembourg Income Tax Act) and, will in principle be taxed at the marginal income tax rate (45.78%).

For employees who migrate to Luxembourg, the law provides a substantial benefit. The conditions for benefiting from a reduced tax rate are as follows:

(i) The employee migrated to Luxembourg in the year the law, as amended, entered into force (2013) or during the following five years;

(ii) The employee in question was not, before migrating to Luxembourg, domiciled in Luxembourg or subject to Luxembourg individual income tax in the five years prior to the law's entry into force;

(iii) No advance payments for carried interest have been paid to the employee; and

(iv) The remuneration is paid within the 10 years following the year the employee began to practice the functions for which the carried interest is paid (limitation in time of the favorable tax treatment).

If all these conditions are fulfilled, such employees of a management company may benefit from a reduced income tax rate corresponding to 25% of the personal income tax rate, resulting in a maximum income tax rate of 10.5%.

Gains which are directly attached to a share or unit held and sold by an employee of a management company of an AIF do not qualify as carried interest in general, but as an "ordinary" capital gain. As with other gains on securities, an exemption applies for capital gains when the shares are sold more than six months after their acquisition by the employee and represent 10% or less of the fund's nominal capital.

c. Benefits in Kind

The general rule is that fringe benefits are taxable on their market value; some benefits are taxed on a reduced value. The most common benefits are:

(i) Free housing: this is taxed on a monthly value that is the higher of 25% of the standard value (*valeur unitaire*), or three-quarters of the rent actually paid. If the apartment/house is furnished, the above-defined taxable benefit in kind is to be increased by 10%. Other expenses (for example, electricity and heating) must be added to the computation at their nominal value.

(ii) Private use of a company car: from January 1, 2017, the benefit in kind arising from the private use of a company car is taxed based on a monthly value ranging from 0.5% of to 1.8% of the purchase price of the car (including VAT and all the options). The applicable value will depend on the car's CO_2 emissions level and fuel type. The tax also covers any ancillary costs (for example, fuel, insurance and maintenance costs) borne by the employer. This new valuation method applies to company cars that are leased on or after January 1, 2017. Thus, in the case of a contract in existence on January 1, 2017, the flat rate of 1.5% (applicable before January 1, 2017) will continue to apply until the expiration of the normal term of the contract.

On January 11, 2022, the Deputy Prime Minister introduced a Grand Ducal Regulation[423] favoring the use of zero or low-rolling CO_2 emission company cars. From 2023, the rate applicable to newly registered company cars will be increased by 0.2% for company cars with CO_2 emissions above 80 g/km. Zero or low-rolling CO_2 emission company cars (for example, with CO_2 emissions below 18 kWh/100km) will be subject to the 0.5% minimum rate. From 2025, the rate applicable to newly registered company cars, will be 1% for pure electric cars with an electric energy consumption of up to 18 kWh/100km and for hydrogen fuel cell vehicles. For all other electric company car models, a 1.2% rate will apply. For all other vehicles, including hybrid vehicles, a 2% rate will apply.

(iii) Free meals in in-house canteens and meal vouchers for restaurants (provided the value of a voucher does not exceed 10.80 euros as of January 1, 2017): free meals in-house canteens are taxable on the difference between 2.80 euros and the lower price paid by the employee; similarly, meal vouchers are taxable on a value of 2.80 euros (unless the 2.80 euros are reimbursed to the employer by the employee) to the extent their value does not exceed 10.80 euros. Specifically, as from January 1, 2017, employers are able to provide employees with meal vouchers with a face value of up to 10.80 euros (8.40 euros before January 1, 2017) without triggering an additional taxable benefit at

[422] Law of July 12, 2013, transposing Directive 2011/61/EU on Alternative Investment Fund Managers.

[423] Grand Ducal Regulation dated December 23, 2016.

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the level of the employees. Thus, with a personal participation on the part of the employee corresponding to 2.80 euros, the employee will not be taxed if the value of the meal vouchers does not exceed 10.80 euros.

(iv) Interest benefits from employers' loans offered at less than the official interest rate (i.e., 1.5% from the tax year 2017):[424] these are taxable on the excess over the following tax-free amounts:

- 500 euros per annum for personal loans; and
- 3,000 euros per annum for mortgage loans for a private dwelling.

(The tax-free amounts are doubled for taxpayers filing jointly.)

d. Salary Bonuses

The Law of December 19, 2020[425] added provision 13a. to Article 115 of the LIR, which exempts 50% of profit-participating bonuses granted by an employer from an employee's income for purposes of personal income taxation. Such bonuses also remain fully deductible at the level of the employer as operational expenses. The aggregate bonus that can be awarded under this rule is capped at 5% of the annual profits of the employing company. As of January 1, 2025, this limit has been increased to 7.5%. The Budget Law 2023 clarifies that companies in a fiscal unity within the meaning of Article 164 *ter* LIR can opt to calculate the 5% limit based on the positive algebraic result of all companies forming part of such fiscal unity.

This regime is designed to replace the stock option regime repealed by a 2020 circular.[426] The regime requires the employee to be:

(i) A Luxembourg taxpayer with income derived from an employment activity; and

(ii) Affiliated to the Luxembourg social security regime or any social security regime covered by a bilateral or multilateral social security convention that applies to Luxembourg.

A number of conditions must also be fulfilled by the employer:

(i) The employer must derive business income, or farming and/or forestry income, or income from independent services;

(ii) The employer must keep regular accounts: (a) during the financial year in which the bonuses concerned are granted; and (b) during the financial year preceding the financial year in which the bonuses are granted;

(iii) The aggregate amount of bonuses granted, under the regime may not exceed 7.5% of the employer's results for the financial year immediately preceding the financial year in which the bonuses are granted; and

(iv) The employer must comply with reporting obligations, i.e., must provide the *Section RTS, Retenue d'Impôt sur les Traitements et Salaires* (RTS) clerk by electronic means[427] with a document in the prescribed form containing all the elements required to prove that the conditions for benefitting from the tax regime are fulfilled and the names of the employees who will benefit from the regime during the year. When submitting the required information, the employer must estimate the gross annual remuneration an employee will receive based on all the data available up to the time of submission and likely to have an impact on the amount of the gross remuneration during the year. The estimated salary must therefore be communicated before the incorporation of cash and in-kind benefits. If the employer fails to report, the exemption will not be available and a tax reassessment will be made.[428]

Since January 1, 2025, the 50% exemption is capped at a maximum of 30% (previously 25%) of the ordinary annual gross remuneration — computed as the annual gross remuneration before the addition of benefits in cash or in kind for the year in which the bonuses are granted. Thus, the 50% exemption applies only to that part of salary bonuses that does not exceed the 30% threshold. The 30% limit is calculated based on the annual gross remuneration the employee has received or will receive from the employer paying the salary bonus. If an employee retires, changes employer or stops working during the year, the employer will recalculate the withholding tax and the 30% limit, if necessary, taking into account the annual remuneration already paid. The same applies if an employee reduces or increases the number of hours worked during the year.

The circular dated March 8, 2021 adds further clarification with regard to: the calculation of non-deductible social security contributions, and salary bonuses allocated to shareholders of a capital company. The circular also provides that, under Article 110(1) LIR, social security contributions in relation to exempted wages are not deductible, with the exception of those relating to the wage supplements referred to in Article 115(11) LIR. Social security contributions on the exempted part of salary bonuses are, therefore, not deductible. The circular then provides a method (followed by an example) for calculating the amount of non-deductible social security contributions. In addition, the circular states that a salary bonus allocated to a shareholder of a capital company who derives income from a salaried occupation attributed to the company will be treated as income from a salaried occupation within the meaning of Article 95 LIR, and the exemption will be granted if all the conditions set out in that Article are fulfilled.

e. Bonuses for Young Employees

The Law of December 20, 2024[429] added provision 13d. to Article 115 of the LIR, which at the discretion of the employer exempts 75% of bonuses to employees who qualify as full-time young employees entering the Luxembourg labor market. The maximum annual amount, that qualifies for the exemption is:

1. 5,000 euros for gross annual salary of 50,000 euros or less;

[424] RGD, December 23, 2014.
[425] Budget Law of December 19, 2021.
[426] Circular No. 104/2 of December 14, 2020.
[427] Circular L.I.R. n°115/12 dated March 8, 2021.
[428] Circular L.I.R. n°115/12 dated March 8, 2021.
[429] Budget Law of December 20, 2024.

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2. 3,750 euros for gross annual salary above 50,000 euros and up to 75,000 euros; and

3. 2,500 euros for gross annual salary above 75,000 euros and up to 100,000 euros.

The bonus incentive is not available to employees with gross annual salary above 100,000 euros.

Furthermore, the young employee bonus payment benefits from the tax exemption only if, at the time of the provision made available by the employer, the following conditions are met:

1. The employee is less than 30 years old at the beginning of the tax year;

2. The employee is in possession of his or her first full-time, permanent employment contract, which has been signed on or after January 1, 2025 by an employer established or with a permanent establishment in Luxembourg; and

3. The employee remains with the same employer for the entire year.

In the event of a change of employer, the employee is no longer eligible for the exemption of the young employee bonus. The incentive is available for up to a maximum of five years.

5. Income from Pensions and Annuities

Pension income includes:[430]

(i) Pensions paid by the Social Security Institution;

(ii) Private pensions paid by a former employer (unless they are paid out from a qualifying supplementary pension scheme within the meaning of the Law of June 8, 1999 on supplementary pension schemes);

(iii) Life or other annuities paid by insurance companies;

(iv) Life annuities purchased against the sale of an asset; and

(v) Private annuities fixed by notarial deed or by Court decision.

Pensions deriving from a former activity and paid by the Social Security Institution or a former employer are subject to a wage tax (see X.E.1.a., below). Lump-sum pensions qualify for a lower tax rate (see X.D.5.d., below). Private pensions and annuities are taxed by way of assessment. Alimony to which the recipient is entitled under civil law is not taxable income.

6. Income from the Investment of Capital

Income from capital includes:[431]

(i) Dividends from shares and participating certificates in entities subject to corporate income tax;

(ii) Profit-sharing income received by a silent partner in a business entity. The tax authorities are of the view that this also includes profit participating interest on loans granted to a Luxembourg business entity;

(iii) Interest from bonds or any other kind of money claim with a credit institution or a private debtor (for example, deposits, savings accounts, loans, mortgages or annuity charges);

(iv) Discounts on bills including treasury bonds; and

(v) Payments in lieu of or for the assignment of any such income.

The following receipts are not regarded as income from capital:

(i) Freely allocated stock if the existing share value is reduced proportionally; and

(ii) Payments out of a company's assets on its liquidation.

Zero coupon bonds are deemed to generate interest amounting to the difference between cost and face value, which is taxable in the year of sale or reimbursement.

It should be noted that interest that has been subject to the 20% domestic withholding tax on interest on savings accounts is exempt from income tax to the extent not derived from a business activity according to the Relibi Law (see XIV.C.3.b., below).

Capitalized income from undertakings for collective investment in transferable securities (UCITS) or alternative investment funds is treated as a capital gain.

Half of the dividends obtained from companies resident within the EU and regularly subject to corporate income tax, and from other companies resident in a country with which Luxembourg concluded a tax treaty and which are subject to corporate income tax comparable to the Luxembourg corporate income tax, are exempt.

7. Income from Renting and Leasing

Rental income includes:[432]

(i) Income from the renting of real property;

(ii) Income from the renting and leasing of movable assets; and

(iii) Income from the assignment of the use of intangible property (royalties, copyrights, etc.).

The Budget Law for fiscal year 2017, dated December 22, 2016, has abolished the inclusion in income of the rental value of an owner-occupied dwelling and of a dwelling put at the disposal of a relative free of charge.

8. Capital Gains

Luxembourg has no specific capital gains tax. Proceeds from the sale of assets invested in a business or a professional undertaking are included in business or professional income. Capital gains on private assets are included in taxable income as "Miscellaneous Income."[433]

[430] LIR, Art. 96.
[431] LIR, Art. 97.
[432] LIR, Art. 98.
[433] LIR, Art. 99.

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Aggregate capital gains on private assets in excess of 500 euros are taxable. A distinction is made between speculative and nonspeculative gains.

a. Speculative Gains

Speculative gains[434] are taxable at an individual's marginal tax rate. Gains on the sale of private property are defined as "speculative" if:

(i) The property is real property that was held for less than two years (five years as of 2025);[435]

(ii) The property is a movable asset that was held for less than six months; or

(iii) The sale precedes the purchase of the property.

b. Capital Gains Other than Speculative Gains

The income tax on capital gains is mitigated by a number of relief provisions where the gains are realized on:[436]

(i) Real property sold two years or more after acquisition (as of 2025: five years or more);[437]

(ii) The sale of a taxpayer's private home. Such gains are tax-exempt (see X.D.8.c., below);

(iii) As of 2024: the sale of real estate by individuals to the state, municipalities or syndicates thereof, or to the *Fonds du Logement*; such gains are tax exempt;[438] or

(iv) Substantial shareholdings sold six months or more after acquisition. A shareholding is "substantial" where more than 10% of a company's nominal paid-up stock is held by one shareholder together with his or her relatives at any time during the five years preceding the sale. Capital gains on a shareholding of 10% or less are not taxable if the shares are sold six months or more after acquisition.

The capital gain (before tax) is reduced as follows:

(i) Monetary inflation is eliminated by increasing the purchase price by official coefficients. The coefficients are adjusted every two years to the cost-of-living index.

(ii) By a personal deduction of 50,000 euros, available once every 10 years. The deduction is doubled for taxpayers filing jointly.

The tax on a non-speculative gain is levied at half an individual's average income tax rate. In the case of sales of real property made in calendar year 2024, the tax is levied at a quarter of the individual's average income tax rate.

9. Digital Assets

While existing Luxembourg tax law does not include any specific provisions related to digital assets, they are covered by the general tax rules. Cryptocurrencies are not considered to be legal tender, whose value would be supported by a central bank. For tax purposes, they are therefore not considered currency, but rather intangible assets.

For tax purposes, income, losses, and expenses resulting from transfer transactions (i.e., disposals and exchanges) of digital assets are considered as either income from a "trade or business," or alternatively as capital gains. As such, income losses and expenses related to digital assets are treated accordingly. Income and expenses from mining activities, i.e., the creation of cryptocurrencies, is systematically considered to be income from a "trade or business."[439]

Income and expenses related to the creation of non-fungible tokens (NFTs) constitute, for tax purposes, income from "independent personal services."

A taxpayer that has expenses in this industry activity is obliged to maintain a coherent and continuous record of acquisition dates (or creation dates, in the case of mining) and acquisition prices. In situations in which it is difficult or impossible to determine the acquisition price, the weighted average price method must be applied to determine the acquisition price.[440]

On March 9, 2023, Luxembourg implemented the Blockchain III Law (officially published on March 17, 2023), amending, among others:

(i) The Law of August 5, 2005 on financial collateral arrangements, as amended (the "Financial Collateral Law"); and

(ii) The Law of April 5, 1993 on the financial sector, as amended (the "Financial Sector Law").

The Blockchain III Law redefined the concept of "financial instruments" set out in the Financial Sector Law to incorporate EU Regulation 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology (DLT). Accordingly, the definition of "financial instruments" was revised to include DLT financial instruments. This change took effect on March 23, 2023, coinciding with the commencement of the EU DLT Pilot Regime.

A financial instrument issued using DLT is a type of digital (or crypto) asset. DLT is the technological system of infrastructure and protocols by which transactions in various digital assets can be recorded, stored, and updated simultaneously across a networked database for security, based on cryptographic techniques, such as blockchain technology. It is used primarily in finance in relation to crypto assets, i.e., the digitalization of financial services. It has not yet been extended to include digital representations of traditional currencies, though work on the issuance of central bank digital currencies (or CBDCs) is underway.

Adhering to the principle of technological neutrality, the EU DLT Pilot Regime modified Directive 2014/65/EU on markets in financial instruments to include DLT financial instruments within the definition of "financial instruments" (Article 18 of the EU DLT Pilot Regime).

The Blockchain III Law also amended the Financial Collateral Law to specify that book-entry transferable financial instruments now include "financial instruments registered or existing in securities accounts held within or through the secured electronic registration mechanisms, including distributed electronic ledgers or databases." This amendment became effective

[434] LIR, Arts. 99(1) and 99 *bis*.
[435] Law of May 22, 2024, art. 16 first point.
[436] LIR, Arts. 99(2), 99 *ter*, 100 and 101.
[437] Law of May 22, 2024, Art. 17.
[438] Law of May 22, 2024, Art. 19.
[439] Circular LIR no. 14/5 99/3, 99*bis*/3 of July 26, 2018.
[440] *Id.*

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when the Blockchain III Law came into force, i.e., on March 17, 2023.

D. Allowances, Deductions, and Credits

Deductions available to individuals are grouped as follows:

(i) Income-related expenses and allowances specifically defined for each of the eight categories of income (see X.D.1. to 8., below);

(ii) Expenses of a private nature (see X.D.9. to 11., below); and

(iii) Tax credits (see X.D.12., below).

1. Allowances with Respect to Business Income

a. Business Expenses

The rules described under VI.B.4. to 8., above, apply.

b. Allowances for Discontinuance of Business

The following allowances for the discontinuance of a business are available:

(i) Liquidation proceeds before tax are reduced by a lump-sum deduction of 10,000 euros. The lump-sum deduction is 25,000 euros where the proceeds include a capital gain on premises or landed property. (The allowance cannot exceed the capital gain.)

(ii) The book value of immovable business assets is revalued by reference to official coefficients to account for inflation.

(iii) A capital gain in excess of lump-sum deductions is taxed at half the individual's global tax rate.

(iv) Excess losses may be carried forward if they cannot be offset against an individual's other income.

2. Allowances with Respect to Farming and Forestry Income

a. Deductible Expenses

Allowances with respect to farming and forestry income are basically the same as those with respect to business income[441] (see X.D.1., above), unless the farmer concerned can avail himself or herself of the simplified flat rate method to determine his or her taxable income.[442]

b. Reduced Tax Rate

Profits on wholesale liquidations or mass fellings necessitated by chance events may be taxed at one-quarter of the taxpayer's global tax rate.

3. Allowances with Respect to Income from Independent Services

a. Self-Employed Professionals

(1) Deductible Expenses

Where the taxable income is determined using a proper bookkeeping system, deductible expenses are the same as for businesses (see VI.B.4., above).

(2) Discontinuance of the Professional Activity

The allowances with respect to liquidation proceeds are the same as for businesses, as discussed at X.D.1.b., above.

b. Board Members and Statutory Auditors

The special tax of 20% on directors' fees (see X.E.1.b.(1), below) is credited against the Luxembourg income tax liability of such board members and statutory auditors. Income-related expenses such as traveling costs, advisors, fees, etc., are deductible to the extent they are not reimbursed by the company.

4. Allowances with Respect to Employment Income

a. Deductible Expenses

The following income-related expenses are deductible:[443]

(i) The expenses of commuting between home and place of work;

(ii) The cost of membership in professional associations;

(iii) Moving expenses (under restrictive conditions);

(iv) The cost of professional tools, clothes, periodicals, books, training courses and home computers (fully related to employment duties), and home office expenses (fully related to employment duties); these are deductible to the extent they exceed the flat minimum allowance; and

(v) Expenses other than income-related expenses:

- Compulsory social security contributions; and
- A number of private expenditures defined as "special expenses" (see X.D.9., below).

b. Lump-Sum Allowances with Respect to Salaries

Standard allowances are automatically taken into account for purposes of wage tax withholding, as follows:

(i) A deduction of 540 euros concerning professional expenses related to the employment income category.

(ii) An individual mileage allowance of up to a maximum of 2,574 euros where the distance between the taxpayer's home and the taxpayer's workplace is more than 26 units (i.e., kilometers in straight line).

(iii) A minimum deduction of 480 euros for "special expenses" (see X.D.9., below).

(iv) An "extraprofessional" abatement of 4,500 euros, given in addition to twice the lump-sum deductions listed

[441] LIR, Art. 64.

[442] LIR, Art. 64 *bis*; RGD of July 26, 1986, instituting a simplified method of determining profits and LIR Circular no. 108 of July 8, 1987, "Introduction of a simplified method of determining agricultural and forestry profits."

[443] LIR, Arts. 105 and 105 *bis*.

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above in (i)–(iii), where both spouses/partners earn income from employment.

c. Tax-Exempt Compensation

A number of payments made by an employer are not regarded as taxable compensation:[444]

(i) The employer's component of social security contributions;

(ii) Refunds of duly supported professional expenses laid out by the employee;

(iii) Overtime surplus (under conditions);

(iv) Anniversary gifts up to specified limits;

(v) Dismissal indemnities, as laid down under (a) labor law, (b) decreed by a Court or (c) agreed by the parties. For (b) and (c), the exemption is limited to 12 times the monthly minimum social wage for nonqualified workers (as set on January 1 of the relevant tax year); and

(vi) Subject to certain conditions, tax-free indemnities of up to 12 times the monthly minimum social wage for nonqualified workers (as set on January 1 of the relevant tax year) per employee in compensation for collective dismissal on the discontinuance of the employer's business.

Some benefits in kind are tax-free within defined limits (see X.C.4.c., above).

d. Reduced Tax Rates

Lump-sum compensation relating to a period other than the tax year (for example, salaries in arrears, severance pay, and dismissal indemnity) qualifies as "extraordinary" income and may be taxed, upon approval of the wage tax authorities, at a reduced rate of a maximum of 21.8%.

e. "Impatriate" Tax Regime

The Impatriate Tax Regime was introduced by the Law of December 19, 2020 under Article 115, 13b. LIR.

From its introduction until the fiscal year 2024, qualifying expenses and allowances paid by a Luxembourg employer in connection with the secondment or recruitment of an "impatriate" worker into Luxembourg did not constitute employment income or benefits in kind for the impatriate worker. This means that reasonable, assignment-linked benefits were tax-exempt to the employee.

Under Article 115, 13b. LIR, an impatriate worker could be either a worker who was seconded to a Luxembourg company belonging to an international group or who was recruited from abroad by a Luxembourg company.

Subject to restrictive conditions in relation to the impatriate worker (i.e., with respect to his or her duties, professional experience, salary level, etc.) and the company (with respect to the number of its impatriate workers, etc.), Article 115, 13b. provided a detailed list of "exempt" assignment-linked benefits, including:

(i) One-off expenses linked to the move itself (for example, travel costs);

(ii) Expenses incurred to buy new furniture, including appliances, for the impatriate worker;

(iii) Standard expenses linked to the expatriation, including housing expenses (provided the impatriate worker retained a residence in the country of origin; otherwise, only the additional costs are covered) and tax equalization, up to the lower of 50,000 euros (80,000 euros for couples) or 30% of the impatriate worker's total annual fixed remuneration;

(iv) Schooling costs for the children of the impatriate worker or his or her partner;

(v) A cost-of-living allowance subject to certain limits; and

(vi) One-half of the inpatriation premium, capped at 30% of the worker's annual gross remuneration before the addition of benefits in cash or in kind.

Starting from the 2025 tax year, the Luxembourg impatriate regime has been revised to introduce a straightforward 50% tax exemption on the annual gross remuneration (excluding benefits in kind and most fully or partially exempt cash allowances) of eligible employees relocating to Luxembourg. This exemption applies to gross annual salaries of up to 400,000 euros; any amount above this threshold remains fully taxable. As previously, the regime remains available until the end of the eighth year following the employee's start date in Luxembourg, subject to continued compliance with the applicable conditions.

Employees who are currently benefiting from the former impatriate regime may continue to do so, provided they continue to meet its conditions. However, they may choose to switch to the new regime by notifying their employer, which may be advantageous, particularly for those whose compensation consists largely of an impatriation bonus. Under the former regime, such bonuses were 50% exempt but limited to 30% of the annual gross salary, whereas the new regime offers a broader 50% exemption on gross remuneration, subject to a cap of 400,000 euros.

The switch to the new regime is made through the employer's annual tax reporting to the Luxembourg authorities and is irrevocable. By January 31 of each year, the Luxembourg employer must provide the tax authorities with a list of the impatriate workers it employs, other than employees who have irrevocably opted for the transition to the current impatriate regime. Failure to respect to report by this deadline will lead to revocation of the impatriate regime.

Once switched, employees may benefit from the new regime until the end of the eighth year following their initial employment start date in Luxembourg, assuming continued compliance. For example, an employee who began benefiting from the former regime in 2023 and opts into the new regime starting in 2025 would remain eligible under the new terms until the end of 2031.

5. Allowances with Respect to Pensions

a. Deductible Expenses

The following expenses are deductible:

[444] LIR, Art. 115.

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(i) All income-related expenses;

(ii) Compulsory social security contributions; and

(iii) Expenses registered on the pension tax card (see X.E.1.a., below).

b. Lump-Sum Deductions

The following lump-sum deductions also are available:

(i) A minimum of 300 euros is deducted where income-related expenses are less than this amount; and

(ii) A minimum of 480 euros is deductible for "special expenses" (see X.D.9., below).

c. Tax-Exempt Pensions

Alimony received by persons entitled to maintenance under the Civil Code is not regarded as taxable income.

Annuities settled for a one-time valuable consideration (for example, the sale of an asset) are 50% tax-exempt.

Pensions paid out of an employer qualifying supplementary pension scheme within the meaning of the Law[445] are tax exempt.

d. Reduced Tax Rates

A lump-sum payment in lieu of a pension is taxable at half the recipient's average tax rate. (A capital sum paid by an insurance company in settlement of a policy of life insurance is tax-free.)

6. Allowances with Respect to Investment Income

a. Deductible Expenses

Deductible expenses include: financing interest; bank commissions; safe-deposit box rentals; fees to agents, advisors, and counsel; traveling costs; and all other income-related expenditure.

b. Lump-Sum Deduction

The following lump-sum deductions are allowed:

(i) A minimum of 25 euros (50 euros for taxpayers filing jointly) is deducted where investment-related expenses are less than this amount; and

(ii) Capital income (for example, interest derived from deposits or savings accounts, dividends, etc.) is reduced by 1,500 euros (3,000 euros for taxpayers filing jointly). Savings related to the future acquisition of a private dwelling are fully tax-exempt.

7. Allowances with Respect to Rental Income

a. Deductible Expenses

The following expenses are deductible from rental income:

(i) Cash expenses of current maintenance and upkeep;

(ii) Financing interest without any limit for rented out real property and with specific limits for the taxpayer's main residence (financing interest in relation to the taxpayer's secondary residences are not tax deductible); and

(iii) Acquisition costs (including real estate transfer tax and notary's fees, but excluding the value of land), as well as the costs of substantial improvements, which must be written off at an annual rate of 1.5% to 3%, depending on the age of the construction, increased to 2% to 4% if duly substantiated by the taxpayer.[446] A rate of 2% is applied to residential buildings destined for the rental market. For a maximum of two such buildings, the rate is increased to 4%, if they were acquired or constructed less than five years prior to the applicable tax year. Investments in the energy sustainability of real estate made less than nine years prior to the applicable tax year may be depreciated at a rate of 6%.

b. Lump-Sum Deduction

Depreciation, upkeep, and miscellaneous expenses may be deducted as a lump-sum of 35% of gross rentals, limited to a yearly deduction of 2,700 euros, if:

(i) The taxpayer expressly opts for this lump-sum deduction;

(ii) The building concerned is more than 15 years old; and

(iii) The premises are not used for professional purposes.

c. Reduced Tax Rate

Lump-sum rentals relating to a period other than the tax year (for example, rentals in arrears) are taxable at half the taxpayer's average tax rate.

Note: In the case of a private dwelling (i.e., the main residence of an owner) only the interest on mortgage loans or by annuities payable for the acquisition of the dwelling are deductible. The maximum deductible amount for both items depends on the date of acquisition and ranges from 1,000 euros to 2,000 euros per family member.[447]

d. Special Real Estate Allowances

A tax credit of 20,000 euros is available to individuals (40,000 euros per couple) who, over the period of January 1, 2024, and June 30, 2025, invest in a new residential rental property for a rental term of more than two years.[448]

Furthermore, a special construction allowance is available for taxpayers who earn rental income and invest in new residential rental properties, in connection with construction contracts signed between January 1, 2024, and June 30, 2025. The taxpayer can take a special deduction equal to 4% of the deemed amortization of the asset (i.e., the building) in the year it is com-

[445] Law of June 8, 1999 on supplementary pension schemes.

[446] LIR, Art. 106, al. 3 and 4 and RGD of November 19, 1999, Art. 2, as modified by RGD of December 13, 2024.

[447] LIR, Art. 98(1) 5 and RGD of July 12, 1968, concerning the determination of the rental value of property occupied by the owner, or occupied at no charge or by virtue of a life estate or legal right (*RGD concernant la fixation de la valeur locative de l'habitation occupée en vertu du droit de propriété ou occupée á titre gratuit ou en vertu d'un droit de jouissance viager ou legal*).

[448] LIR, Art. 129e, and Circular LIR no. 129e/1 of May 30, 2022, replaced by Circular LIR no. 129e/1 of January 9, 2024 for 2023 and subsequent tax years. Allowances claimed under Arts. 127, 127*bis* and/or 129b reduce the allowance under Art. 129e.

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pleted and for the following six years, subject to an annual cap of 250,000 euros. This special deduction cannot be taken together with the tax credit discussed above.[449]

8. Allowances with Respect to Capital Gains

a. Speculative Gains

Gains on speculative transactions involving real property that is not the principal residence of the taxpayer[450] and that was held for less than five years[451] (see X.C.8.a., above) may be reduced only by incidental costs, acquisition costs (the cost of a notarial deed, registration duties, etc.), and maintenance and improvement expenses.

Gains on speculative transactions on movable assets that were held for less than six months may only be reduced by incidental costs and acquisition costs (banking costs, etc.). Speculative losses are deductible from speculative gains only.

b. Non-speculative Capital Gains

The taxable amount of certain non-speculative capital gains,[452] i.e., gains realized on the sale of real property after a period of more than five years[453] after acquisition and gains realized on the sale of shares more than six months after acquisition, provided the shareholding represents more than 10% of the stock of the company concerned, are reduced, after the deduction of incidental costs and subject to the following:

(i) The purchase price is revalued by reference to official coefficients that are updated every two years;

(ii) The net capital gain before tax is reduced by a lump-sum deduction of 50,000 euros (100,000 euros in the case of taxpayers filing jointly); this deduction is available once every 10 years; and

(iii) The balance is taxed at one-half of the taxpayer's average tax rate.

c. Tax-Exempt Capital Gains

Gains arising on the following capital assets are tax-free:

(i) Shares sold more than six months after acquisition, provided the shareholding does not represent more than 10% of the stock of the company concerned; and

(ii) Other movable assets sold more than six months after acquisition.

A gain on the sale of a taxpayer's private dwelling is tax-free if:

(i) The taxpayer has occupied the premises since acquisition or for at least five years before the sale; or

(ii) The taxpayer has to move for professional or family reasons.

d. Rollover of Capital Gains

The tax on a capital gain may be deferred by rolling over the taxable gain against the cost of a newly-acquired replacement building used as accommodation or real property used for farming or forestry.[454]

The tax on capital gains may also be deferred in the case of share-for-share exchanges, as discussed in VI.B.3.c., above.[455]

e. Step Up for New Luxembourg Residents

The Law of December 18, 2015, introduced the "step up" mechanism for individuals who transfer their tax residence to Luxembourg.

In case of sale of a substantial shareholding (i.e., more than 10% of the share capital of the company), the capital gain realized will be calculated on the difference between the sale price and the market value of the shares on the date the taxpayer became resident in Luxembourg (and not the historical value of the shares on the day of acquisition).

Luxembourg therefore waives its right to tax the unrealized capital gain accumulated in the former state of residence.

To prevent abuses, it is foreseen that this mechanism is not applicable if, before the date of the transfer of residence to Luxembourg, the taxpayer was resident in Luxembourg for more than 15 years, then nonresident for less than five years.

This new provision applies for capital gains realized after December 31, 2015.

9. Private Recurring Expenses

Deductible expenses that are not related to income, referred to as "special expenses," are exhaustively enumerated in the law.[456]

a. Pensions and Annuities Payable in Consideration of a Contract or a Judicial Deed

Pensions settled by notarial deed or by a court decision and payable to persons other than those entitled to alimony under the Civil Code are fully deductible.

Alimony paid on divorce by mutual consent to a former spouse is deductible up to an amount of 24,000 euros per annum.

Annuities payable against the acquisition of an asset are deductible at the rate of 50%.

b. Debt Interest

Interest on personal loans for financing the purchase of movable property or consumer goods is deductible up to an amount of 672 euros per annum (this ceiling is a combined ceiling with that for insurance premiums — see below), increased by the same amount for each family member.

[449] LIR, Art 129f introduced by Law of May 22, 2024, as amended by Law of April 4, 2025, Art. 4. Allowances claimed under Arts. 127, 127*bis*, 1229b and/or 129e reduce the allowance under Art. 129f.

[450] LIR, Art. 99 *bis*. See Administrative Tribunal 18 July 18, 2022, no. 45543 and 45583: the main requirement for a principal residence is the occupation of the residence.

[451] LIR, art. 99 *bis* (1) 1.a., as amended by law of April 4, 2025, Art. 1. For real property sold until June 30, 2025, the relevant term is two years.

[452] LIR, Arts. 99 *ter* and 100.

[453] For real property sold until June 30, 2025, the relevant term is two years (LIR, Art. 99 *ter* (1), as amended by law of April 4, 2025, Art. 2.

[454] LIR, Art. 54.

[455] LIR, Art. 102(10).

[456] LIR, Arts. 109 to 114.

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c. Insurance Premiums

Voluntary contributions to social security that continue to be made in the absence of income subject to compulsory contribution are 100% deductible.

Premiums paid to Luxembourg insurance companies are deductible up to a maximum of 672 euros per annum for each family member (this ceiling is a combined ceiling with that for interest on debt — see above). Deductions are available for the following insurance premiums:

(i) Life insurance if duration to maturity exceeds 10 years;

(ii) Death, accident, old age, sickness, disability, and unemployment insurance; and

(iii) Insurance for civil liability against third parties.

An additional deduction is available for four specified types of insurance contracts:

(i) Death insurance as security for a loan for the taxpayer's own private or professional premises;

(ii) An old-age surplus pension payable monthly starting at age 60 or after 10 years of premium payments, whichever is later; the deduction is for up to 3,200 euros (January 1, 2017 onwards);

(iii) A daily sickness indemnity insurance underwritten by independent professionals; and

(iv) Employee benefit insurance initiated by the employer.

A deduction of 1,200 euros is available for employees making personal contributions to a qualifying supplementary pension scheme[457] implemented by their employer.

d. Building Savings

Payments to recognized building-loan associations for the acquisition or alteration of a taxpayer's own dwelling are deductible up to a maximum of 1,344 euros per family member.

Comment: The expenses described under a. through d., above, are deemed to be covered by a minimum deduction of 480 euros per annum (doubled for taxpayers filing jointly if both spouses/partners work), if the actual expenses amount to less than this amount.

e. Compulsory Social Security Contributions

Contributions paid to the Luxembourg Social Security Institution are deductible up to the full amount paid. (See the Worksheets.)

Contributions paid to foreign social security institutions, in line with EU regulations or bilateral social security conventions, are fully deductible from Luxembourg income.

f. Gifts

Gifts to Luxembourg and EEA institutions recognized as being in the public interest are deductible if the total gifts exceed 120 euros per annum per donor, and to the extent the total amount does not exceed the lesser of:

(i) 20% of taxable income; or

(ii) One million euros.

Gifts to EEA institutions may be subject to administrative requirements in the form of a standard certificate to be completed by the taxpayer.

g. Loss Carryover

Losses incurred with respect to business activities, farming and forestry, or independent services, are deductible from income derived in subsequent years until entirely absorbed, provided the losses are calculated using a proper book-keeping system. Only the person who has suffered the loss can deduct it.

10. Deductions for Extraordinary Charges

a. Expenses Related to Exceptional Hardship

Exceptional hardship expenses are allowed as deductions only:[458]

(i) If they are unavoidable and are not incurred by the majority of taxpayers (for example, expenses attributable to illness, accident, disability, lawsuit or forfeiture, or alimony paid to family members entitled to maintenance); and

(ii) To the extent they exceed a specified percentage of the individual's income (these percentages are defined with respect to family charges and range from 0% to 10% of taxable income).

Standard allowances are available for disability, the support of ancestors, child care and domestic help.[459]

b. Allowances for Extraordinary Child-Related Charges

Extra relief is available to taxpayers living alone. Specifically, alimony or education costs borne by a taxpayer for the taxpayer's children under age 21 at the beginning of the tax year (who are not engaged in study on a full-time basis) who are part of another taxpayer's household may be deducted up to a maximum amount of 5,424 euros since January 1, 2025 (previously 4,422 euros) per year per child.

11. Investment Incentive

For tax years before 2021, investment incentives were provided in the form of venture capital certificates.[460] The face value of negotiable investment certificates issued to the shareholders of resident companies that have as their sole purpose the financing of venture projects in Luxembourg could be set off against taxable income to the extent of 30% of taxable income.[461]

[457] Within the meaning of the Law of June 8, 1999, on supplementary pension schemes.

[458] LIR, Art. 127.

[459] LIR, Arts. 127, 127*bis* and 129b. There are limitations on the extent to which these allowances can be aggregated.

[460] Law of April 3, 1989, as amended.

[461] Until the end of 2013, similar investment certificates were available for investments in companies with the sole purpose of engaging in audio-visual projects.

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The venture capital investment certificates regime introduced in 1993[462] was repealed with effect from January 1, 2021.[463]

12. Tax Credits

a. Credit for Domestic Income Tax

Wage tax, pension tax, withholding tax on dividends, withholding tax on director's fees and prepaid tax installments are creditable against domestic income tax payable. Effective January 1, 2015, the withholding tax is no longer refundable.[464]

b. Credits in Lieu of Allowances

Individuals can benefit from four attributable or refundable tax credits in lieu of the former wage, pension, single-parent, business income and farming and forestry tax allowances now abolished, as set out in (1) to (4), below.

(1) Tax Credits for Employees

Taxpayers entitled to income from an occupation in Luxembourg and holding a tax card are eligible for the employee tax credit, as well as the so-called "CO_2 tax credit."[465] These credits are granted once, based on the overall income allocated to the taxpayer. With effect from January 1, 2025, the employee tax credit is between 300 euros and 600 euros and the CO_2 tax credit is 192 euros per annum where annual income is between 936 euros and 11,265 euros. For income between 11,266 euros and 40,000 euros, the employee tax credit is 600 euros and the CO_2 tax credit is 192 euros per annum. For annual income between 40,001 euros and 79,999 euros, the credits range from 0 euro to 600 and 168 euros, respectively, depending on the amount of annual income. Neither credit is granted to employees with income below 936 euros and income above 80,000 euros. The credit is paid by the employer during the taxable year to which it corresponds.

Also, low- to moderate-income earners benefit from a targeted tax relief known as the Minimum Social Wage Tax Credit ("CISSM").[466] This monthly credit is designed to support employees whose taxable income stems from employment governed by Luxembourg's tax jurisdiction. Eligible individuals must be affiliated with a recognized social security scheme and possess a valid tax card. The credit amounts to 81 euros per month for gross monthly salaries ranging from 1,800 euros to 3,000 euros, with a gradual reduction for earnings up to 3,600 euros, beyond which the credit is no longer granted. For part-time workers or those not employed the full month, the credit is adjusted proportionally. Employers are responsible for applying the credit through payroll deductions, though specific provisions exist for temporary workers or those under special tax regimes. The CISSM plays a key role in easing the tax burden on lower-income households, promoting greater equity within the wage system.

Finally, employees who receive additional pay for overtime hours actually worked may qualify for the Overtime Tax Credit ("CIHS"),[467] a fiscal measure aimed at reducing the tax burden on such supplemental income. This credit is available to individuals whose right of taxation lies with Luxembourg under applicable tax treaties and who are not civil servants or public-sector trainees covered by specific statutes. To be eligible, the taxpayer must also be affiliated with a recognized social security scheme and receive overtime pay that is fully exempt from taxation under article 115, provided it results from actual work performed. The CIHS applies only once to the total gross amount earned through overtime in a given year. The amount of the credit depends on annual gross overtime earnings: it is not granted if earnings are below €1,200, increases linearly between 1,200 euros and 4,000 euros, and is capped at 700 euros per year for earnings above 4,000 euros. The credit is either deducted from the taxpayer's income tax or refunded after the end of the tax year by the tax authority. This measure serves as a financial incentive for employees working additional hours and supports fair compensation within Luxembourg's tax framework.

Employers paying the employee tax credit and the single parent tax credit are allowed to set off the credit granted against wage taxes withheld or request a refund of the tax credit advanced, as the case may be, as set forth by regulation.

(2) Tax Credits for Pensioners

Taxpayers entitled to pension allowances in Luxembourg and holding a tax card are eligible for a pensioner tax credit, as well as the CO_2 tax credit.[468] The tax credit is granted once, based on the overall income allocated to the taxpayer. The amounts of these credits are equal to the amounts of the credit for employees, i.e. with effect from January 1, 2025, the pensioner tax credit is between 300 euros and 600 euros and the CO_2 tax credit is 192 euros per annum where annual income is between 936 and 11,265 euros. For income between 11,266 euros and 40,000 euros, the pensioner tax credit is 600 euros and the CO_2 tax credit is 168 euros per annum. For annual income between 40,001 euros and 79,999 euros, the credits range from 0 euro to 600 and 192 euros, respectively, depending on the amount of annual income. The credit are not available to individuals with income below 936 euros and above 80,000 euros, no pensioner tax credit or CO_2 tax credit is granted. The credit is paid by the pension fund or other debtor of the pension during the taxable year to which it corresponds. Taxpayers receiving pension income below these amounts are not entitled to the employee tax credit. Pension funds or the debtors of the pension paying the pensioner tax credit and the single parent tax credit are allowed to set off the credits granted against wage taxes, if withheld or request a refund of the tax credit advanced, should that be the case, as set forth by regulation.

[462] Law of December 22, 1993, Art. VI, as amended.

[463] Law of December 19, 2020, Arts. 20 and 58.

[464] LIR, Art. 154, para. 6a.

[465] LIR, Art. 154 *quater*; Circular L.I.R., n°154 *quarter*/1 of May 25, 2021; Circular L.I.R n°15 *ter*/1, 154 *quater*/2, 154 *quinquies*/2 of May 25, 2021.

[466] LIR, Art. 139 *quater.*

[467] LIR, Art. 154 *terdecies.*

[468] LIR, Art. 154 *quiniquies*; Circular L.I.R. n°154 *quinquies*/1 of May 25, 2021; Circular L.I.R n°15 *ter*/1, 154 *quater*/2, 154 *quinquies*/2 of May 25, 2021.

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(3) Tax Credit for Single Parents

Single parent taxpayers can apply for a "single-parent tax credit."[469] The credit amounts to 3,504 euros per annum where annual taxable income is below 60,000 euros, regardless of the number of children. The credit is 750 euros if income exceeds 105,000 euros. A special formula applies with respect to income between 60,000 euros and 105,000 euros. The single parent tax credit is refundable to the taxpayer to the extent it exceeds the tax liability (*créance d'impôt*) owed by the taxpayer to the Tax Administration.

The single-parent tax credit is reduced by 50% of the total amount of all allowances from which the relevant child benefits to the extent these allowances do not exceed 2,712 euros per annum or 226 euros per month.

(4) Tax Credits for Independents

Taxpayers deriving business income, farming and forestry income or income from independent services are eligible for the tax credit for independents as well as the "CO_2 tax credit" for independents.[470] The tax credit is granted once, based on the overall income allocated to the taxpayer. The credit for independents cannot be aggregated with either the credit for employees or the credit for pensioners. With effect from January 1, 2025, the tax credit for independents is between 300 and 600 euros and the CO_2 tax credit is 192 euros per annum where annual income is between 936 and 11,265 euros. For income between 11,266 euros and 40,000 euros, the tax credit for independents is 600 euros and the CO_2 tax credit is 192 euros per annum. For annual income between 40,001 euros and 79,999 euros, the credits range from 0 euro to 600 and 192 euros, respectively, depending on the amount of annual income. For income below 936, as well as income in excess of 80,000 euros, no tax credit for independents or CO_2 tax credit is granted. The credit is limited to the period during which the taxpayer receives income deriving from an independent activity. The credit can only be used and or received within the framework of a final tax assessment (i.e., by filing an income tax return).

c. Credit for Descendants Ceasing to Qualify for Dependent's Allowance in the Preceding Two Years

A credit of up to 922.50 euros is available to a taxpayer with a descendant who ceased to qualify for the dependent's allowance in the two preceding years provided the taxpayer's annual income is less than 71,000 euros.[471]

d. Credit for Specified Luxembourg Business Investments

A tax credit is available as an incentive for specified investments in Luxembourg businesses.[472] See II.A.2.a.(2), above. The tax credit is extended to eligible assets used in any other EU Member State pursuant to the decision of the Court of Justice of the European Union (CJEU) dated December 22, 2010.[473]

e. Credit for Foreign Income Taxes

Resident individuals are given a tax credit for withholding taxes paid in treaty partner countries on dividends, interest, royalties and other income, as provided for under the applicable treaty.[474] A unilateral tax credit is available for income taxes paid in non-treaty partner countries[475] that reduces the tax due in Luxembourg by the amount paid in the foreign country.

The credit for foreign taxes can never exceed the portion of Luxembourg domestic tax attributable to the foreign income concerned. Foreign taxes in excess of the creditable amount are deductible as expenses.

f. Energy Tax Credit

A temporary energy tax credit for independent workers, employees, pensioners and disabled persons was introduced via the Law of June 29, 2022, which entered into force on June 30, 2022.[476] The credit of up to 84 euros is based on the gross monthly income of the recipient and is automatically applied on the salary slips of all employees in Luxembourg. The credit was available until April 2023. There are ongoing discussions about extending the relief measures in some form.

E. Rates and Calculation of Taxable Income

Three main features determine an individual's income tax liability:

(i) The individual's aggregate net income from all sources;

(ii) The individual's tax class with regard to his/her family charges; and

(iii) The income tax rate.

1. Aggregate Taxable Income

Below is an example of the aggregation of taxable income:

Net income (= gross receipts less income-related allowances) calculated separately for each one of the eight income sources:

[469] LIR, Art. 154 *bis* and 154 *ter.*

[470] LIR, Art. 152 *ter;* Circular L.I.R n°15 *ter*/1, 154 *quater*/2, 154 *quinquies*/2 of May 25, 2021.

[471] Circular no. 123*bis*/1 of January 24, 2008.

[472] LIR, Art. 152 *bis.*

[473] Circular of March 31, 2011.

[474] LIR, Art. 134 *bis.*

[475] LIR, Arts. 134 *bis* and 134 *ter.*

[476] LIR, Arts. 154 *sexies to octies* and Law of September 12, 2003 (as amended).

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— business	_____
— farming and forestry	_____
— independent services	_____
— employment	_____
— pensions	_____
— renting and leasing	_____
— investment	_____
— sundry services and capital gains	_____
Total net	_____
Less "special" and "extraordinary" expenses and investment incentives	(_____)
Adjusted taxable income	_____

a. Wage Withholding Tax

Salaries and pensions are subject to a withholding tax on wages that includes both income tax and social security contributions. In the case of salaries, the responsibility for correct withholding and timely payment lies with the employer paying the salaries. In the case of pensions, the responsibility lies with the payer of the pensions, if this is a Luxembourg public or private entity.

The computation of the correct withholding is based on the individual "tax cards" issued to employees and pensioners. All personal and family data are registered on the tax card, which must be remitted to the employer (or payer of the pension). Upon request, deductible expenses may be registered on the card by the tax authorities, thus enabling the employer to account for allowances in computing the wage tax.

The tax withheld is a prepayment of the individual income tax. Where a taxpayer has no further income, the salary or pension tax is normally the final tax. A tax return, however, must be filed if:[477]

(i) The amount of the taxable salary (or pension) exceeds 100,000 euros per annum;

(ii) Two or more salaries (or pensions) are earned and their aggregate amount exceeds 36,000 euros per annum in the case of married couples/partners filing jointly or 30,000 euros per annum in the case of single individuals; or

(iii) In addition to a salary (or pension), the taxpayer has dividend income of more than 1,500 euros per annum or any other earnings of more than 600 euros per annum (including treaty-exempt income).

b. Other Withholding Taxes

(1) Special Tax on Directors' Fees

Fees paid to members of the board or to the statutory auditor of a Luxembourg company are subject to a special tax of 20% to be withheld by the paying company.[478] Where the company bears the tax, the rate is 25% of the net fees paid. The special tax is creditable against individual income tax.

(2) Dividends

Dividends paid by Luxembourg companies, other than SPFs, venture capital entities, securitization entities and regulated collective investment entities, are subject to a 15% withholding tax.[479] The withholding tax applies to profit-linked distributions, including interest derived from profit-sharing bonds or loans. The withholding tax is creditable against individual income tax. Where the paying entity bears the tax, the rate is 17.65% of the dividends paid.

(3) Interest

Interest paid by a Luxembourg paying agent for the immediate benefit of individuals resident in Luxembourg is subject to a withholding tax of 20%.[480] Interest that has been subject to this withholding tax need not be included in the taxable income of the recipient, provided it is not received through a business or in the context of the exercise of a liberal profession. Interest paid by foreign paying agents in EU/EEA Member States and certain other territories may be brought within this system if the taxpayer himself or herself declares and pays the 20% withholding.

(4) Royalties

Luxembourg does not levy withholding tax on royalties paid to nonresidents with regard to the right to use or sublicense copyrights on artistic and literary works, or patents and trademarks. There is no withholding tax on rentals for tangible property.

However, Luxembourg does impose withholding tax at a rate of 10% on remuneration for independent activities of a literary or artistic nature, as well as remuneration for professional sports activities paid to nonresidents.[481] If the paying entity bears this tax, the rate is 11.11% of the remuneration paid.

2. Tax Classes and Child Allowances

a. Classification of Taxpayers

The taxable unit is the household.[482] Taxpayers are jointly assessable with their spouses and their minor children. Majority, for this purpose, is reached at the age of 21.

For purposes of determining the final tax liability, taxpayers are classified as belonging to one of three tax classes. This classification is a way of mitigating the tax burden by taking account of personal and family allowances. The three tax classes are:

(i) Tax Class 1 for single individuals not falling within Class 1a or 2;

[477] LIR, Art. 153 and RGD of December 28, 1990.

[478] LIR, Art. 152 and Decree of March 31, 1939 on Withholding Tax on Directors' fees (*et Verordnung über den Steuerabzug von Aufsichtsratsvergütungen*).

[479] LIR, Art. 148.

[480] Law of December 23, 2005.

[481] LIR, Art. 152, sec. 1.

[482] LIR, Art. 119.

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(ii) Tax Class 1a for taxpayers who are widowed or aged over 64 on January 1 of the tax year, or individuals with dependents in their household (and who are not otherwise within Class 2); and

(iii) Tax Class 2 for: (a) jointly assessed spouses; (b) registered partners; or (c) taxpayers of the same sex married under Luxembourg law or a foreign law (on request and, under the conditions for (b), by means of the filing of an annual personal tax return).[483]

With effect from January 1, 2018, jointly assessed taxpayers (i.e., married couples or civil partners) have the option to be taxed separately. These taxpayers now have the possibility to either continue to file a joint tax return or to opt for separate individual taxation. The separate taxation can take the form of a full individualization (each item of income is allocated to each spouse/partner and private expenses are split equally between the spouses/partners) or an individualization with reallocation of income (i.e., allocation made on an equal basis between the spouses/partners irrespective of the level of their individual income).

Child support is available for each minor child living in a taxpayer's household regardless of whether the taxpayer falls within Class 1a or Class 2.

Comment: Individuals whose marriage is terminated by reason of divorce or death remain in Tax Class 2 until the end of the third tax year after the divorce or the death of their spouse and, thereafter, fall into Tax Class 1 (or 1a).

b. Differences in Taxation of Classes 1, 1a, and 2

The general rate applies to Class 1 taxpayers; the general rate less a sliding allowance applies to Class 1a taxpayers. The "split" rate applies to Class 2 taxpayers, i.e., the tax rates applicable in Class 2 are the same as for Class 1 but are applied twice to one-half of the income.

c. Child Support

Dependents who have not reached the age of 21 on January 1 of the tax year and who are living in the taxpayer's household, regardless of whether they are the taxpayer's own descendants, descendants of the spouse or children taken into the household on a lasting basis, qualify for child support.[484]

The allowance amounts to net tax relief of a maximum of 76.88 euros per month per child, payable on a monthly basis to taxpayers who did not obtain this relief throughout the year together with their child social security benefits.[485] The allowance cannot produce a negative tax liability.

Child allowances are available, on the making of a claim, as follows:

(i) Children for whom the tax allowance has expired within the two years preceding the tax year qualify for a tax bonus, which is given to the taxpayer on the making of a claim and amounts to 922.5 euros per annum per child; and

(ii) Dependents aged 21 and over who are pursuing full-time vocational training and are essentially maintained by the taxpayer, and disabled dependents aged 21 and over, entitle the taxpayer to a child allowance subject to the taxpayer's making a claim annually and being able to substantiate his or her claim.

3. Tax Rate

a. Individual Income Tax Rates

The individual income tax[486] is imposed at progressive rates that depend on a taxpayer's income bracket. The income brackets are regularly adjusted by reference to the cost-of-living index. The income brackets are expected to be adjusted further for fiscal year 2025 (by two indexations equaling roughly 5%).

A previous adjustment became applicable with effect from January 1, 2024,[487] when the tax brackets where adjusted by 10.38% (equal to four indexations) compared with the brackets applicable since 2017. A tax credit equal to the impact of two index tranches (roughly 5%) was introduced with retroactive effect from January 1, 2023 (partially) to make up for the shortfall.

For fiscal year 2025, the income tax rates range from a low 8% on income above 13,230 euros to a high of 41% and 42% for income above 176,160 euros and 234,870 euros, respectively.

In addition, the surcharge for the employment fund for individual taxpayers is 7% for income not exceeding 150,000 euros (or 300,000 euros for joint taxpayers). For income exceeding that threshold the surcharge is 9%.

In the case of a taxpayer who receives a salary or replacement income (for example, a retirement pension or an unemployment allowance), the tax is levied by the employer (or the paying agent, i.e., the retirement fund, employment agency, etc.) on the gross amount of the salary or replacement income reduced by a rebate corresponding to the minimum social wage for non-qualified employees (2,637.79 euros as of January 1, 2025).

For the self-employed, the tax is due on the net income reduced by a rebate corresponding to 3/4 of the minimum social wage for non-qualified employees (1,978.34 euros as of January 1, 2025).

For investment income, the tax calculation is carried out by the Luxembourg tax authorities at the time of the annual taxation (i.e., through the filing of a Luxembourg personal income tax return).

b. Tax-Free Brackets

Income below certain thresholds is tax-exempt. The tax-free bracket is separately fixed for each tax class. The limits are as follows:

(i) 13,230.00 euros per annum for single taxpayers (Class 1);

[483] Circular 3/3 – 157 *bis*/2 – 157 *ter*/3 of January 7, 2015.

[484] LIR, Arts. 122, 123 and 123 *bis*.

[485] I.e., child benefits paid by the Luxembourg social security regime to private individuals subject to the Luxembourg mandatory State social security regime.

[486] LIR, Art. 118.

[487] Budget Law 2024.

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(ii) 26,500.00 euros per annum for widowed, old-aged and single-parent taxpayers (Class 1a); and

(iii) 26,500.00 euros per annum for married taxpayers (Class 2).

F. Assessment and Filing

1. Tax Return and Assessment Formalities

Income tax is levied by way of assessment where the wage withholding tax was not the final levy (see X.E.1.a., above).

Following a legislative change introduced by the Budget Law 2023, with effect from the fiscal year 2022, the deadline for filing tax returns was extended from May 31 to December 31.[488] While the Luxembourg tax authorities typically extended the filling deadline to December 31, without imposing any penalties, this change clarifies the administrative practice and provides more legal certainty to taxpayers. Forms are sent to the taxpayer by the tax administration.

A notice of assessment is issued to the taxpayer. The time limit for assessment is fixed solely by the statute of limitations, which is generally five years. Where an inaccurate income tax return is filed, whether fraudulent or not, the statute of limitations is extended to 10 years.

In the case of a change of tax residence, two tax assessments are issued in one calendar year, each constituting a separate assessment: one for a resident taxpayer (unlimited tax liability); and the other for a nonresident taxpayer (limited tax liability). No tax clearance is required for leaving the country.

Comment: Tax equalization is available for income subject to wage tax. Employees or pensioners earning annual salary or pension of less than 100,000 euros who are not subject to assessment by way of a tax return and who have deductible expenses not related to this income may obtain tax equalization by means of a simplified procedure, known as *décompte annuel*. Under this procedure, the relevant tax office will, on demand, adjust the aggregate monthly wage tax withholding to the effective annual tax payable after taking into account the deductible expenses.

2. Tax Payment

Tax must be paid within the month of receipt of the notice of assessment. It is possible to postpone payment at a low interest rate upon request. Where income tax liability is not so, or is insufficiently settled by wage tax withholding, the taxpayer must pay tax in advance based on quarterly installments determined by reference to the tax due in the previous year. A tax refund is paid either to the taxpayer's bank account or by postal money order sent to the taxpayer's home. Jointly assessed spouses are individually liable for the payment of tax and both must sign the receipt for a tax refund.

[488] 2023 Budget Law, Art. 3.

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XI. Taxation of Nonresident Individuals

A. Scope of Taxation

Nonresident individuals are subject to Luxembourg tax only on their Luxembourg-source income.[489] The taxation of nonresident individuals differs from the taxation of resident individuals in the following respects:[490]

(i) The deduction of private expenses is subject to restrictions in the case of nonresidents;

(ii) As from January 1, 2018, married nonresident taxpayers will have to fulfill some specific conditions (e.g., 90% of their income should be derived from Luxembourg) and they will have to report their non-Luxembourg sourced income to benefit from tax under Class 2; and

(iii) Nonresidents pay tax at the ordinary tax rates, subject to a minimum rate of 15% (except on income subject to wage tax, i.e., salary and pension income). However, the minimum rate of 15% cannot lead to an income tax liability exceeding the theoretical Luxembourg income tax liability that would arise from the application of tax Class 1 to the nonresident's Luxembourg-source taxable income increased by the upper limit of the tax-free bracket (i.e., increased by 13,230.00 euros per annum for Class 1).

B. Earned Income from Independent Activities

The following types of income are taxed under the heading of earned income from independent activities:[491]

(i) Business profits of a nonresident derived from:

- A permanent establishment (PE) in Luxembourg;
- The activities of a door-to-door salesman; or
- The performance in Luxembourg of a professional sportsperson or artist;

(ii) Income from an agricultural or a forestry undertaking located in Luxembourg; and

(iii) Income from a profession carried on from a fixed base in Luxembourg.

The following expenses are deductible from income from independent activities:

(i) Income-related expenses, i.e., all business expenses generally deductible for residents and based either on regular bookkeeping or, where permitted, on a cash accounting method;

(ii) Compulsory contributions to social security paid in Luxembourg or abroad; and

(iii) Loss carryforwards, if it can be demonstrated from records held in Luxembourg that the losses are economically connected to the Luxembourg activity.

C. Income Subject to Wage Tax

Pursuant to Article 156 LIR, the following are subject to wage tax:

(i) Wages paid by Luxembourg employers; and

(ii) Pensions generated by a former personal activity carried out in Luxembourg.

1. Income from Employment

Luxembourg law provides for wages to be taxable in Luxembourg if the relevant activity is performed or used in Luxembourg, or if it is remunerated by a Luxembourg public body, unless an applicable tax treaty provides otherwise. Income from an activity performed outside of Luxembourg on behalf of a Luxembourg employer is exempt if it is subject to a foreign income tax (irrespective of the existence of an applicable treaty).

2. Pensions

Nonresident pensioners are taxed at source on non-qualifying pensions paid by a former Luxembourg employer[492] or by a Luxembourg public body, unless an applicable tax treaty provides otherwise. Private annuities paid to nonresidents are not taxed in Luxembourg.

3. Deductible Expenses

The following expenses may be deducted from earned income subject to wage tax:

(i) Income-related expenses listed under X.D.4. and 5., above;

(ii) Lump-sum allowances and tax exemptions listed under X.D.4. and 5., above;

(iii) Compulsory social security contributions paid in Luxembourg or paid abroad on the Luxembourg income; and

(iv) Private expenses, but only up to a flat maximum of 480 euros per annum.

D. Income from Investment

Income derived from private investment in Luxembourg includes:

(i) Income from portfolio investments or other capital assets;

(ii) Income from the rental of movable, immovable, and intangible property, i.e., rents and royalties; and

(iii) Capital gains on the sale of private assets.

Nonresidents are taxable on such income as described in 1. to 6., below, subject to any relevant provisions of an applicable tax treaty.

1. Dividends

Dividends paid by Luxembourg entities other than undertakings for collective investment in transferable securities

[489] LIR, Art. 2.
[490] LIR, Arts. 157 and 157 *bis*.
[491] LIR, Art. 156.
[492] Non-qualifying pensions within the meaning of the Law of June 8, 1999, on supplementary pension schemes.

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(UCITS), specialized investment funds (SIFs), *sociétés d'investissement en capital à risque* (SICARs), securitization vehicles or *sociétés de gestion de patrimoine familial* (SPFs) are subject to withholding tax at the rate of 15%. Exemptions may apply depending on the characteristics of the nonresident recipients and the size of their shareholdings. In the case of nonresidents, the withholding tax is a final tax.

2. Interest

The tax treatment of interest paid to nonresidents that is not allocable to a Luxembourg permanent establishment (PE) depends on the kind of interest paid. Interest on profit-sharing or profit-participating bonds is subject to withholding tax at the rate of 15% to be withheld by the Luxembourg debtor. In the case of nonresidents, this is a final tax. All other interest received by nonresidents is tax-free, provided it is not earned through a business carried out through a PE situated in Luxembourg.

3. Royalties

Luxembourg does not levy withholding tax on royalties as regards the right to use or sublicense copyrights on artistic and literary works, patents or trademarks. However, a 10% withholding tax is imposed on remuneration for independent activities of a literary or artistic nature, as well as for professional sports activities.

4. Rental Income

Income from the renting of real property, equipment and other assets, including movables, is taxable by way of assessment based on progressive rates (subject to a minimum rate of 15%)[493] in the hands of nonresident owners if the real property, etc. is located in Luxembourg.

5. Capital Gains on Private Assets

The sale of private property by nonresidents generates taxable income only if the capital gain is realized on the sale of:

(i) Real property located in Luxembourg; or

(ii) A substantial shareholding (more than 10%) in a Luxembourg company that is sold within six months of acquisition. If a substantial shareholding is sold more than six months after acquisition, the capital gain is taxable only if the nonresident vendor was resident for 15 years or more and became a nonresident less than five years before the sale. This provision does not apply to shareholdings in (a) UCITS having legal personality, (b) SPFs, and (c) SICARs.

6. Deductible Expenses

Assessable investment income may be reduced by revenue-related expenditure. No deduction is given where the tax at source is the final tax. Losses on the sale of private assets cannot be set off against income from other sources.

[493] However, the minimum rate of 15% cannot create an income tax liability exceeding the theoretical Luxembourg income tax liability that would arise from the application of Class 1 tax to the nonresident's Luxembourg-source taxable income increased by the upper limit of the tax-free bracket (i.e., increased by 11,265 euros per annum for Class 1, as stated in LIR, Art. 118).

E. Method of Taxation

1. Tax Rate

The same progressive income tax rates are applicable to resident individuals and nonresident individuals (see X.E.3., above). The entire Luxembourg-source income of nonresidents (except for dividends, interest, directors' fees, independent activities of a literary or artistic nature or professional sports activities and, under certain circumstances, employment and pension income relating to activities carried out in Luxembourg) is subject to assessment.

2. Classification of Nonresident Taxpayers

Although nonresidents are usually Class 1 taxpayers (see XI.A., above), in certain circumstances they may fall into other categories.[494] Thus, subject to certain conditions relating to the type of income, nonresidents may be given allowances for the support of dependents, as described in XI.E.2.a. to c., below.

a. Earned Income and Passive Income in Luxembourg

Passive income of a nonresident (i.e., investment income, as discussed under XI.D., above) is taxed as if the taxpayer were in the tax class for single taxpayers (i.e., Class 1), irrespective of the taxpayer's actual family status.

Earned income of nonresidents (as described under XI.B. and XI.C., above) may be reduced by child allowances (Class 1a) and/or by wife and child allowances (Class 2), depending on the criteria outlined in XI.E.2.b., below.

b. More than 90% of Earned Income Derived from Luxembourg

Married nonresidents who derive more than 90% of their household's earned income from Luxembourg are taxed in Luxembourg as taxpayers subject to Class 2 (see X.E.2.b., above). If both derive professional income from Luxembourg source, the application of the Class 2 will lead to their joint taxation. Married nonresident taxpayers must report their non-Luxembourg sourced income to benefit from the tax Class 2.

c. Allowances for Dependents

Child allowances are given upon request to married nonresidents and single nonresidents who support dependents (see X.E.2.c., above). The dependents living in the nonresident's household must be certified by the nonresident's foreign municipality of residence.

A child aged 21 or over who is completing his/her professional education must provide a school certificate or tuition fee receipt to qualify as a dependent.

3. Withholding Taxes

a. Passive Income

Dividends and interest on certain debt instruments are subject to withholding tax.[495] For nonresident recipients of such income, this is a final tax.

[494] LIR, Art. 157 *bis.*
[495] LIR, Art. 146.

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b. Directors' Fees

Taxes withheld on fees paid to nonresident directors for their board activities (*tantièmes*)[496] for Luxembourg companies are creditable.

Tantièmes paid to nonresident directors are subject to the special withholding tax at the rate of 20%. The 20% tax is creditable against the final income tax due, if any.

Where fees are paid net of tax, the paying company must withhold 25% on the net fees (by way of a gross-up). Where the fees amount to less than 100,000 euros per annum and the nonresident director does not derive any other Luxembourg-source professional income,[497] the 20% (or 25% where the nonresident director receives a payment net of withholding tax) withholding is the final tax.

c. Withholding Tax on Wages and Pensions

For taxpayers whose only income is income subject to the wage tax, the tax withheld is normally the final tax. Otherwise, the tax withheld under the wage tax system is considered to be a prepayment of the final income tax liability determined by assessment (see X., above).

The wage tax procedures for residents described in X.E.1.a., above, also apply to nonresidents. However, nonresidents should be particularly aware of the following aspects:

(i) Nonresidents must apply for their salary tax card to the Luxembourg tax authorities each year. Applications must be accompanied by a municipal certificate of residence and family status.

(ii) In the case of part-time employees, wage tax must be calculated on a time-apportioned basis. The liability, therefore, remains with the Luxembourg employer.

(iii) Part-time employees, employees whose family situation changes during the year (for example, as the result of a wedding or birth) and taxpayers who change their tax residence in the course of a year may obtain a refund of possible excess salary tax withheld by filing a special application called a *décompte annuel* with the Tax Administration.[498]

(iv) Nonresident employees or pensioners are not subject to the minimum rate of 15%. If their Luxembourg salary or pension is below the tax-free threshold (see X.E.3.b., above), no Luxembourg tax will arise thereon.

(v) Nonresident employees who do not physically perform their professional duties in Luxembourg are, in principle, not subject to the Luxembourg withholding tax on their wages.[499]

4. Assessment of Nonresidents

Nonresidents deriving income subject to wage tax, i.e., salaries and pensions, must file a tax return if they exercise an employment continuously for nine months in the tax year and their salary exceeds:[500]

(i) 36,000 euros per annum in the case of single taxpayers (Class 1 and 2); or

(ii) 30,000 euros per annum in the case of Class 1a taxpayers (see X.E.1., above).

Nonresident spouses who both derive income from employment or pension income from Luxembourg may elect either to file a joint tax return and be taxed as married taxpayers, or to be taxed separately as unmarried taxpayers.

[496] LIR, Art. 152.

[497] I.e., business income, income from agriculture and forestry, income from a liberal profession, employment income, and pension and annuities from a Luxembourg source.

[498] Model 163 R.

[499] LIR, Art. 136.

[500] LIR, Art. 153.

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XII. Estate, Inheritance, and Transfer and Gift Taxes

A. Inheritance Tax and Transfer Tax

Inherited property is subject to two taxes:[501]

(i) Inheritance tax (*droit de succession*) is due on the value of all property inherited from a Luxembourg inhabitant;[502] and

(ii) Transfer tax (*droit de mutation*) is due on the value of real property located in Luxembourg that is inherited from a non-inhabitant.

Inheritance tax is levied on the beneficiary of the net assets inherited, after deduction of all liabilities other than the inheritance tax itself. Real property located abroad is not subject to the tax, but it is included at its market value for purposes of determining the value of net assets for progression purposes. The proportion of liabilities corresponding to the value of real property located abroad is deducted from total liabilities admitted as a charge against the inheritance. Gifts and donations made during the year preceding death by the deceased that have not been subject to registration tax also are considered part of the inheritance.

Transfer tax is levied on the market value of all inherited real property situated in Luxembourg. No deductions are allowed.

Normally, assets are valued at their market value as of the date of death. Quoted securities are valued at rates published weekly by the government, or at stock exchange quotation on the day of death. The value of unquoted securities must be established by the heirs.

Inheritances passed by inhabitants to direct-line descendants or to spouses are exempt from inheritance tax, except where, under the testament, a descendant or the spouse inherits a share that exceeds the legal share to which he or she is otherwise entitled by more than 10,000 euros. The excess over this threshold in such cases will be taxed.

Legacies for the foundation of scholarships with educational institutes in Luxembourg, as well as legacies left to a member of a specified institution or organization, are exempt from inheritance and transfer tax.

1. Tax Rates

The normal tax rates to be applied are set out below. A standard deduction of 38,000 euros is granted to a surviving spouse with no children. This deduction is not available with respect to the transfer tax.

All inheritances valued at over 10,000 euros are liable to surcharges as in XII.A.2. and 3., below.

Legacies in favor of communes, public establishments and charitable institutions in Luxembourg are subject to a 4% inheritance tax or transfer tax; legacies in favor of nonprofit organizations and churches are subject to tax at the rate of 6%.

[501] Law of December 27, 1817, as amended.

[502] An inhabitant is defined as a person having either his or her domicile, or the seat of his or her wealth in Luxembourg.

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2. Inheritance Tax

Amount of the Inheritance		2nd Degree of Kinship*	3rd Degree of Kinship*	Other Relatives*	Third Parties	Increase
From	To					
Euros		%	%	%	%	%
	10,000	6	9	10	15	—
10,000	20,000	6.6	9.9	11	16.5	1/10
20,000	30,000	7.2	10.8	12	18	2/10
30,000	40,000	7.8	11.7	13	19.5	3/10
40,000	50,000	8.4	12.6	14	21	4/10
50,000	75,000	9	13.5	15	22.5	5/10
75,000	100,000	9.6	14.4	16	24	6/10
100,000	150,000	10.2	15.3	17	25.5	7/10
150,000	200,000	10.8	16.2	18	27	8/10
200,000	250,000	11.4	17.1	19	28.5	9/10
250,000	380,000	13.2	19.8	22	33	12/10
380,000	500,000	13.8	20.7	23	34.5	13/10
500,000	620,000	14.4	21.6	24	36	14/10
620,000	750,000	15	22.5	25	37.5	15/10
750,000	870,000	15.6	23.4	26	39	16/10
870,000	1,000,000	16.2	24.3	27	40.5	17/10
1,000,000	1,250,000	16.8	25.2	28	42	18/10
1,250,000	1,500,000	17.4	26.1	29	43.5	19/10
1,500,000	1,750,000	18	27	30	45	20/10
1,750,000		19.2	28.8	32	48	22/10

* Rates applicable to assets inherited *ab intestat* (i.e., assets inherited according to the allocation rules set down in the law). If additional assets are inherited (e.g., pursuant to a will), the starting rate is 15%.

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3. Transfer Tax

Amount of the Inheritance		Direct Line	Spouse	2nd Degree	3rd Degree	Other Relatives	Third Parties	Increase
From	To							
Euros		%	%	%	%	%	%	%
	10,000	2	5	6	9	10	15	—
10,000	20,000	2.2	5.5	6.6	9.9	11	16.5	1/10
20,000	30,000	2.4	6	7.2	10.8	12	18	2/10
30,000	40,000	2.6	6.5	7.8	11.7	13	19.5	3/10
40,000	50,000	2.8	7	8.4	12.6	14	21	4/10
50,000	75,000	3	7.5	9	13.5	15	22.5	5/10
75,000	100,000	3.2	8	9.6	14.4	16	24	6/10
100,000	150,000	3.4	8.5	10.2	15.3	17	25.5	7/10
150,000	200,000	3.6	9	10.8	16.2	18	27	8/10
200,000	250,000	3.8	9.5	11.4	17.1	19	28.5	9/10
250,000	380,000	4.4	11	13.2	19.8	22	33	12/10
380,000	500,000	4.6	11.5	13.8	20.7	23	34.5	13/10
500,000	620,000	4.8	12	14.4	21.6	24	36	14/10
620,000	750,000	5	12.5	15	22.5	25	37.5	15/10
750,000	870,000	5.2	13	15.6	23.4	26	39	16/10
870,000	1,000,000	5.4	13.5	16.2	24.3	27	40.5	17/20
1,000,000	1,250,000	5.6	14	16.8	25.2	28	42	18/10
1,250,000	1,500,000	5.8	14.5	17.4	26.1	29	43.5	19/10
1,500,000	1,750,000	6	15	18	27	30	45	20/10
1,750,000		6.4	16	19.2	28.8	32	48	22/10

B. Gift Tax

Gifts and donations must, in principle, be registered and are, thus, subject to registration tax (*droit d'enregistrement*). Gift tax is payable by the donee on the gross market value of the assets received, whether the property is located in Luxembourg or elsewhere. Legacies for the foundation of scholarships with educational institutes in Luxembourg are exempt.

1. Tax Rates

The tax rates vary according to the degree of kinship between the donor and the donee. The tax rates range from 1.8% to 14.4%, as shown in 2., below (a surtax of 2/10 is included). Gifts made to municipalities and public establishments are taxed at a rate of 4%. Gifts made to charities and churches are taxed at a rate of 4%.

2. Effective Rates

Relationship	Rate (%)
Direct line	1.8
Spouse	4.8
Brother, sister	6.0
Uncle, aunt, niece, nephew, parent-in-law (subject to certain conditions), adopted child	8.4
Other relationships, or no relationship	14.4

The rate of 1.8% applies where the gift is an advance of an inheritance from the parent and does not exceed the share that the child would receive if the decedent were to die intestate. If the amount is in excess of such a share, the rate is 2.4%.

The above tax rates are halved if the gift is made on the occasion of marriage.

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XIII. Transfer Pricing

A. Scope of Provision

Luxembourg's transfer pricing policy has long been based on the arm's-length principle, which requires that business terms and conditions between related parties do not deviate from those that could be agreed to by unrelated third parties under the same or similar circumstances, to avoid price adjustments being made by local tax authorities. However, the arm's-length principle was not explicitly codified in the income tax law until January 1, 2015.[503]

Furthermore, as of that date, a specific transfer pricing documentation requirement was introduced. Non-compliance with this requirement may result in a reversal of the burden of proof.

With effect from January 1, 2017, a transfer pricing provision in the income tax law is in force that outlines a detailed framework for defining and performing a comparability analysis based on the 2015 final report on Actions 8–10 of the OECD/G20 BEPS Project revising the OECD Transfer Pricing Guidelines for MNEs and Tax Authorities.[504] The provision imposes an obligation on taxpayers to perform such an analysis for each controlled transaction in which they are engaged. Further, this provision provides for a general anti-abuse measure under which a transaction can be disregarded for transfer pricing purposes if it is concluded between controlled parties and includes one or more elements that in substance do not have valid commercial rationality and that impact the determination of the arm's length price.

On January 28, 2011, the tax administration issued a circular[505] that sets out the framework for advance pricing agreements (APAs) regarding intra-group financing activities (see IV.A.5., above). However, this Circular was replaced with application from January 1, 2017, by Circular 56/1 – 56 *bis*/1 of December 27, 2016, which aligns the APA framework to Article 56 *bis* LIR and thus to the revised OECD Transfer Pricing Guidelines.

Over the past few years, transfer pricing has become an increasingly important focus of attention in Luxembourg taxation. The decrease in advance tax rulings and APAs has resulted in increased scrutiny by the Luxembourg tax authorities. The tax authorities have started questioning taxpayers' intercompany transactions and the application of the arm's length principle more systematically.

While in many cases the tax authorities limit themselves to requesting the supporting transfer pricing documentation for transactions with related parties, in other cases the tax authorities have not hesitated to review in detail and challenge the methodology applied and the underlying calculations performed, and to make corrections on that basis,

Comment: Jurisprudence shows that the tax authorities have an easier time challenging a taxpayers' intercompany transactions when no transfer pricing documentation is prepared, or when the transfer pricing documentation is prepared only after an audit by the tax authorities. In an environment where more and more tax scrutiny is observed, taxpayers should strive to ensure that all controlled transactions are duly documented and supported by *ad hoc* transfer pricing documentation.

For further discussion of the Luxembourg's transfer pricing system, see also Chapter 100 of 6960 T.M., Transfer Pricing: Rules and Practice in Selected Countries (J–L).

B. Determination of Arm's-Length Price

In general, Luxembourg regards the OECD Transfer Pricing Guidelines as a principal source of guidance for the determination of the correct arm's length prices.

The interpretation by the Luxembourg Administrative Court of the amendments to the OECD Commentaries with regard to their application to Luxembourg's existing tax treaties varies as follows:[506]

(i) Amendments that are mere clarifications of the interpretation or of the difficulties in applying a treaty can be taken into account for purposes of such interpretation, provided the OECD Model Convention was not itself amended;

(ii) Amendments that are made based on consensus among the OECD Member States can be taken into account to interpret a treaty if no change in the allocation of taxing powers has been made and the update consists of a simple clarification; and

(iii) Amendments that seek to solve an existing problem and go beyond a simple clarification are not taken into account in interpreting an existing tax treaty.

[503] LIR, Art. 56, as amended.
[504] LIR, Art. 56 *bis*.
[505] Circular 164/2.
[506] Administrative Court, July 17, 2019, n°42043C.

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XIV. Avoidance of Double Taxation

A. *Tax Treaty Interpretation and Application*

1. *Creation of Income Tax Treaty Relationship*

Luxembourg has a broad network of tax treaties, consisting of 86 tax treaties that are currently in force and 25 that are not yet in force; 35 agreements have been terminated. For a list of Luxembourg's tax treaties and other tax-related agreements, see International Tax Treaties.

The adoption of tax treaties by Luxembourg is the result of a process of negotiation and ratification, leading to the entry into force.

In Luxembourg, tax treaty negotiations are in principle conducted by the Ministry of Finance, or an official with a negotiating mandate (i.e., the International Relations Division of the Luxembourg tax authorities).

The tax treaties negotiated by Luxembourg are generally in line with the provisions of the OECD Model. However, some of the tax treaties entered into by Luxembourg with emerging states contain provisions which are based on the UN Model.

The text of the tax treaty is then established as authentic and definitive through the signature of the Ministers of both contracting states, or by the officials that have participated in the elaboration of the treaty. However, the signing, in itself, does not yet mean that Luxembourg has consented to be bound by it. For this to be the case, parliament must approve the treaty (through a "consenting law"), after which the treaty is ratified.[507] In practice, the instruments of ratification are exchanged with the other state concerned and the treaty enters into force on the day provided for in the text (often 30 days after the exchange of the instruments of ratification), provided the completed ratification has been published in the *Official Journal.*

At the time of signature or ratification, reservations may be made by Luxembourg or by the other contracting state to the treaty. These reservations restrict the scope of the commitments. They are submitted for approval to parliament in the same way as the treaty.

Simultaneously, interpretative declarations may be formulated by Luxembourg or by the other contracting state. These are unilateral declarations, through which the parties to the treaty specify or clarify the meaning or scope they attribute to the treaty or to certain provisions, without modifying the actual obligations arising from the treaty. Such interpretative declarations may be amended or modified at any time and do not require the approval of parliament.

Moreover, the Ministers of Finance or the accredited officials of Luxembourg and the other contracting state may negotiate a mutual agreement (for Mutual Agreement Procedures, see XIV.C.6., below), or a Mutual Agreement on Interpretation, which is neither binding for the taxpayers nor the courts.

2. *Administrative Measures Dealing with Tax Treaty Provisions*

Once a particular tax treaty is in force, the Luxembourg tax authorities may publish guidance on the application of its provisions from a Luxembourg perspective.[508] When the OECD Model has been used, the Luxembourg tax authorities tend to refer to the commentary on the OECD Model, as well as to the OECD Base Erosion and Profit Shifting (BEPS) reports.

3. *Treaty Interpretation*

Once in force, a treaty can be referred to by taxpayers before the courts. If interpretation of a treaty is essential for the settlement of a dispute, a Luxembourg court may interpret it.

In this context, Luxembourg courts adopt an objective or textual approach. There is a presumption that the intention of the parties is reflected in the text of a tax treaty. If the wording of the relevant provision is not sufficient, the court may take into account the preparatory work or the relevant context and the comparative law of Luxembourg and the other contracting state in applying a treaty.[509] Moreover, the Vienna Convention on the Law of Treaties, which Luxembourg formally approved through a law[510] of April 4, 2003, states that treaties should be interpreted in good faith in accordance with the ordinary meaning given to terms in the treaty in light of their object and purpose.[511]

In addition to the rules of interpretation laid down by a treaty itself, the court must consider the reservations and declarations made by both states that are parties to the treaty. However, the court should not take into account the commentary of a treaty, if the commentary has been published after the ratification of the concerned treaty, if it would have the effect of modifying the scope or the modalities of the commitments agreed upon in the treaty. This follows the distinction between an ambulatory and a static interpretation. Similarly, reference should be made to the most recent commentaries on the OECD Model (as well as the OECD BEPS reports) regarding the interpretation of terms when the OECD Model is used, except where the OECD Model has been changed in substance.[512]

If a treaty has been drafted and signed in different languages, all such language versions are generally equally authentic. Therefore, differences in interpretation may arise, as there is generally no preference for any particular language version. For this purpose, some treaties specifically provide that only a certain language version or versions are authentic.

It should be noted that, unless expressly provided otherwise, a treaty has no effect on the domestic tax regime of the state that is granted the right to tax a particular item of taxable income or capital and is therefore not intended to impose a recharacterization of that income or capital under that state's domestic law.[513]

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[507] Constitution, Art. 37.

[508] These documents can be found on the website of the Tax Authority at *Conventions internationales en vigueur et en négociation — Affaires internationales — Administration des contributions directes — Luxembourg*, https://impotsdirects.public.lu/fr/conventions/luxembourg.html.

[509] Court of Cassation, February 23, 1933.

[510] Law approving the Vienna Convention of the Law of Treaties of April 4, 2003.

[511] Vienna Convention on the Law of Treaties, Art. 31.

[512] Administrative Tribunal case no. 35474 of March 4, 2015.

[513] Administrative Court case no. 26997C of December 16, 2010 and Administrative Court case no. 39274C of February 8, 2018.

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B. Foreign Tax Credits

As a rule, Luxembourg residents are taxable on a worldwide income basis. The only exception to this principle arises when a relevant tax treaty applies. Tax credits relating to foreign income may be credited against Luxembourg tax due. Foreign tax credits[514] are limited to the amount of Luxembourg tax that corresponds to the taxable foreign income concerned. The non-creditable portion may be deducted as an expense.

A tax credit may also be available under treaty provisions if double taxation is not eliminated by the exemption method.

The following kinds of income are considered foreign-source income:

(i) Business income derived through a foreign permanent establishment (PE) or by a foreign permanent representative and income of the kind referred to below in (iv), (vii) and (viii) that qualifies as business income.

(ii) Income from agriculture and forestry carried on in a foreign country and income referred to below in (iv), (vii) and (viii) that qualifies as income from agriculture and forestry.

(iii) Income from independent personal services exercised or used in a foreign country and income of the kind referred to below in (iv), (vii) and (viii) that qualifies as income from independent services.

(iv) Income from the disposition of:

- Goods that form part of the fixed assets of a business or a farm, or goods used for the exercise of an independent profession; and
- Shares in a company that has its principal place of business or statutory seat in a foreign country.

(v) Income from dependent services performed in a foreign country or used in a foreign country, as well as income paid by foreign public funds with respect to current employment. Income paid out of domestic public funds is not considered to be foreign-source income even if the relevant services are rendered in a foreign country.

(vi) Pension income, where the dependent services generating the pension were performed or used in a foreign country or when the pension is paid by a foreign public fund. Notwithstanding that the services were performed abroad, a pension paid by a domestic public fund is not considered to be derived from a foreign country.

(vii) Arrears of pensions, annuities and other allowances, where the debtor's residence or principal place of management is in a foreign country.

(viii) Income from capital investments, where the debtor's residence or principal place of management is in a foreign country.

(ix) Income from the leasing or letting of real property where the fixed assets or the mineral or fossil substances are located in another country or if the rights generating royalties are used in another country.

(x) Income from the alienation of fixed assets (real property) or other assets held for less than six months.

There is no indirect foreign tax credit, meaning that the local income taxes paid by a foreign subsidiary may not be credited against Luxembourg income tax.

C. Tax Treaties

1. In General

Companies and individuals that are residents of Luxembourg may claim the benefit of Luxembourg's tax treaty network.

Two methods for the avoidance of double taxation are used simultaneously in all of Luxembourg's double taxation agreements that are currently in effect:

(i) The exemption method; and

(ii) The tax credit method.

a. Exemption Method

The exemption method grants exclusive taxing rights to the country of source or the country of residence. Where the exemption method applies, income or capital may no longer be taxed by one of the contracting states, regardless of whether the other country, under its national tax law provisions, exercises its taxing rights.

Where Luxembourg waives its taxing rights, a "progression clause" applies with respect to the remaining taxable income and the net assets of resident taxpayers. In such case, the tax rate is determined based on total income, including any income exempted under the treaty. The tax rate so computed is then applied to the remaining income. This exemption with progression permits the avoidance of double taxation without favoring the taxpayer.

All Luxembourg's tax treaties use the exemption method as the general rule. The tax credit method is generally used only for income from capital assets, where the taxing rights are generally attributed to the country of residence, although a reduced tax may be withheld by the country of source.

b. Credit Method

The tax credit method is based on the principle that a resident taxpayer remains liable to domestic taxation on his or her total worldwide income. Taxes paid in the treaty partner source country are creditable against the tax assessed in the country of residence (foreign tax credit). Consequently, unlike under the exemption method, the taxpayer may not benefit from a lower rate imposed in the source state.

2. Taxation of Foreign Business Income

a. Foreign Permanent Establishment

Most of Luxembourg's treaties follow the Organisation for Economic Cooperation and Development (OECD) Model Con-

[514] LIR, Arts. 134 and 134 *bis.*

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vention[515] and, therefore, contain a definition of "permanent establishment" (PE).

b. Industrial and Commercial Profits

Industrial and commercial profits of a company are taxable only in the company's country of residence, unless the business of the resident company is carried on in the other contracting state through a PE. Profits allocable to a foreign PE are exempt from tax in Luxembourg. Until the year 2002, losses incurred by a foreign PE could be set off against taxable Luxembourg profits.[516] As a result of a change in income tax law with effect from 2002, the argument has been made that losses incurred by a PE should no longer be deductible from the worldwide tax base.

Comment: In the author's view, PE losses should continue to be deductible. It should be noted that there is consensus to the effect that losses of a PE that is not located in a tax treaty country are deductible. Moreover, European case law prescribes such deductibility where a PE is located in another EU Member State and such losses cannot be taken into account in that Member State.[517]

The profits to be attributed to a PE are determined as if the PE were a distinct and separate company engaged in business activities under the same or similar conditions and dealing wholly independently with the company of which it is a PE.[518]

Interest income, dividend income, royalties and capital gains are considered to be part of industrial and commercial profits if they can be attributed to a PE.

Translation results of the PE, at least in the case of losses, are in certain circumstances to be taken into account by the head office.[519]

The domestic PE definition set out in paragraph 16 of the Tax Adaptation Law is broader than the definitions in Luxembourg's tax treaties. On January 1, 2019, a new domestic provision[520] came into force that stipulates that, where there is an applicable tax treaty, the treaty definition of a PE is the only definition that should be applied. It further provides that, if this is consistent with the applicable treaty provision, a taxpayer will be considered to conduct its activity through a foreign PE if the activity, considered in isolation:

(i) Constitutes an independent activity; and

(ii) Represents a participation in the general economic life of the other country.

The tax authorities may require the taxpayer to provide proof that the other country recognizes the PE as such. If the applicable treaty does not contain a provision akin to Article 23A(4) of the OECD Model Convention, such proof must be provided without request.

3. Taxation of Investment Income

a. Dividends

Luxembourg tax law provides for a withholding tax that is generally levied at the rate of 15%. Under Luxembourg's tax treaties, this rate is often reduced if certain thresholds in terms of size and duration in relation to the shareholding are met.

Under Article 147 LIR, dividend withholding tax is reduced to 0% if the following requirements are met:

(i) The recipient company must hold 10% or more of the nominal paid up share capital of the dividend-paying company or the participation must have an acquisition price of 1.2 million euros or more;

(ii) The recipient company must be: (a) a resident of Luxembourg and fully subject to Luxembourg income tax, (b) a resident of a European Union (EU) Member State and covered by the EU Parent-Subsidiary Directive, or (c) resident of Switzerland or of a country with which Luxembourg has concluded a tax treaty, provided the recipient company is subject in its country of residence to an income tax that is comparable to the Luxembourg corporate income tax; and

(iii) At the time of the dividend/liquidation distribution, the minimum participation referred to above under (i) must have been held by the recipient company for an uninterrupted period of at least 12 months, or the recipient company must commit itself to continue to hold the minimum participation for an uninterrupted period of at least 12 months.

In March 2015, a common minimum anti-abuse rule was introduced in the EU Parent-Subsidiary Directive to prevent abusive structuring and erosion of the tax base in EU Member States. These amendments are implemented in Luxembourg law with effect from January 1, 2016.[521]

The common minimum anti-abuse rule disallows the application of the Participation Exemption based in the EU Parent-Subsidiary Directive, i.e., for recipient companies fulfilling condition (ii)(b), above, for profit distributions made to companies within the meaning of the EU Parent-Subsidiary Directive, in case of artificial arrangements, which have been put in place for the purposes of obtaining a tax advantage and not for valid commercial reasons reflecting economic reality.

The paying company is required to withhold the regular 15% tax, and the tax paid in excess is refunded to the recipient upon application if the conditions for refund are met. However, if the paying company is able to determine an applicable reduction or exemption of the withholding tax rate itself, it may also directly apply the reduced rate or exemption when paying the dividend. It has to declare the distribution in a withholding tax return it must file within eight days of putting the dividend at the disposal of shareholders.

b. Interest

With effect from January 1, 2015, Luxembourg adopts the automatic exchange of information approach, ending the transi-

[515] Organisation for Economic Cooperation and Development (OECD) Model Double Taxation Conventions on Income and on Capital released in 1994, 1995, 1997, 1998, 2000, 2003, 2005, 2008, 2010, 2014, and 2017.

[516] The tax authorities have long taken the opposite view, and it was not until the *Cour Administrative* decision of August 10, 2005, No. 19407C that the deductibility of PE losses was confirmed for years before 2002.

[517] European Court of Justice (ECJ), *Lidl Belgium GmbH & Co. KG v. Finanzamt Heilbronn*, case C-414/06.

[518] OECD Model Convention, Art. 7(2).

[519] *Tribunal d'arrondissement*, December 10, 2009, no. 24663.

[520] StAnpG, Art. § 16 No. 5, introduced by the Law of December 21, 2018.

[521] Law of December 18, 2015, Art. 2.

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tional period during which it favored the system of withholding tax within the framework of the EU Directive on the taxation of savings.[522] The first exchange of information took place in 2016 in relation to interest paid in 2015. As a consequence of the Council Directive (2015/2060/EU) repealing the EU Savings Directive, the Law dated July 23, 2016 abolished the Luxembourg implementation of the EU Savings Directive.

Under the Relibi Law dated December 23, 2005, as amended by the Law of December 23, 2016,[523] payments of interest or similar income with respect to debt instruments made or deemed to be made by a paying agent established in Luxembourg to or for the benefit of an individual resident in Luxembourg are subject to a withholding tax at a rate of 20% (before 2017: 10%). Such withholding tax fully discharges the income tax liability if the individual beneficial owner acts in the course of the management of his/her private wealth. The Luxembourg paying agent is responsible for withholding this tax.

There is no other interest withholding tax in Luxembourg, except with respect to certain forms of profit-participating interest.

4. Luxembourg-United States Tax Treaty

A new income tax treaty between the United States and Luxembourg was signed on April 3, 1996.[524] The 1996 Luxembourg-United States tax treaty is generally applicable with effect from January 1, 2001. The 2009 Protocol to the treaty, which inserts an article on the exchange of information, entered into force on September 9, 2019.

a. Income and Capital Gains from Real Property

Income from real property is taxable in the state in which the property is situated. Gains derived from the alienation of real property are taxable in the situs state. Such gains include gains on the alienation of shares of a company more than 50% of the assets of which consist of real property situated in the United States (or Luxembourg; however, under Luxembourg domestic law, gains on the alienation of the shares of such companies are not taxable).

b. Business Profits

In accordance with the OECD Model Convention, business profits of an enterprise carried on by a resident of one of the Contracting States are taxable only in that State, unless there is a PE in the other State to which part of the profits is attributable.[525] The 1996 Luxembourg-United States tax treaty allows the imposition of the U.S. branch profits tax on the "dividend equivalent amount" at a maximum rate of 5%.[526]

c. Dividends, Interest and Royalties

The Luxembourg-U.S. tax treaty provides for three rates of dividend withholding tax:

(i) 5% — if the beneficial owner of the dividend is a company that directly owns at least 10% of the voting stock of the paying company (other than a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT)).

(ii) 0% — if the dividends are paid by a Luxembourg company that is engaged in the active conduct of a trade or business in Luxembourg to a U.S. company that has held directly at least 25% of the voting stock of the Luxembourg company for an uninterrupted period of two years.

(iii) 15% — in all other cases (including profit-sharing interest). Dividends paid by a RIC will be subject to 15% U.S. tax in all circumstances. Dividends paid by a REIT will be subject to the 15% rate only if such dividends are beneficially owned by a Luxembourg resident individual holding less than a 10% interest in the REIT. Otherwise, the 30% U.S. withholding tax rate applies.

The Luxembourg-United States tax treaty provides for an exemption from tax for interest (other than profit-sharing interest, which is taxable at 15%) and royalties paid by a resident of one of the states to a resident of the other state that is the beneficial owner of such income. The term "royalties" does not encompass film royalties or payments for the use of industrial, commercial or scientific equipment. The latter income will be treated as business profits[527] or other income.[528]

d. Triangular Cases

The Luxembourg-United States tax treaty contains a "triangular cases" provision.[529] Under this provision, for example, income derived from the United States that is attributable to a PE of a Luxembourg company located in a third state, and that is subject to an aggregate tax rate in the PE country and Luxembourg of less than 50% of the Luxembourg tax rate that would apply in the absence of a PE, may be taxed in the United States in accordance with U.S. domestic law and, in the case of dividends, interest and royalties, at a rate not exceeding 15% of the gross amount.

e. Avoidance of Double Taxation

The United States will allow Luxembourg income tax and Luxembourg municipal business tax as a credit in accordance with the U.S. foreign tax credit rules (Luxembourg net wealth tax is not creditable in the United States). An indirect credit will be allowed with respect to Luxembourg tax on the profits out of which dividends are paid by a Luxembourg company to a 10%-or-more parent company in the United States.

Luxembourg grants an exemption from income (and net wealth tax) with respect to items of income that may be taxed in the United States under the Luxembourg-U.S. tax treaty, other than dividends and profit-sharing interest. A credit is al-

[522] 2003/48/EC.

[523] *Loi portant introduction d'une retenue à la source libératoire sur certains intérêts produits par l'épargne mobilière* of December 23, 2005.

[524] Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed on April 3, 1996 (the "Luxembourg-U.S. tax treaty").

[525] Luxembourg-U.S. tax treaty, Art. 7.

[526] Luxembourg-U.S. tax treaty, Art. 11.

[527] Luxembourg-U.S. tax treaty, Art. 7.

[528] Luxembourg-U.S. tax treaty, Art. 22.

[529] Luxembourg-U.S. tax treaty, Art. 24(5).

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lowed with respect to U.S. tax payable on dividends and profit-sharing interest. Furthermore, Luxembourg grants an exemption with respect to U.S.-source dividends, provided the Luxembourg company receiving the dividends has directly held at least 10% of the U.S. company paying the dividends since the beginning of the book year of the Luxembourg company, and provided the U.S. company is subject in the United States to an income tax that is comparable to the Luxembourg company tax.

f. Limitation on Benefits

The availability of benefits under the Luxembourg-U.S. tax treaty is restricted to "qualified residents," but non-qualified residents may also be entitled to certain benefits subject to conditions.

(1) Qualified Residents

Qualified residents are individuals, the states themselves, or any subdivision or local authority of the states and not-for-profit organizations that are generally exempt from tax in their country of residence, provided more than half of their beneficiaries, members, or participants are qualified residents.

A company is considered a qualified resident if it meets one of the following three tests laid down in the Luxembourg-U.S. tax treaty:

(i) Shareholder/base reduction test: This test is a cumulative, two-part test. One part of the test concerns requirements regarding the shareholder of the Luxembourg company, the other part concerns requirements with respect to the tax base of the latter company.

The shareholder requirement requires 50% or more of the principal class of shares in the Luxembourg company to be ultimately owned by qualified residents or U.S. citizens. The base reduction requirement prohibits the erosion of the tax base of the Luxembourg company by payment or accrual of expenses that are deductible for Luxembourg income tax purposes for non-qualified residents or non-U.S. citizens. Such payments or accruals may not, in principle, exceed 50% of the gross income of the Luxembourg company.

(ii) Direct stock exchange test: A Luxembourg company qualifies if its principal class of shares is quoted, and substantially and regularly traded on one or more recognized stock exchanges. Shares are substantially and regularly traded if at least 6% of the average number of shares outstanding in that class of shares is traded during a taxable year. Recognized stock exchanges are defined and consist of the following: the authorized stock exchanges in the contracting states; the NASDAQ system; and any other stock exchange the states may agree upon. So far, the states have agreed upon the Amsterdam, Brussels, Frankfurt, Hamburg, London, Madrid, Milan, Paris, Sydney, Tokyo and Toronto stock exchanges. An anti-abuse provision prevents the Luxembourg company from being a "closely held company."

(iii) Indirect stock exchange test: A Luxembourg company that is directly or indirectly controlled by companies that meet the Direct Stock Exchange Test described above in (ii), above, also qualifies for treaty benefits, provided the base reduction requirement described above in (i), above, is also met.

(2) Non-Qualified Residents

A Luxembourg company that does not fall within the definition of the term "qualified resident" may still be entitled to some or all benefits of the Luxembourg-U.S. tax treaty.[530] To be so entitled, it must meet either the activities test or another type of shareholder test as follows:

(i) Activities test: A Luxembourg company may qualify for the benefits of the treaty if it is directly (or indirectly through an associated enterprise) engaged in the active conduct of a trade or business in Luxembourg. A Luxembourg company that is engaged in the active conduct of a trade or business in Luxembourg will qualify for treaty benefits if both of the following conditions are met:

- The U.S.-source income must be derived "in connection with" the Luxembourg trade or business. The term "in connection with" is defined in two different ways. First, the "in connection with" requirement is met if the income is derived in the ordinary course of the Luxembourg business and the beneficial owner of the income holds less than 5% of the shares of the payer. Second, the "in connection with" requirement is met if the income derived forms a part of, or is complementary to, the business of the Luxembourg company.

- The Luxembourg trade or business must be substantial in relation to the interest of the Luxembourg company in the U.S. activity generating the income. The term "substantial" requires the activities of the Luxembourg company to amount separately to more than 7.5%, and on average to more than 10%, of the activities in the United States. These percentages are calculated using value of assets, gross income and payroll expense ratios.

If the activities of the Luxembourg company are not substantial, as described above, but the income derived from the United States is incidental to the business carried on by the Luxembourg company, such income is also eligible for treaty benefits. The term "incidental" generally means that the production of such income facilitates the trade or business in Luxembourg (for example, the investment of the working capital of the trade or business).

(ii) USMCA (formerly NAFTA)/EU shareholder test:[531] a Luxembourg company is also entitled to all the benefits of the Luxembourg-U.S. tax treaty if (at least) 95% of its shares are owned ultimately by seven or fewer residents of either a state that is a party to the USMCA or is an EU Member State, if that state has a comprehensive tax

[530] Luxembourg-U.S. tax treaty, Art. 24(3) and 24(4).

[531] On July 1, 2020, the U.S.-Mexico-Canada Agreement (USMCA) replaced NAFTA. In Announcement 2020-6 (May 19, 2020), the IRS declared that "… any reference to the NAFTA in a U.S. bilateral income tax treaty should be interpreted as a reference to the USMCA." While Luxembourg has not officially confirmed or denied that it agrees with this interpretation, however, such lack of confirmation is not expected to have any impact on the treaty.

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treaty with the United States or, if that treaty does not contain a comprehensive limitation on benefits provision, the resident would be entitled to the benefits of the Luxembourg-United States tax treaty if it were a resident of Luxembourg or the United States. Besides this shareholder requirement, the Luxembourg company must also meet a base reduction requirement as described at (i) under (1), above.

This test has an additional requirement as far as the benefits with respect to dividends, branch profits tax, interest and royalties are concerned. This additional requirement is that, regarding the income derived from the United States, the tax treaty between the country of residence of the ultimate shareholder(s) of the Luxembourg company and the United States should provide a rate of tax equal to or less than the rate under the Luxembourg-U.S. tax treaty.

g. Other Limitations on Benefits Provisions

The former Luxembourg 1929 Holding Companies, *sociétés d'investissement à capital variable* (SICAVs) and *sociétés d'investissement à capital fixe* (SICAFs), and entities enjoying similar tax advantages do not qualify for the benefits under the 1996 Luxembourg-United States tax treaty. *Sociétés à participation financière* (Soparfis), however, do qualify for such benefits. It is currently not clear whether *sociétés d'investissement en capital à risque* (SICARs) and securitization vehicles could be excluded under this provision.

h. Exchange of Information

Article 28 of the Luxembourg-U.S. tax treaty, as amended under the protocol signed in 2009, includes stronger provisions on the exchange of information between tax authorities, facilitating the administration of each country's tax laws. Article 28 provides for the full exchange of information upon request for all types of federal taxes. The Article covers civil and criminal matters and disregards domestic tax interest requirements and domestic bank secrecy rules. However, the protocol includes provisions to safeguard the confidentiality of the information exchanged.

5. OECD Multilateral Instrument

In June 2017, Luxembourg formally signed the OECD's Multilateral Instrument ("MLI"), developed as part of BEPS Action 15. The MLI implements in tax treaties (between its signatories) certain recommendations arising from the BEPS project, e.g., the prevention of treaty abuse and anti-hybrid rules. Luxembourg has not excluded any of its bilateral tax treaties from the scope of the MLI, but made a series of reservations regarding specific provisions.

The MLI includes a range of mandatory and voluntary rules derived from various BEPS Actions. The MLI's voluntary rules generally work on the basis of a matching system. Firstly, jurisdictions have to decide whether a tax treaty should be affected by the MLI. If one or both jurisdictions do not list a specific tax treaty to which the MLI will apply, then the MLI does not have any effect on that tax treaty. Secondly, jurisdictions have to decide which optional provisions they want to apply. If there is no match, those provisions would in principle not apply. Lastly, jurisdictions may decide to allow other jurisdictions to one-sidedly apply a provision, even if the jurisdiction itself does not want to use the provision. Jurisdictions have to submit a provisional list of their covered tax treaties ("CTAs") and choices at the moment of signature of the MLI, while a final list has to be submitted when the MLI is ratified.

The timing of when the MLI applies to specific treaties will depend on when jurisdictions complete their domestic ratification procedures in respect of the MLI.

On March 14, 2019, the Luxembourg Parliament adopted the law ratifying the OECD Multilateral Convention (MLI) to implement tax treaty-related measures to prevent BEPS, better known as the "multilateral instrument." The vote confirms the limited opt-ins indicated by Luxembourg when signing the MLI.

The MLI has been signed by over 80 jurisdictions and will effectively modify bilateral tax treaties between countries having ratified the MLI. It introduces a general anti-abuse provision — the "principal purposes test" (PPT) as a minimum standard — and the possibility to apply other specific measures when both countries have opted for them.

The MLI should apply in respect of withholding taxes as from January 1, 2020, to the tax treaties concluded by Luxembourg with other jurisdictions that have completed the MLI ratification process prior to October 1, 2019. With respect to all other taxes, the MLI will have an impact in tax years starting at least nine months after Luxembourg or the other treaty state has deposited the ratification instrument at the OECD (whichever date is latest). Over time, more tax treaties will be covered as ratification of the MLI progresses in other jurisdictions.

a. Mandatory Minimum Standards

All parties to the MLI must agree to implement an anti-abuse rule in their tax treaties with another MLI party. Luxembourg opted for the principal purpose test (PPT), in line with the European Commission's recommended approach. The PPT denies tax treaty benefits if "it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the [CTA]." Luxembourg has opted to include a competent authority relief provision, under which a person that is denied the benefits of a CTA may still be granted the benefits of the CTA as a result of a decision by the competent authority, "if such competent authority […] determines that such benefits would have been granted to that person in the absence of the transaction or arrangement." Granting treaty access in these circumstances requires consultation with the competent authority of the other contracting state.

The other two main minimum standards implemented by the MLI concern the mutual agreement procedure to improve the resolution of double taxation situations and the implementation of corresponding adjustments (if one of the treaty jurisdictions makes a transfer pricing adjustment to bring an income or expense in line with the arm's length principle).

b. Voluntary Rules

Part II of the MLI (Articles 3 to 5) contains provisions which aim to combat certain hybrid mismatch arrangements.

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Article 3 addresses the situation of hybrid mismatches as a result of entities that one or both contracting jurisdictions treat as wholly or partly transparent for tax purposes. Luxembourg decided to apply paragraph 1 of Article 3, which clarifies that income derived by or through an entity or arrangement that one of the contracting states considers as wholly or partly fiscally transparent will be treated as income of a resident of a contracting state, to the extent it is treated as income of a resident of that contracting state for taxation purposes in that contracting state. Its application to a specific CTA will require the other contracting party to have made the same choice. Luxembourg reserved its right not to apply paragraph 2 of Article 3. That provision would result in CTAs not providing relief for double taxation where the other state's tax is levied solely on the basis of residence (of the partners).

Article 4 would replace the current tie-breaker rules applicable to dual-resident companies. Luxembourg has made a full reservation against this Article.

Article 5 provides three options to countries with respect to elimination of double taxation: (a) disallow the exemption method for income that is exempt or subject to a reduced treaty rate in the other jurisdiction, (b) disallow the exemption method for dividends that are deductible in the other jurisdiction, and (c) solely apply the credit method. Where contracting states to a CTA choose different options, the option chosen by a contracting state would apply to its own residents only. Luxembourg has chosen option (a) under which Luxembourg would not grant an exemption otherwise foreseen in the CTA where the other contracting state applies the provisions of the CTA to exempt such income or capital from tax or to limit the rate at which such income or capital may be taxed. Instead, Luxembourg would grant a tax credit for the foreign tax on the income or capital (within the ordinary limits that apply to tax credits in Luxembourg). Luxembourg has also chosen to reserve the right not to permit certain identified contracting states to apply option (c) to treaties with Luxembourg which provides, in relation to income or capital that may be taxed in a contracting state, that the other contracting state applies the credit method to avoid double taxation, rather than the exemption method.

Part III of the MLI (Articles 6 to 13) contains six provisions related to the prevention of treaty abuse, including the mandatory anti-abuse rules (see XIV.C.5.a., above). Luxembourg has made full reservations against the other provisions which include anti-abuse rules dealing with dividend transfer transactions (Article 8), "real estate-rich companies" (Article 9), and "third country permanent establishment" (Article 10).

Part IV of the MLI (Articles 12 to 15) describes the mechanism by which the PE definition in existing tax treaties may be amended to prevent the artificial avoidance of PE status through, e.g., commissionaire arrangements, the splitting-up of contracts, and the specific activity exemption. Luxembourg made reservations on most of the changes dealt with in Part IV except as regards the provision dealing with specific activity exemptions (Article 13), for which Luxembourg chose option B, which provides that specific activity exemption applies irrespective of whether activity is of auxiliary or preparatory character.

6. Dispute Resolution

The Law of December 20, 2019, creating a tax dispute resolution mechanism,[532] represents the implementation into Luxembourg law of the EU Directive[533] of October 10, 2017 on tax dispute resolution mechanisms. The objective of the Directive and the Law is to resolve, within a set timeframe disputes between EU Member States on the interpretation of bilateral tax agreements in a particular case. The Law entered into force on December 27, 2019 and applies with respect to requests for the resolution of tax disputes in relation to income or wealth for fiscal years beginning on or after January 1, 2018. The competent authorities of EU Member States can agree to apply the provisions also to tax disputes relating to earlier fiscal years.

The Directive is wider in scope than the Convention on the elimination of double taxation in connection with the adjustments of profits of associated enterprises,[534] which provides for an arbitration procedure within the EU Member States, as it applies to all disputes relating to differences in interpretation of the provisions of tax treaties between Member States.

Under the dispute resolution mechanism of the law, a taxpayer facing a difference in the interpretation of a provision of a tax treaty between EU Member States can, within three years, simultaneously file a request for dispute resolution with the Luxembourg tax authorities and the competent authorities of the other Member State(s) involved. Individuals and small enterprises may only file a request with the Luxembourg tax authorities. The Luxembourg tax authorities must decide on the admissibility of the request within six months.

If the Luxembourg tax authorities and the competent authority(ies) of the other Member State(s) involved admit the request, they will endeavor to resolve the dispute amicably within two years of the latest notification of the admissibility of the request. An extension of an additional year can be requested by the Luxembourg tax authorities from the other competent authorities based on a written justification or *vice versa*.

If:

(i) Not all the competent authorities involved admitted the request of the taxpayer; or

(ii) The mutual agreement procedure (MAP) did not result in a resolution of the dispute within the given delay,

the taxpayer can request that the Luxembourg tax authorities form, together with the other competent authority(ies) involved, a consultative commission consisting of members of each Member State involved and independent persons, within 120 days. In the case of (i), the consultative commission then decides within six months on the admissibility of the request. The competent authorities can then engage in a MAP within 60 days. Failing this, or in the case of (ii), the consultative commission will, within a delay of six months that may be extended once for a further three-month period, offer its own advice on resolving the dispute. The competent authorities may agree to

[532] Law of December 20, 2019, Memorial A890.

[533] EU Directive 2017/1852 of October 10, 2017.

[534] Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC), dated August 20, 1990.

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form an alternative commission that offers the advice instead of the consultative commission.

The competent authorities then must render a final decision within six months after the consultative or the alternative commission gives its advice. If they do not find a resolution, the advice becomes binding upon them.

The final decision or at least an anonymized summary of the decision is published.

It should be noted that the filing of a request by a taxpayer under this law terminates any other ongoing MAP or dispute resolution procedure dealing with the same dispute and initiated under an agreement or convention for the elimination of double taxation on income and capital.[535]

[535] Art. 16 of the Law of December 20, 2019, and Circular L.G. — Conv. D.I. n°60 of March 11, 2021.

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XV. Exchange of Information and Reporting

A. U.S. Foreign Account Tax Compliance Act

On March 28, 2014, Luxembourg signed an Intergovernmental Agreement (IGA) for the exchange of tax information with the United States pursuant to the U.S. Foreign Account Tax Compliance Act (FATCA). The IGA was implemented in Luxembourg through the Law of July 24, 2015,[536] which approved the IGA and ensures its effective implementation in Luxembourg domestic law by appointing the Direct Tax Administration (*Administration des Contributions Directes*) as the competent tax authority concerned with FATCA exchanges of information. The IGA follows the Model 1 IGA.[537]

Under the IGA, an entity not based in the United States can be classified either as a foreign financial institution (FFI) or as a non-financial foreign entity (NFFE). Both categories are divided in two subcategories, each subcategory being subject to different obligations: while an FFI is either a reporting or a non-reporting FFI, an NFFE is either active or passive.

Luxembourg Financial Institutions (FFIs) within the meaning of the IGA are banks, custodians, certain investment entities and certain insurance companies that are resident in Luxembourg and branches located in Luxembourg of such non-Luxembourg resident financial institutions.

The core text of the IGA is completed by two annexes and a memorandum of understanding. Annex I describes a due diligence process that certain FFIs need to follow. Annex II lists entities that will be considered as Non-Reporting Institutions because they are either exempt beneficial owners or deemed-compliant for purposes of the IGA. Annex II also contains special provisions for the classification of specific Luxembourg entities and products (e.g., SEPCAV, ASSEP).

According to the Model 1 IGA, only reporting FFIs are subject to the reporting obligations, i.e., Luxembourg FFIs that are neither non-reporting FFIs nor deemed-compliant FFIs as defined by Annex II or U.S. Treasury regulations. Reporting FFIs that maintain a U.S. reportable account within the meaning of the IGA[538] are required to report to the Luxembourg tax authorities on an annual basis information about financial accounts held by: (i) specified U.S. persons; (ii) certain U.S. controlled entities; and (iii) non-U.S. financial institutions that do not comply with FATCA. Under the IGA, such information will subsequently be remitted by the Luxembourg tax authorities to the U.S. Internal Revenue Service.

Such reporting needs to be made by June 30 of each year. Reporting obligations started to apply for the year 2015 with respect to information for the year 2014.

Under Article 2(2)(a) of the IGA, information to be reported to the Luxembourg tax authorities is the following:

(i) Name;

(ii) Address;

(iii) U.S. Federal Taxpayer Identification Number, if applicable;

(iv) Account Number;

(v) Name and global intermediary identification number of the reporting financial institution; and

(vi) Account balance or value as of the end of the relevant calendar year or other appropriate reporting period or account balance or value immediately as before closure if the account was closed during such year.

Additional information is required if the account is a custodial account.[539]

If a Reporting FFI fails to comply with its reporting obligations, it will be considered as a Non-Participating Financial Institution and subsequently could be subject to a 30% withholding tax on U.S. source withholdable payments it will receive (i.e., payments of interest, dividends, rent, salaries and other defined income from sources within the United States).

For purposes of the IGA, a U.S. Reportable Account means either a financial account held by one or more U.S. Specified Persons[540] or an account held by a passive NFFE with one or more Controlling Persons[541] that are U.S. Specified Persons. Annex II of the IGA also provides for specified accounts that are not considered to be financial accounts and therefore are excluded from the U.S. Reportable Account definition.

The LTA has been informed by the IRS of the introduction of new codes that can be used for FATCA reporting. These codes have been developed by the IRS to better identify the reasons why a financial institution has not been able to collect U.S. tax identification numbers (TINs). The use of these codes is not mandatory for Luxembourg reporting financial institutions. However, the LTA recommends their use from fiscal year 2020 (deadline June 30, 2021).[542] These new codes complete the provisions of section 3.6.6 TIN UNKNOWN of the LTA's Circular of August 10, 2020. The list can be found on the LTA's site under the name "*FATCA — Liste des codes en cas de TINs/NIFs américains inconnus.*" It should be noted that, according to the newsletters, the absence of U.S. TINs should result in a notification from the IRS for administrative errors and minor mistakes. In the event the Luxembourg reporting financial institution does not communicate the unknown U.S. TINs within 120 days after receipt of the notification, the IRS will assess whether there is significant non-compliance. In this context, the IRS should consider all the facts and circumstances, including the reasons why the unknown U.S. TINs could not be obtained, the procedures put in place by the Luxembourg reporting financial institution for obtaining the unknown U.S. TINs, and the efforts made in this context. If the IRS concludes that there is significant non-compliance, the Luxembourg reporting financial institution will be treated as a non-participating FFI, which will result in the imposition of the sanctions described above.

[536] Law of July 24, 2015, *Memorial A* no. 145, July 29, 2015.

[537] For the full text of the agreement, see: http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Luxembourg-3-28-2014.pdf.

[538] Luxembourg-U.S. IGA, Art. 1(cc).

[539] Luxembourg-U.S. IGA, Art. 2(2)(5).

[540] Luxembourg-U.S. IGA, Art. 1(ff).

[541] Luxembourg-U.S. IGA, Art. 1(mm).

[542] Newsletters of the LTA of April 1, 2021, "FATCA — Introduction of codes for unknow TINs," of June 7, 2021 "FATCA — New code in the case of unknown TINs" and of September 21, 2021 "FATCA — Error messages in the case of unknown TINs."

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B. Common Reporting Standard

The OECD has developed the Common Reporting Standard (CRS) which aims at implementing automatic exchange of financial account information among participating countries. On October 29, 2014, 51 jurisdictions, including Luxembourg, signed a multilateral competent authority agreement (the Multilateral Agreement) for a new standard on automatic exchange of financial account information for tax matters. This new standard covers both the CRS and a model competent authority agreement for jurisdictions that want to participate at a later stage.

The CRS is based on the Model 1 IGA in relation to FATCA, discussed above. The CRS contains the due diligence process and reporting procedures to be followed by financial institutions. The CRS has been incorporated in the revised EU Directive on Administrative Cooperation (EU Directive 2014/107). Luxembourg implemented this Directive in Luxembourg domestic law through the Luxembourg CRS Law of December 18, 2015. Pursuant to the Luxembourg CRS law, the year 2016 is the first year for which information must be exchanged. Such information will need to be exchanged by Luxembourg financial institutions (FIs) with the Luxembourg tax authorities prior to June 30, 2017.

Pursuant to Luxembourg CRS legislation, an entity residing in a participating jurisdiction can be classified either as a participating jurisdiction financial institution (FI) or as a non-financial entity (NFE). Both categories are divided in two subcategories, each subcategory being subject to different obligations: while FIs are either reporting or non-reporting FIs, NFEs are either active or passive.

Luxembourg FIs within the meaning of the CRS law are banks, custodians, certain investment entities and certain insurance companies that are resident in Luxembourg and branches located in Luxembourg of such non-Luxembourg resident FIs.

The CRS law requires Luxembourg FIs to identify financial account holders and establish whether they are tax resident either in an EU Member State or in a country with which Luxembourg has an exchange of information agreement. Luxembourg FIs will need to report financial account information of such account holders to the Luxembourg tax authorities which will remit such information to the competent foreign tax authorities of the other country.

For the purpose of the Luxembourg CRS law, a reportable account means either a financial account held by a reportable person or by a passive NFE with one or more controlling persons that are reportable persons. The Luxembourg CRS law also lists some excluded accounts. Reportable persons are individuals or entities which are tax residents in another EU Member State other than Luxembourg, with the exception of an entity that is:

(i) A corporation whose stock is regularly traded on one or more established securities markets;

(ii) A corporation that is a related entity of a corporation described above in (i);

(iii) A governmental entity;

(iv) An international organization;

(v) A central bank; or

(vi) A financial institution.

The financial information to be reported has a similar scope to that required by FATCA and includes the following:

(i) Name;

(ii) Address;

(iii) Taxpayer identification number, if applicable;

(iv) Account number;

(v) Name and global intermediary identification number of the reporting financial institution; and

(vi) Account balance or value as of the end of the relevant calendar year or other appropriate reporting period or account balance or value immediately as before closure if the account was closed during such year.

Additional information is required if the account is a custodial account.

C. Country-by-Country Reporting

The OECD has developed the country-by-country (CbC) reporting which aims at implementing automatic exchange of financial and tax information by multinational enterprise groups relating to the global allocation of their income and taxes and other indicators of their economic activity among participating countries.

In January 2016, 31 jurisdictions, including Luxembourg, signed a multilateral competent authority agreement for the automatic exchange of CBC reports. The CbC reporting has been incorporated in Council Directive 2016/881/EU of May 25, 2016, amending Directive 2011/16/EU. This Directive was implemented in Luxembourg domestic law through the Law of December 23, 2016.

Under the CbC reporting law, a Luxembourg tax resident ultimate parent entity of a multinational enterprise group with a consolidated turnover amounting to at least 750 million euros in the preceding year (a "CbC reporting group") must file an annual CbC report with the Luxembourg tax authorities. The ultimate parent entity is the entity that owns directly or indirectly a sufficient interest in one or more entities of the group, such that it is required to prepare consolidated accounts (or would be so required if its equity interests were traded on a public securities exchange) and no other entity of the multinational enterprise owns such interest in the first-mentioned entity. Further, any other Luxembourg tax resident entity or Luxembourg situated permanent establishment of a CbC reporting group must file a CbC report with the Luxembourg tax authorities if Luxembourg does not receive a CbC report from another country or from a relevant designated Luxembourg entity (e.g., if the ultimate parent entity is tax resident in a jurisdiction that does not (yet) oblige it to file a CbC report).

CbC reports must be filed within 12 months after the end of the relevant fiscal year for which the report is prepared. The first CbC report had to be filed for fiscal years starting on or after January 1, 2016, and therefore had to be filed in 2017 if the fiscal year coincided with the calendar year. Further, a Luxembourg taxpayer of a CbC reporting group must notify the Luxembourg tax authorities which entity of the multinational enter-

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prise group is required to file the CbC report. This notification must be submitted no later than the last day of the relevant fiscal year.

Failure to comply, late compliance and incomplete compliance with the CbC reporting law obligations are punishable with a fine of up to a maximum amount of 250,000 euros.

The Luxembourg tax authorities will exchange a CbC report with every country that is:

(i) Included in the report as a country in which the CbC reporting group is present through one or more entities or permanent establishments (PEs); and

(ii) An EU Member State or a jurisdiction with which Luxembourg has entered into an agreement to exchange CbC reports.

On November 11, 2021, the EU Parliament adopted the proposed directive on the disclosure of income tax information by certain undertakings and branches, known as the Public CbC Reporting Directive.[543] This Directive, amended the Accounting Directive 2013/34/EU and entered into force on December 21, 2021. EU Member States, including Luxembourg, must transpose the Directive into domestic law by June 22, 2023.

The public CbC reporting directive provides that the following undertakings whose (consolidated, where applicable) revenue on their balance sheet date exceeded for each of the last two consecutive financial years a total of 750 million euros, as reflected in their consolidated financial statements, must draw up, publish and make accessible a report on income tax information as regards the latter of those two consecutive financial years:

(i) EU ultimate parent undertakings;

(ii) EU standalone undertakings;

(iii) EU medium-sized and large subsidiary undertakings controlled by a non-EU ultimate parent undertaking (in this case, the consolidated revenue is determined at the level of the non-EU ultimate parent undertaking);

(iv) EU branches of non-EU undertakings (in this case, the consolidated revenue is determined at the level of the non-EU ultimate parent undertaking).

This obligation will, however, not apply to:

(i) Undertakings listed above whose total consolidated revenue falls below 750,000,000 euros for each of the last two consecutive financial years;

(ii) Undertakings listed above that are established or exercise their activities in a single EU Member State and in no other tax jurisdiction;

(iii) Standalone credit institutions, investment firms, or ultimate parent undertakings of such institutions/firms that disclose a CbC report in accordance with Article 89 of Directive 2013/36/EU of the European Parliament and of the Council that includes information on all of their activities; or

(iv) EU branches of non-EU undertakings where a similar report is drawn up by the non-EU undertakings.

The report on income tax information should include information relating to all the activities of the standalone undertaking or ultimate parent undertaking and in particular:

(i) The name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned, the currency used, and where applicable, a list of all subsidiary undertakings consolidated in the financial statements of the ultimate parent undertaking with respect to the relevant financial year, established in the European Union or in tax jurisdictions included in Annexes I and II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes;

(ii) A brief description of the nature of their activities;

(iii) The number of employees on a full-time equivalent basis;

(iv) Revenues;

(v) The amount of profit or loss before income tax;

(vi) The amount of income tax accrued during the relevant financial year;

(vii) The amount of income tax paid on a cash basis; and

(viii) The amount of accumulated earnings at the end of the relevant financial year.

The report should present the information separately for each EU Member State and for each jurisdiction listed on the EU list of non-cooperative jurisdictions for tax purposes.

EU Member States should ensure that the report is made accessible to the public in at least one of the official languages of the Union, free of charge, no later than 12 months after the balance sheet date of the financial year for which the report is draw up on the website of:

(i) The undertaking;

(ii) The subsidiary undertaking or an affiliated undertaking; or

(iii) The branch or the undertaking that opened the branch or an affiliated undertaking.

The Directive was transposed into Luxembourg legislation by the law of August 15, 2023. The law applies to financial years commencing on or after June 22, 2024.[544]

The law allows in-scope groups to, in certain cases, defer the disclosure of commercially sensitive information for up to five years. Sensitive information must be understood as information that, if made publicly available, would be seriously prejudicial to the commercial position of the undertaking to which the report relates. Any omission must be clearly indicated in the report, together with a reasoned explanation. However, information pertaining to tax jurisdictions included in Annexes I and II of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes may never be omitted.

[543] The EU Directive 2021/2101 of the European Parliament and of the Council of November 24, 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.

[544] Law of August 15, 2023, Art. 3.

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In certain circumstances, the law also exempts in-scope groups from the obligation to publish their income tax information on their website. However, this exemption only applies provided that the declaration is made available to any third party located in the European Union on the Luxembourg Trade and Companies Register's website, free of charge. If that is the case, the company's website must contain information regarding the exemption and a link to the website of the relevant business register.

D. Luxembourg Register of Ultimate Beneficial Owners

The UBO Law of January 13, 2019, implementing the register of beneficial owners in Luxembourg entered into force on March 1, 2019. The UBO Law, which transposes into Luxembourg law Article 30 of the fourth Anti-Money Laundering Directive,[545] as amended by the fifth Anti-Money Laundering Directive,[546] created a register of beneficial owners (*registre des bénéficiaires effectifs*, RBO) in which the ultimate beneficial owners (UBOs) of companies and other Luxembourg legal entities can be consulted.

A Grand-Ducal Regulation, published on February 19, 2019, provides guidance on the practical application of the law.[547]

Registrations must be completed in French, German or Luxembourgish. A request to register or modify information will have to be supported by documentary evidence that includes:

(i) Official documents enabling the identification of UBOs;

(ii) If relevant, a request to limit the access to the information available in the register; and

(iii) If relevant, proof that the registered entity is listed on a regulated market that fulfils certain conditions.

1. Covered Entities

Most of the Luxembourg entities registered with the Luxembourg Register of Trade and Companies (*Registre de Commerce et des Sociétés*, RCS) are covered by the Law of January 15, 2019, which notably applies to all Luxembourg civil and commercial companies, e.g., S.à r.l.s, SAs and SCAs (except for *sociétés commerciales momentanées* and *sociétés commerciales en participation*), (European) economic interest groupings, and Luxembourg branches of foreign entities.

Fonds communs de placement and companies listed on a regulated market in Luxembourg, the European Economic Area or a third country that imposes obligations recognized as equivalent by the European Commission within the meaning of Directive 2004/109/EC,1 are no longer excluded from the scope of the Law.

Fund entities, whether regulated or not, and with or without legal personality, will thus also have to comply with the new requirements.

2. Definition of Ultimate Beneficial Owner of a Luxembourg Company

A UBO is defined as any natural person who ultimately owns or controls the entity or any natural person for whom a transaction is executed or an activity carried out. In the case of companies, this includes any natural person who ultimately owns or controls the company through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that company, including through bearer shareholdings, or through control via other means. A person may thus be a UBO based on the ownership criterion and/or on the control criterion.

A direct or indirect shareholding of more than 25% held by a natural person in a Luxembourg company is an indication that the ownership criterion is met. This does not mean that a person who owns a shareholding of 25% or less is automatically not a UBO, since that person may exercise actual control via other means.

If, after having exhausted all possible means and provided there are no grounds for suspicion, no UBO can be identified, or if it is uncertain whether the persons identified are the UBOs, information has to be provided with respect to the natural person(s) holding the position of senior management (*dirigeant principal*).

3. Scope of Information Subject to Disclose

The UBO Register will contain the name, date and place of birth, nationality and the country of residence, the exact private or professional address of the UBO and the identification number for the individuals registered in the Luxembourg Register of natural persons (or for nonresident individuals their national identification number, e.g., the number of the ID card). The nature and the extent of the beneficial interest held must also be included in the UBO Register.

Companies listed on a regulated market in Luxembourg, the European Economic Area or a third country that imposes obligations recognized as equivalent by the European Commission within the meaning of Directive 2004/109/EC, will only have to provide the name of the regulated market(s) on which their securities are admitted to trading.

The information will be kept in the UBO Register until a period of five years after the date on which the relevant Luxembourg entity has been removed from the RCS (e.g., because it has been dissolved or has ceased to exist).

4. Obligations of Reporting Entities

Luxembourg entities will have to collect information, file it with the UBO Register, keep it up to date, and give it to national authorities upon request.

Information on the UBO will have to be filed with the UBO Register within one month from the moment when the entity has become aware or should have become aware of the event requiring the registration or modification of information.

[545] Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

[546] Directive (EU) 2018/843 of the European Parliament and the Council of May 30, 2018, amending Directive (EU) 2015.

[547] Grand-Ducal Regulation of February 15, 2019 on the modalities of registration, payment of administrative fees and access to information entered in the Register of Beneficial Owners.

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The filing will be made electronically on the website of the UBO Register manager.

5. Access to the UBO Register

In accordance with the 5th EU anti-money laundering Directive adopted on May 30, 2018, Member States are required to maintain interconnected, publicly available national UBO registries. Any person has the right to access such information (except for the exact private or professional address and identification number of the UBOs) without having to demonstrate a legitimate interest.

However, a Luxembourg company required to file information with the UBO Register may request that the access to such information be limited exclusively to the national authorities (e.g., the Luxembourg tax authorities), credit and financial institutions, as well as bailiffs and notaries acting in their professional capacity. Such request must be duly motivated and addressed to the UBO Register manager (i.e., to the economic interest grouping "Luxembourg Business Registers," which also maintains the RCS). The limitation of access will be granted only in exceptional circumstances, where access to information available in the UBO Register could expose the UBO in question to a disproportionate risk, a risk of fraud, kidnapping, blackmail, violence, intimidation, or in case the UBO is either a minor or legally incapable.

The Court of Justice of the European Union (CJEU) rendered its judgement on the compatibility of public access to UBO information with the fundamental right to the protection of private life and the right to the protection of personal data as guaranteed in the TFEU. The CJEU found that the current public accessibility to UBO information in the UBO register was invalid.[548] Following the judgment of the CJEU of November 22, 2022, access to the RBE website via the Internet was temporarily suspended pending the introduction of changes to the register that are in line with the judgement. Access was restored in December 2022 for professionals subject to the amended law of November 12, 2004 on the fight against money laundering and terrorist financing, such as professionals in the financial and insurance sectors, auditors, real estate agents and developers, persons carrying on a family office activity, notaries and lawyers.[549] Access should also be restored for any other parties with a legitimate interest.

On December 19, 2024, the Luxembourg Parliament enacted a law clarifying the relevant access rights to the UBO register.[550] Published in the Luxembourg Official Journal on January 27, 2025, it entered into force on February 1, 2025. It details the categories of persons and entities with a legitimate interest in accessing the UBO register. These expressly include:

- Professional journalists;
- Non-profit organizations, associations and foundations established within the European Union and focused on AML/CFT;
- Individuals seeking to identify beneficial owners of entities they may transact with, to avoid links to money laundering or terrorist financing; and
- National authorities/administrations involved in AML/CFT, provided they do not already have access to the UBO Register under other provisions.

6. Penalties for Non-Compliance

For a Luxembourg company, non-compliance may result in a criminal fine ranging from 1,250 euros to 1,250,000 euros. A UBO that does not comply with its obligation to cooperate with the Luxembourg company may also be subject to a criminal fine ranging from 1,250 euros to 1,250,000 euros.

Furthermore, as of 2025, the manager of the UBO register is empowered to take additional administrative measures in this regard:

- Display on the UBO website, the fact that the file of the person or entity concerned is non-compliant with the UBO Law;
- Issue certificates of non-compliance with the UBO Law to the entity concerned;
- Impose daily penalties for non-compliance on the entity concerned; and
- Remove the non-compliant entity's registration from the UBO register, without this entailing dissolution or loss of legal personality for the entity, thus effectively depriving it of registration.

These administrative penalties will co-exist with the existing criminal fines, some of which the UBO Law now provides may only be imposed if the violation was committed knowingly.

Additionally, the non-compliant entity can appeal the decisions of the UBO manager before the administrative courts.

E. Mandatory Disclosure Rules for Reportable Transactions (DAC 6)

On May 25, 2018, the DAC 6 Directive[551] introduced mandatory disclosure rules for intermediaries such as lawyers, accountants and tax advisors, who must report potentially aggressive tax planning arrangements with a cross-border dimension, as well as arrangements designed to circumvent reporting requirements like the CRS and the UBO reporting obligation. EU Member States' tax authorities will exchange the information automatically within the European Union through a centralized database.

The reporting obligation applies to intermediaries with residency, incorporation, professional registration or a permanent establishment in an EU Member State and only related to cross-border arrangements concerning at least one other EU Member State. The Directive includes a list of features, elements, and examples of arrangements that should present a strong indication of aggressive tax planning or the undermining of reporting obligations. Covered intermediaries must disclose

[548] Joined cases C37/20 and C601/20.

[549] Government press releases of December 6, 2022, and December 21, 2022.

[550] Law of January 23, 2025, amending: 1º amended Law of December 19, 2002, on the register of commerce and companies and the annual accounts of undertakings; 2º amended UBO Law of January 13, 2019.

[551] Directive 2011/16/EU of May 25, 2018.

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such arrangements within 30 days after making them available to their clients.

In certain cases, for instance when no intermediary is involved, when the intermediary does not have an EU presence or in the case of client-attorney privilege, the obligation to report lies with the client.

Member States were obligated to implement the DAC 6 Directive in their domestic laws by December 31, 2019, and apply it from January 1, 2021 (this was as a result of COVID-19, the Directive originally was meant to be applied from July 1, 2020). However, the Directive has retroactive effect for all reportable arrangements between June 25, 2018 and July 1, 2020. Luxembourg transposed DAC 6 into domestic law on March 25, 2020,[552] and delayed its entry into force to January 1, 2021.[553] Reportable arrangements from the retrospective period had to be reported by January 31 and February 28, 2021, respectively. Current reportable arrangements must be reported within 30 days beginning either on the day after the reportable arrangement is made available or is ready for implementation, or when the first step of the reportable arrangement is implemented, whichever event occurs first.

Intermediaries that are subject to obligations of professional secrecy, such as lawyers and accountants in the exercise of their profession, are exonerated from the reporting obligation. Instead, within 10 days of the above event, they had to notify other intermediaries, or, in the absence thereof, the relevant taxpayer. In the latter case, the reporting obligation falls on the taxpayer.

However, in a judgment dated December 8, 2022,[554] the Grand Chamber of the CJEU ruled that the obligation imposed on lawyers under DAC 6 to notify intermediaries other than their own clients infringes the right to respect for communications between lawyers and their clients guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union. As a consequence of the judgment of the CJEU, Luxembourg lawyers no longer have an obligation to notify other intermediaries who are not their clients. On October 14, 2020, the Luxembourg tax authorities released reporting specifications. A reporting XSD schema has been published allowing the reporting of reportable arrangements on the "*MyGuichet*" portal from January 1, 2021.

F. Mandatory Reporting for Digital Platform Operators (DAC 7)

On March 22, 2021, the Council of the European Union approved an amendment to the Council Directive 2011/16/EU on administrative cooperation.[555] The DAC 7 Directive[556] is designed to expand reporting obligations and the exchange of information to cover sales made via digital platforms. The reporting obligation for digital platform operators had to be transposed into domestic law by December 31, 2022, and enter into force on January 1, 2023. The remaining amendments must be implemented into domestic law by December 31, 2023.

On May 5, 2023, the Luxembourg government voted the bill[557] transposing the DAC 7 Directive into Luxembourg Law.

On June 12, 2023, the Luxembourg tax authorities issued guidance on the requirements for the mandatory automatic exchange of information (AEOI) by digital platform operators, under the law implementing the Directive. The guidance harmonizes the exchange of information between the tax authorities of the Member States in terms of registration, reporting and exchange of information.

It also clarifies the mechanism for exchanging information when a group of taxpayers cannot be identified individually, and introduces automatic and mandatory information exchanges for real estate assets.

Finally, the guidance establishes the following deadlines:

(i) December 31, 2023 for reporting platform operators and excluded platform operators to complete their due diligence procedures (extended to December 31, 2024 with respect to sellers already registered on the platform as of January 1, 2023); and

(ii) February 19, 2024 for the submission of the first declaration of information by platform operators on 2023 reportable seller income for activities covered by DAC 7.

The Luxembourg tax authorities have issued guidance in the form of "frequently asked questions" on the information to be declared by platform operators, the latest version being issued on September 16, 2024.[558] This guidance contains numerous instructions regarding the entities concerned, the excluded entities, the information to be declared during the registration and the declaration, the various deadlines (for registration, declaration, notification and exchange of information), sanctions and legal actions where a fine is imposed by the Luxembourg tax authorities.

Pursuant to DAC 7, digital platform operators must identify and report information about income derived by their sellers from certain relevant cross-border and domestic activities (i.e., the rental of immovable property, personal services, sales of goods and the rental of any mode of transport). The information has to be reported to the competent tax authorities of the relevant EU Member States no later than January 31 of the following calendar year (i.e., the reporting deadline for the year 2023 is January 31, 2024). The relevant Member State then has to exchange this information automatically in a standard computerized format with the competent tax authority of the other Member State concerned.

A platform operator is an entity that contracts with sellers to make available all or part of a platform to them. A platform operator qualifies as a reporting platform operator (RPO) if it is resident for tax purposes in an EU Member State, is incorporated under the laws of a Member State, has its place of management in a Member State or has a permanent establishment (PE) in a Member State. A platform operator that does not fulfill any of those conditions may still qualify as an RPO if it facilitates the carrying on of a relevant activity by reportable sellers or a

[552] Law of March 25, 2020.

[553] Law of July 24, 2020.

[554] Case C-694/20.

[555] Council Directive 2021/514 of March 22, 2021, amending the Directive 2011/16/EU on administrative cooperation in the field of taxation.

[556] Directive 2021/514/EU.

[557] Bill n°8029.

[558] FAQ of Luxembourg tax authorities, version of September 16, 2024 regarding the information to be declared by platform operators, https://impotsdirects.public.lu/dam-assets/fr/echanges-electroniques/dac7/foire-aux-questions-informations-dclarer-par-les-oprateurs-de-plateform-loi-dac7.pdf.

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relevant activity involving the rental of immovable property located in a Member State.

Reportable sellers are:

(i) Residents of an EU Member State for purposes of DAC 7, i.e., sellers that have their primary address, a taxpayer identification number (TIN) or a PE in a Member State; or

(ii) Sellers that rented out immovable property located in a Member State.

An RPO has to report in substance information regarding a reportable seller, the income earned, the fees, commissions or taxes withheld or charged by the RPO and each EU Member State in which a reportable seller is resident as defined above for purposes of DAC 7.

Under the Luxembourg law, reporting obligations are imposed on digital platform operators that are tax resident in Luxembourg, or that are incorporated under Luxembourg law, have an effective place of management in Luxembourg or have a PE in Luxembourg.[559] Digital platform operators subject to reporting obligations had to register with the Luxembourg tax authorities before December 31, 2023 if they were already operative on the date the law entered into force. Digital platform operators that commence operations after that date must register no later than on the date of commencement of their activities.

G. Mandatory Reporting for Crypto-Asset Transactions (DAC 8)

On December 8, 2022, the EU Commission proposed an amendment to Council Directive 2011/16/EU on administrative cooperation (i.e., DAC 8). The proposal aims to increase transparency and accountability for crypto-assets. If adopted, the rules will need to be implemented by EU Member States by December 31, 2025, and will come into effect on January 1, 2026.

The proposed amendments introduce additional reporting requirements. DAC 8 will apply to both EU-based and non-EU crypto-asset service providers. It will require them to report information on transactions (exchanges and transfers) involving crypto-assets entered into by their EU-based users. Non-EU crypto-asset operators will have to register in a EU Member State of their choice and report in that EU Member State, unless they already report information under a similar regime in a country that has committed to share such information with EU Member States.

The proposed amendments also introduce new due diligence procedures. DAC 8 would require crypto-asset service providers to perform due diligence on reportable users, i.e., individuals or entities that are customers of the crypto-asset service provider and carry out reportable transactions. Such users must be resident in a EU Member State and cannot be active entities or excluded persons (e.g., government entities, international organizations, central banks, financial institutions). Crypto-asset service providers must obtain self-certification and relevant documentation from their customers to determine if they are "reportable persons" subject to reporting requirements, including for the purposes of identifying any pre-existing relationships within 12 months of DAC 8 coming into effect.

Member States will have to enforce DAC 8 rules against crypto-asset operators within their jurisdiction through effective measures (the choice of which is left to the discretion of each Member State). If a crypto-asset user does not provide information requested by the reporting crypto-asset service provider after two reminders (but not before 60 days), the reporting crypto-asset service provider must prevent the user from performing exchange transactions.

Relevant crypto-asset service providers are expected to report information by January 31 of the year following the relevant calendar year (or any other appropriate reporting period) to which the information relates, starting from January 1, 2026. The automatic exchange with competent tax authorities of the Member States is expected to occur within 2 months following the end of the relevant calendar year (or any other appropriate reporting period), starting from January 1, 2027.

[559] Bill no. 8029 of June 13, 2022.

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XVI. Social Security Contributions

A. Social Security System

1. In General

Social security is organized as a net of several funds covering the following:

(i) Health;

(ii) Old age and invalidity;

(iii) Family allowances;

(iv) Work-related accidents; and

(v) Unemployment benefits.

These funds are administered by the common social security center (*Centre Commun de la Sécurité Sociale*) (CSSF).

In principle, every employee (or worker) working in Luxembourg must be a member of the common social security center. There are some exceptions to this principle as a result of special EU legislation.

Employees who reside in third countries, but who are employed in Luxembourg, are generally required to make Luxembourg social security contributions.

However, a resident of a Member State working for an employer established in another Member State, who carries out a substantial activity (i.e., corresponding to more than 25% of his or her working time or pay) in his or her country of residence, is subject to the social security system in his or her country of residence.[560] In this case, the employer is obliged to contribute in the country of residence of the employee.[561]

Due to the widespread use of telework during the COVID-19 crisis, the European authorities recommended to Member States not to take into account telework days in the calculation of the 25% threshold during the transitional period (initially supposed to end on December 31, 2022. The transitional period was extended for an additional period of six months, ending on June 30, 2023.[562]

On July 1, 2023, the European Union unveiled a new Framework Agreement designed to establish a more enduring system for determining the social security status of cross-border teleworkers within the EU. Based on Article 16 of Regulation (EC) no. 883/2004 on the coordination of social security systems, the Framework Agreement establishes a system under which, if adopted by the Member States concerned, the telework performed in an employee's home country will not be considered, in certain cases, when determining the applicable social security scheme. Note that the Framework Agreement will only apply if both Member States involved have ratified it.

2. Luxembourg Tax and Social Security Rules on Working from Home

Since January 1, 2023, changes in tax and social security legislation in Luxembourg to facilitate access to teleworking have continued to increase and evolve so that the Luxembourg tax and social security rules do not represent an obstacle to enabling cross-border employees of Luxembourg companies to telework.

From a tax point of view, Luxembourg has been able to harmonize the tax thresholds for working days spent outside Luxembourg (including teleworking days) with its neighboring countries, i.e., Germany, Belgium and France. As from January 1, 2024, the tax tolerance threshold is 34 days per annum for German, Belgian and French residents.

The tax tolerance thresholds allow nonresident employees working for a Luxembourg employer to work outside Luxembourg without triggering taxation in their country of residence. In other words, cross-border workers who do not exceed the tax tolerance thresholds in a given year remain subject to Luxembourg taxation on their employment income. The table below demonstrates the main changes with respect to the tax tolerance thresholds on January 1, 2023 and January 1, 2024.

Country	France	Belgium	Germany
As of January 1, 2023	34 days[563]	34 days	19 days
As of January 1, 2024	34 days	34 days	34 days

From a social security point of view, Luxembourg signed the Framework Agreement on June 5, 2023, based on Article 16 of the Regulation (EC) n°883/2004 related to the coordination of social security systems.

Under the Framework Agreement, cross-border workers living in Germany, Belgium and France are able to telework while remaining subject to Luxembourg social security legislation, provided that the time worked in their respective countries of residence does not exceed 50% of their actual working time.

The Framework Agreement came into force on July 1, 2023 and has been concluded for an initial term of five years. The table below shows the place of affiliation of teleworkers before and after July 1, 2023.

Place of Affiliation	Teleworking < 25%	25% < Teleworking < 50%	Teleworking > 50%
Before July 1, 2023	Country of exercise	Country of residence	Country of residence
After July 1, 2023	Country of exercise	Country of exercise*	Country of residence

The harmonization of the tax tolerance thresholds as well as the new social security rules applicable to teleworking will help Luxembourg employers to implement teleworking proce-

[560] Regulation (EC) n° NO 883/2004 of the European Parliament and of the Council of April 29, 2004, Art. 13.

[561] Regulation (EC) No 987/2009 of the European Parliament and of the Council of September 16, 2009, laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, Art. 21.

[562] https://ccss.public.lu/fr/actualites/2022/11/23.html.

[563] See amendment dated May 3, 2023, applicable retroactively to January 1, 2023.

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dures founded on the principle of equal treatment of employees, regardless of their country of residence. Employers should declare any teleworking activities carried out by the employees on a daily basis to the Joint Social Security Centre (*Centre commun de la sécurité sociale*).

Employees are covered under the following institutions:

(i) *La Caisse Nationale de Santé* (health care and work-related accident insurance);

(ii) *La Caisse National d'Assurance Pension* (pension fund);

(iii) *Le Fonds pour l'Emploi* (unemployment fund); and

(iv) *La Caisse pour l'Avenir des Enfants* (family allowances).

As of April 1, 2024, a Luxembourg employer is obliged to submit a form to the Luxembourg Joint Social Security Centre for each time-period during which an employee performs work from abroad.

B. National Health Fund (Caisse Nationale de Santé)

1. In General

An employee and the members of the employee's family (provided they are not personally insured with the social security center and that they still belong to the employee's household) are covered under the health insurance system. A temporary stay in a different country will not interrupt the insurance coverage, unless the stay exceeds 12 months, 24 months or even more in specific cases.

The *Caisse Nationale de Santé* will refund a percentage of the amounts paid in advance by the employee. The percentage refunded depends on the nature of the medical treatment in question.

2. Illness or Accident Allowances

An employee who is unable to work because of illness/accident will receive his or her usual salary from his or her employer for the current month and the three following months. After this time, the *Caisse Nationale de Santé* will take over the payment of the monthly gross salary up to five times the minimum salary (i.e., 13,188.95 euros as of January 1, 2025).

The indemnity is calculated based on the normal salary that the employee would have received had he or she continued his or her employment. If the employee is working under a time-limited contract (*contrat à la tâche*), the average income from the last 12 calendar months will be used as the basis for calculating the indemnity.

3. Contribution Rates

Contributions must be made by both the employee and the employer, as follows:

(i) Employer contribution: between 3.12% (i.e., 0.07% + 3.05) and 5.69% (i.e., 2.64 + 3.05)[564] computed on the employee's annual gross salary (including bonuses and benefits in kind) capped at 158,653.48 euros (according to the January 1, 2025 index); and

(ii) Employee contribution: 3.05% computed on the employee's annual gross salary (including bonuses and benefits in kind) capped at 158,653.48 euros (according to the latest index) and 1.4% for dependency insurance computed on the employee's annual gross salary decreased by 7,913.40 euros for the calendar year 2025 (i.e., 659.45 euros per month).

Luxembourg's Joint Center for Social Security has published revised minimum and maximum amounts for social security contributions. On January 1, 2025, the lowest monthly contribution basis (also known as the standard monthly minimum basis) is 2,637.79 euros. The highest monthly contribution basis (also known as the standard monthly maximum basis) is 13,188.96 euros. For the entire year of 2025, the lowest and highest annual contribution basis amounts are 31,653.48 euros and 158,267.52 euros, respectively. These figures are calculated based on the monthly amounts applicable throughout the year. For 2025, based on the current index, the capped amount for the full year is 158,653.48 euros.

C. Pension Funds (Caisse des Pensions)

1. In General

The pension fund basically covers every individual who works in the private sector as an employee.

Contributions to the pension fund can be waived in the case of:

(i) Foreign employees who are not residents of an the EU/EEA Member State a state that has concluded a social security totalization agreement with Luxembourg, and who work in Luxembourg for a maximum period of two years.[565] For contributions to be waived, a written request must be made.

The part payable by the employer remains due.

(ii) Foreign employees from an EU Member State working in Luxembourg for a limited period.

The contribution is calculated based on the employee's yearly gross salary, including occasional payments as well as gratuities (for example, bonuses and benefits in kind) capped at 158,653.48 euros (in 2025).

The pension fund will pay a retirement or invalidity pension, as well as an allowance in the case of illness. It will also pay a pension and other special benefits to the survivors in the case of the death of the insured employee.

2. Retirement Pension

The age at which an employee is entitled to start receiving a pension depends on the length of time during which contributions were made, as follows:

(i) Employees who compulsorily or voluntarily contributed for at least 120 months to the Luxembourg State pension fund are entitled to a pension at age 65;

(ii) Employees who compulsorily contribute for at least 480 months are entitled to a pension at age 60;

[564] The rate varies depending on the employee's absenteeism rate.

[565] This limit can be extended under certain social security agreements.

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(iii) Employees who compulsorily or voluntarily contributed, acquired, and/or were recognized past services periods for a total of 480 months to the Luxembourg State pension, of which at least 120 months have been compulsorily or voluntarily contributed to the said fund, are entitled to a pension at age 57; and

(iv) Employees who have contributed for fewer than 10 years at the age of 65 can request that the part contributed by the employer be refunded.

Employment periods performed within the EU or in an EEA country or in a country that has concluded a social security totalization agreement with Luxembourg are taken into account for the computation of the above-mentioned periods.

3. Contribution Rates

Contributions must be made by both the employee and the employer, as follows:

(i) Employer contribution: 8% computed on the employee's annual gross salary (including bonuses and benefits in kind) capped at 158,653.48 euros (in 2025, according to the current index); and

(ii) Employee contribution: 8% computed on the employee's yearly gross salary (including bonuses and benefits in kind) capped at 158,653.48 euros (in 2025, according to the current index).

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