

# International Tax

## Luxembourg Highlights

In Plain English



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## Investment basics:

**Currency** – Euro (EUR)

**Foreign exchange control** – No

### Accounting principles/financial statements

– Luxembourg GAAP/IFRS. Financial statements must be prepared annually.

**Principal business entities** – Public company (société anonyme or SA), private limited company (société à responsabilité limitée or Sàrl), Société par actions simplifiées (SAS), partnership and branch of a foreign corporation.

### Corporate taxation:

**Residence** – A company is resident in Luxembourg if its legal seat or central administration is in Luxembourg.

**Basis** – Residents are taxed on worldwide income; nonresidents are taxed only on Luxembourg-source income. Foreign-source income derived by residents generally is subject to corporation tax in the same way as Luxembourg-source income. Branches are taxed in the same way as subsidiaries.

**Taxable income** – Taxable income is calculated based on the profit as stated in the commercial balance sheet, plus certain adjustments provided for under the tax law.

**Taxation of dividends** – Dividends received by a resident company are included in taxable income, unless the participation exemption regime applies.

**Capital gains** – Capital gains generally are included in taxable income and taxed at the standard corporate tax rate. However, capital gains derived from the sale of shares may be exempt from corporate income tax in certain cases.

**Losses** – Losses incurred up to the fiscal year that ended on 31 December 2016 may be carried forward indefinitely. Losses incurred as from 2017 may be carried

forward for 17 years. The carryback of losses is not permitted.

**Rate** – A corporate income tax rate of 17% applies to a company whose taxable income exceeds EUR 200,000. The rate is 15% if annual taxable income does not exceed EUR 175,000. For amounts between EUR 175,000 and EUR 200,000, corporate income tax is calculated based on a formula, adding EUR 26,250 (i.e. EUR 175,000 x 15%) and 31% of the income amount exceeding EUR 175,000.

A municipal business tax also may be levied (see “Other,” below).

**Surtax** – Corporate income tax is increased by a contribution of 7% to the unemployment fund.

**Alternative minimum tax** – No

**Foreign tax credit** – Foreign tax paid may be credited against Luxembourg corporate income tax if the foreign tax is comparable to the Luxembourg corporate income tax. The credit is limited to the amount of Luxembourg income tax payable on the foreign income.

**Participation exemption** – Dividends and capital gains derived by a qualifying entity from a qualifying shareholding may be exempt from Luxembourg corporate income tax and municipal business tax if the entity deriving the income holds or commits to hold the participation, directly or indirectly, for an uninterrupted period of at least 12 months and the participation does not fall below 10% or below an acquisition price of EUR 1.2 million (EUR 6 million for capital gains) throughout that period.

Dividends received by an eligible Luxembourg parent entity from an eligible subsidiary located in another EU member state are not exempt under the participation exemption regime if the payments are deductible in the other member state. The benefits of the participation exemption regime also will not apply where the transaction constitutes an abuse of law



under the general anti-abuse rule (GAAR).

**Holding company regime** – See “Participation exemption,” above.

**Incentives** – A global investment tax credit is available for 8% of the acquisition value of the first EUR 150,000 of investments made during the year, and 2% of the excess over EUR 150,000. A supplementary investment tax credit of 13% of the acquisition value of qualifying investments made during the tax year also is available.

Luxembourg’s new intellectual property (IP) regime introduced in 2018 follows the OECD nexus approach. The regime provides an 80% exemption on qualifying income derived from the commercialization of certain IP rights, as well as a 100% exemption from net worth tax. The old IP box regime was abolished in 2016, although certain IP rights introduced before 1 July 2016 may continue to benefit from the previous regime through 30 June 2021.

Qualifying investment fund vehicles are not subject to corporate income tax and municipal business tax.

### **Withholding tax:**

**Dividends** – Dividends paid to a nonresident company generally are subject to a 15% withholding tax, unless the rate is reduced under a tax treaty. No tax is withheld on dividends paid to a qualifying company under the EU parent-subsidiary directive, unless the transaction constitutes an abuse of law under the GAAR. Luxembourg has extended the benefits of the directive to parent companies resident in non-EU tax treaty countries, provided conditions similar to those under the Luxembourg participation exemption are satisfied and the parent company is subject to a tax similar to Luxembourg corporate income tax.

**Interest** – Luxembourg does not levy withholding tax on interest. However, interest on profit-sharing bonds and debt

instruments with remuneration linked to the issuer’s profits are taxed as dividends at a 15% rate.

**Royalties** – Luxembourg does not levy withholding tax on royalties.

**Technical service fees** – Luxembourg does not levy withholding tax on technical service fees.

**Branch remittance tax** – No

### **Other taxes on corporations:**

**Capital duty** – No. A registration fee of EUR 75 is imposed on incorporation or amendments to bylaws.

**Payroll tax** – No

**Real property tax** – Municipalities in Luxembourg impose a land tax of 0.7% to 1% on the unitary value of real property (determined based on the value of the property or of a similar property in 1941), including industrial plants. This is multiplied by coefficients fixed by each municipality and varies according to the type of real property.

**Social security** – Employers must make social security contributions (including for pension, illness and accident insurance) on behalf of their employees at a total rate of 12.04% to 15.15%, depending on various factors.

**Stamp duty** – Stamp duty is levied at various rates on the registration of notary deeds, bailiff deeds and certain actions by a court.

**Transfer tax** – Transfer tax is applicable mainly to the transfer of immovable property. The basic rate is 6%, plus a 1% transcription tax. For real estate located in the municipality of Luxembourg, an additional charge amounting to 50% of the transfer tax is imposed. Exemptions are available.

**Other** – Municipal business tax may be

imposed at rates ranging from 6% to 12%, depending on where the undertaking is located.

A net worth tax of 0.5% on total net assets up to EUR 500 million and 0.05% on total net assets of EUR 500 million or more (subject to the minimum net worth tax requirements described below) is imposed on taxpayers subject to corporate income tax, but an exemption from, or a reduction in, the tax may be available.

Luxembourg collective entities that own qualifying holding and financing assets exceeding both 90% of their total balance sheet and the amount of EUR 350,000 are subject to a minimum net worth tax of EUR 4,815; where the total balance sheet does not exceed EUR 350,000, the minimum net worth tax is EUR 535.

Other Luxembourg companies are subject to a progressive minimum net worth tax, depending on the total balance sheet asset value. The tax ranges from EUR 535 (for a total balance sheet up to EUR 350,000) to EUR 32,100 (for a total balance sheet exceeding EUR 20 million).

For tax-consolidated Luxembourg collective entities, all entities in the group are subject to the minimum net worth tax (payable by the parent entity). However, the aggregate amount due by a tax consolidated group is limited to EUR 32,100.

The minimum net worth tax is reduced by the corporate income tax due the previous year.

Other taxes include gift tax, customs duty, subscription tax and registration taxes (e.g. lease contracts and loan agreements).

### **Anti-avoidance rules:**

**Transfer pricing** – Transactions between related parties must be conducted on arm's length terms. The tax authorities can request documents to examine transactions with related parties. Taxpayers should

be able to justify their transactions and provide a valid business rationale through transfer pricing documentation based on a functional and risk analysis. Reporting requirements apply (see "Disclosure requirements," below).

Tax measures have been introduced to support Luxembourg as a financial center, including guidance and clarification on the transfer pricing rules for Luxembourg entities engaged in intragroup financing activities.

A company may request an advance pricing agreement from the Luxembourg tax authorities.

**Thin capitalization** – In practice, the tax administration uses a debt-to-equity ratio of 85:15 for the financing of participations.

As from 1 January 2019, "excess borrowing costs" (the amount of borrowing costs that exceed the amount of taxable interest revenue and other economically equivalent taxable revenue) are deductible up to 30% of the taxpayer's tax-based EBITDA.

Where certain conditions are fulfilled, the 30% limitation does not apply to excess borrowing costs up to EUR 3 million or that are incurred: (i) by taxpayers meeting a group-wide test; (ii) by standalone entities and "financial undertakings"; (iii) on loans concluded before 17 June 2016; or (iv) on loans that are used to fund EU long-term public infrastructure projects.

Excess borrowing costs that cannot be deducted in the current tax year can be carried forward indefinitely. Tax integrated entities are allowed to calculate their excess borrowing costs and EBITDA at the level of the integrated group or to opt for the individual application of the interest limitation rule.

**Controlled foreign companies** – Controlled foreign company (CFC) rules apply as from 1 January 2019, under which certain undistributed income of a CFC whose

profits within the tax year exceed EUR 750,000 or 10% of its operating costs is attributed to the controlling Luxembourg company in proportion to its participation.

Luxembourg can tax a CFC's undistributed income arising from non-genuine arrangements put in place essentially for the purpose of obtaining a tax advantage.

Municipal business tax is excluded from the scope of the CFC provisions.

A tax credit is available for taxes paid by the CFC, and income of a CFC that previously has been taxed under the CFC rules will not be subject to tax again when it is distributed.

**Disclosure requirements** – Country-by-country reporting, in line with the OECD's BEPS action 13, is required for fiscal years commencing as from 1 January 2016.

Hybrid mismatch provisions apply as from 1 January 2019 where there are differences in the legal characterization of payments or entities in different EU states that result in (i) a deduction for the same expense in two member states (double deduction); or (ii) a deduction in one member state without a corresponding income inclusion in another member state (deduction without inclusion).

Non-genuine arrangements put in place for the main purpose, or one of the main purposes, of obtaining a tax advantage that defeats the object or purpose of the applicable tax law are ignored. An arrangement will be considered non-genuine to the extent it is not put in place for valid commercial reasons that reflect economic reality.

### **Compliance for corporations:**

**Tax year** – The tax year for a company is either the calendar year or the company's accounting year ending in a particular calendar year.

**Consolidated returns** – Fiscal consolidation

is allowed for corporate and municipal business tax purposes, but not for net worth tax purposes, except for the minimum net worth tax (see "Other taxes on corporations," above). A fiscal unity may be formed vertically by a Luxembourg company, or a Luxembourg permanent establishment (PE) of a foreign company that is subject to a tax equivalent to Luxembourg corporate income tax, and its wholly owned (at least 95%) Luxembourg subsidiaries/Luxembourg PEs of a foreign company that are subject to a tax equivalent to Luxembourg corporate income tax.

In certain cases, a horizontal fiscal unity may be formed between companies with the same direct or indirect parent company (without the parent company being part of the consolidation).

**Filing requirements** – Corporate income tax, net worth tax and municipal business tax returns must be submitted before 31 May of the following tax year. This date may be extended upon request. Tax returns must be stated in euros, although, in certain circumstances, a company may determine its taxable income in a currency other than the euro.

Capital companies (i.e. the SAS, Sàrl and partnership limited by shares) may be allowed to self-assess.

Luxembourg companies must file their corporate income tax, net worth tax and business tax returns electronically.

**Penalties** – A 0.6% monthly interest charge applies for failure to pay or for late payment of tax. Failure to submit the tax return, or late submission, results in a penalty of 10% of the tax due and fine(s) up to EUR 25,000 each. In the case of a late payment authorized by the tax authorities, the rate ranges from 0% to 0.2% per month, depending on the period of time.

**Rulings** – A corporate taxpayer may request an advance tax decision from the Luxembourg tax authorities.

## Personal taxation:

**Basis** – Resident individuals are taxed on their worldwide income. Nonresidents are taxed only on Luxembourg- source income.

**Residence** – An individual is considered a resident of Luxembourg if he/she is domiciled in Luxembourg or his/her customary place of abode is in Luxembourg.

**Filing status** – In general, married individuals are subject to joint taxation, although they can elect to be taxed separately. Individuals linked by a legal partnership can opt for joint taxation provided certain conditions are fulfilled.

Nonresident taxpayers can request to be assimilated to resident taxpayers under certain conditions. By default, nonresident married taxpayers are subject to tax class 1 (single individuals), but may elect to be taxed under tax class 2 (couples taxed jointly) if certain conditions are satisfied. Where the election is made, the taxpayers are subject to resident assimilation and must file a resident tax return and report their worldwide income.

**Taxable income** – Luxembourg law distinguishes several categories of income, including income from employment, profits from self-employment, business or agriculture. Losses from one category of income generally may be set off against income from another category in the same year with some limitations. Investment income in the form of dividends is subject to the 15% withholding tax.

Interest paid or attributed to Luxembourg resident individuals by a paying agent located in Luxembourg is subject to a 20% final withholding tax, which applies if the annual amount of interest exceeds EUR 250 per individual and per paying agent.

**Capital gains** – Short-term capital gains are taxed as current income (at progressive rates up to 42%); long- term gains receive more favorable treatment, including an

exemption of EUR 50,000 (doubled for couples taxed jointly) for gains realized in a 11-year period and taxation of the remaining long-term gains at 50% of the taxpayer's global rate. Gains derived by an individual from real estate are considered long-term if the property was held for more than two years.

Gains derived by an individual on shares are long-term if the shares were held for more than six months and are taxable only if the shareholding exceeds 10% at one point of time during the five-year period before the sale. Gains on movable assets are exempt if the assets were held for more than six months.

**Deductions and allowances** – Subject to certain restrictions, deductions are permitted for the following: insurance premiums for life, accident and sickness policies and interest on personal loans; individual pension schemes; alimonies and annuities; childcare and housekeeping costs; charitable contributions; interest on mortgage loans; and home saving and loan schemes. Allowances are granted for employment income, dividend and interest income and pension income. Single parents may benefit from an additional tax credit

A new minimum social wage tax credit applies as from the tax year 2019. This monthly tax credit of up to EUR 70 is added up to the current tax credit available to wage earners (which ranges from EUR 0-EUR 600 for the tax year).

**Rates** – Progressive rates up to 42% apply. Individual income tax due is increased by: (1) a 7% contribution to the employment fund for income not exceeding EUR 150,000 (EUR 300,000 for couples taxed jointly), and 9% contribution for income exceeding these amounts; and (2) a 1.4% uncapped dependency contribution.

Investment income in the form of dividends is subject to a 15% withholding tax. See also "Capital gains," above.



## Other taxes on individuals:

**Capital duty** – No

**Stamp duty** – Stamp duty usually is levied on the registration of notary deeds, bailiff deeds and certain actions by a court.

**Capital acquisitions tax** – Certain gifts and donations must be registered (notably, those involving immovable property). The rates range from 1.8% to 14.4%, depending on the relationship between the donor and donee.

**Real property tax** – Municipalities in Luxembourg impose a land tax of 0.7% to 1% on the unitary value of real property, including industrial plants. This is multiplied by coefficients fixed by each municipality, and varies according to the type of real estate.

**Inheritance/estate tax** – Inheritance tax is levied in Luxembourg if the deceased was resident in Luxembourg at the time of his/her death. The tax base is the market value of the entire net estate inheritance at the time of death. Rates range from 0% to 48%, depending on the proximity of the relationship and the amount of the assets bequeathed to each beneficiary. Exemptions are applicable in certain cases.

**Net wealth/net worth tax** – No

**Social security** – Social security contributions apply to wages and salaries and are due from both the employer (at rates of 12.04% to 15.15%) and the employee (at rates of about 12.20% to 12.45%). Contributions for both employers and employees are computed on a capped basis (approximately EUR 124,266 for 2019), and must be withheld by the employer. Self-employed individuals must register for social security purposes and pay rates of approximately between 24.63% and 27.49%.

## Compliance for individuals:

**Tax year** – Calendar year

**Filing and payment** – Tax returns are due by 31 March of the year following the tax year. The filing deadline may be extended at the taxpayer's request, but the filing must be made as soon as possible and at the latest before 31 December of the tax year following the tax year concerned. Self-employed individuals generally make quarterly prepayments of individual income tax, in amounts that are fixed by the tax authorities based on the most recent final assessment.

A taxpayer may request an advance tax decision from the Luxembourg tax authorities. An administrative fee will apply if the request is in connection with individual business matters.

**Penalties** – Late payment of tax triggers automatic default interest of 0.6% per month. Failure to submit a tax return or a late filing is subject to a penalty of 10% of the tax due and a fine up to EUR 25,000. If late payment is authorized by the tax authorities, the interest rate ranges from 0% to 0.2% per month.

## Value added tax:

**Taxable transactions** – VAT is levied on the supply of goods and services.

**Rates** – The standard rate is 17%. An intermediate rate of 14% applies, e.g. to the management and safekeeping of securities, the sale of certain wines and printed advertising materials. A reduced rate of 8% applies, e.g. to the supply of some phytosanitary products, gas and electricity; and a super reduced rate of 3% applies to food products, the supply of water, pharmaceuticals used for disease prevention and medical and veterinary treatment, periodicals (both electronic and hard copy), and radio and television broadcasting services. Certain good services are exempt, e.g. financial, insurance, funds management, health and medical services and the sale, rent or leasing of immovable property with the possibility to opt for VAT.

**Registration** – In principle, taxpayers must be VAT registered (a derogation may apply under certain conditions).

**Filing and payment** – A taxpayer must file at least an annual VAT return. Depending on annual turnover, a taxpayer may be requested to file monthly or quarterly VAT returns, in addition to the annual return. Monthly and quarterly VAT returns must be filed within 15 days of the end of the period and the annual VAT return, depending on the taxpayer's situation, must be filed before 1 March or 1 May of the following year.

Taxpayers with annual turnover of less than EUR 30,000 benefit from a VAT franchise regime, but they still must register for VAT and file an annual VAT return.

**Source of tax law:** Law of 4 December 1967, as amended, on Income Tax; Law of 12 February 1979, as amended, on Value Added Tax, Law of 16 October 1934, as amended, on Net worth tax, Law of 1 December 1936, as amended, on Municipal Business Tax, Abgabenordnung dated 22 May 1931 and Steueranpassungsgesetz dated 16 October 1934

**Tax treaties:** Luxembourg has 82 tax treaties. Luxembourg deposited its instrument of ratification for the OECD MLI in April 2019. The MLI will enter into force in Luxembourg as from 1 August 2019.

**Tax authorities:** Administration of Direct Contributions, the Administration de l'Enregistrement, des Domaines et de la TVA (VAT and other indirect taxes) and the Administration of Customs & Excise

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