Overview

Situated at the heart of Western Europe, the Grand Duchy of Luxembourg benefits from longstanding political, social and fiscal stability. Rated AAA by all three main credit rating agencies, Luxembourg is usually at the forefront of cross-border trade and international investment; and is one of the world’s most important financial centers. In terms of assets under management, Luxembourg is the largest investment fund center in Europe and the second largest in the world after the US. The Grand Duchy’s flexible and investment-friendly tax and legal systems have allowed it to become a major hub for investment funds and the formation of pan-European holding platforms. In addition, Luxembourg is a key location for private banking.

Luxembourg levies corporate and personal income tax on its residents in respect of income and capital gains earned on a worldwide basis. In most cases, non-resident taxpayers are only subject to taxation on the following categories of Luxembourg source income as listed in Article 156 of the Luxembourg income tax law (LIR):

i. Profits derived from a permanent establishment in Luxembourg;
ii. Income from agricultural and forestry exploitations in Luxembourg;
iii. Rental income from immovable property located in Luxembourg;
iv. Profits generated from professional activities (independent or salaried) carried out in Luxembourg;
v. Capital gains realized on disposals of participations totaling at least 10% (or more) in Luxembourgish companies held for a period of less than 6 months (subject to any applicable double tax treaties); and
vi. Capital gains realized on disposals of immovable property located in Luxembourg.

Luxembourg tax law provides for a withholding tax on dividend distributions made by Luxembourg resident companies, salaries and wages, director fees and income from certain literary, artistic and sports activities. With that said, interest payments made to non-resident individuals, as well as resident and/or non-resident companies are not subject to withholding tax in Luxembourg (other than in exceptional cases involving issues such as non-arm’s length interest payments or profit participating interest, etc.).

Transactions between related parties (including but not limited to intra-group financing activities) must comply with the arm’s length principle and the transfer pricing rules as developed by the Organisation for Economic Co-operation and Development (OECD).

As of May 2021, Luxembourg has 85 double-taxation treaties signed and in force, two treaties signed but not ratified, as well as ten potential treaties under negotiation. Most of Luxembourg’s double tax treaties follow the OECD Model. Luxembourg is also a signatory to the Multilateral Convention to Implement Tax Treaty (MLI) Related Measures to prevent Base Erosion and Profit Shifting and has agreed to adopt the minimum standards (modification to the preamble, principal purpose test and dispute resolution), as well as certain optional provisions. The MLI has been ratified and has entered into force as of August 1, 2019.

In this chapter
Legal system

Luxembourg has a civil law system. Due to its history and size, Luxembourg’s legal system has been significantly influenced by the legal traditions of its neighbors. To quote an example, the Grand Duchy’s direct tax law is based on German sources; corporate and criminal law were heavily influenced by Belgian law; with civil and commercial law inspired by the Napoleonic Code (which in turn is based on Roman law).

Commercial companies are governed by the law of August 10, 1915, as amended (the “Company Law”), which was reformed in 2016 to modernize Luxembourg corporate law.

Luxembourg is a founding member of the EU and hosts the European Courts of Justice (CJEU). Luxembourg is bound by EU institutions, legislation and case law.

Taxation authorities

Luxembourg taxes are collected by different tax administrations depending on the nature of the tax.

The Administration des Contributions Directes is responsible for direct taxes (i.e., personal income tax, corporate income tax (CIT), municipal business tax (MBT), net wealth tax (NWT) and withholding tax WHT).

The Administration de l'Enregistrement et des Domaines et de la TVA is responsible for indirect taxes (value-added tax and registration duties).

The Administration des Douanes et des Accises is responsible for customs and excise duties.

Business vehicles

For the purposes of carrying on an activity in Luxembourg, a non-resident may choose to either establish a Luxembourg vehicle or operate directly through a foreign entity (with or without a Luxembourg branch).

The main Luxembourg vehicles are partnerships and corporations.

Investment funds may be established in the form of a company, a partnership or a mutual fund (Fonds Commun du Placement or FCP).

Partnerships

The main forms of partnership are:

i. Société en commandite simple (SCS)

ii. Société en commandite spéciale (SCSp)
The SCS and SCSp are limited partnerships and the SNC is a general partnership. Of the three partnership vehicles, only the SNC and the SCS are embodied with separate legal personality.

A Luxembourg partnership is treated as fiscally transparent for corporate income tax (CIT) and net wealth tax (NWT) purposes. As such, it will not be subject to municipal business tax (MBT), provided that it is not engaged in a business per se nor commercially tainted. That said, tax transparent partnerships are not eligible for Luxembourg’s double tax treaties.

The mere holding of shares in a company does not normally constitute a business activity per se. When an SCS or an SCSp is an alternative investment fund (AIF), as defined by the EU alternative investment fund manager directive (2011/61/EU) and the Luxembourg Law of 12 July 2013 implementing such directive, the Luxembourg tax authorities have confirmed via Circular L.I.R. No. 14/4 that such a partnership is inherently not carrying out a commercial activity.

A partnership is deemed commercially tainted when its general partner is a corporation holding 5% or more of the interest in the partnership of a SCS or SCSp, and a majority of its interest or more for a SNC. Foreign partners in a Luxembourg partnership subject to MBT per the above criteria may be considered to have a taxable presence in Luxembourg (permanent establishment or permanent representative) under domestic tax law. Foreign entities are classified as transparent or non-transparent for tax purposes by comparison of their legal features with those of Luxembourg entities.

Corporations

The main corporate forms are:

i. Société anonyme (S.A.)

ii. Société à responsabilité limitée (S.à r.l.)

iii. Société en commandite par action (S.C.A.)

iv. Société par action simplifiée (S.A.S)

Luxembourg resident companies are in principle subject to CIT, MBT and NWT and can benefit from the country’s double-taxation treaties.

Investment funds

There are multiple ways to structure an investment fund in Luxembourg. A fund can be regulated, and thus subject to the direct supervision of the Luxembourg financial supervisory authority (the CSSF), or unregulated. Investment funds can be further classified based on the target investors to whom they are being marketed.

Among regulated funds, undertakings for collective investments in transferable securities (UCITS) are targeted towards retail investors. The three other fund vehicles available are generally marketed towards professional/institutional investors:

i. Funds falling under part II of the Law of 17 December 2010 (Part II Funds)

ii. Investments companies in risk capital, subject to the Law of 15 June 2004 (SICARs)

iii. Specialized investment funds, subject to the Law of 13 February 2017 (SIFs).

Reserved alternative investment funds (RAIFs), subject to the Law of 23 July 2016, present another option for structuring alternative investments. They are not directly supervised by the CSSF; however, they have to appoint an alternative investment fund manager (AIFM), who is, in turn, under the oversight of the CSSF or the competent authority of another EU member state.

UCITS, SICARs, SIFs and RAIFs all have specific legal regimes and are subject to so-called product laws. On the other hand, an investment fund can also be established as an unregulated structure that is not subject to any product law. However, they cannot form compartments (sub-funds) and they do not benefit from any tax advantages, unless they qualify as alternative investment funds under the Alternative Investment Fund Manager Directive.

The above-mentioned investment funds can be established under contractual form (as an FCP), as a corporate entity
Financing a corporate subsidiary

Equity increase

A share capital increase can be realized in cash or in kind, either in exchange of new shares or via an increase of the nominal value of the existing shares. A contribution to an equity account without issuing shares, known as account 115, is also possible. The contribution to account 115 does not require a notarial deed where a share capital increase does.

Share capital reduction and share premium repayment

The repayment of share capital and share premium (or account 115) are treated similarly for tax purposes. In principle, such redemptions are not subject to WHT to the extent that (i) the Luxembourg company has no distributable profits/retained earnings (whether capitalized or not), and (ii) the repayment of share premium is motivated by genuine economic reasons.

If share premium is repaid by a Luxembourg company in spite of there being distributable reserves, the latter will be deemed to be distributed first as a dividend, triggering a corresponding WHT unless, (i) an exemption under domestic rules applies, or (ii) an exemption or WHT reduction under a double-taxation treaty applies.

Debt financing

Withholding tax implications

Arm’s length interest payments made by a Luxembourg resident corporation to a lender are generally not subject to WHT, except for interest payments made to Luxembourg resident individuals, certain types of profit-sharing debts and payments made under silent partnership arrangements.

It should also be noted that non–arm’s length intra-group interest payments may be requalified as dividend distributions and thus, be subject to a 15% WHT (17.65% on the gross amount). The aforementioned dividend WHT rate may be reduced or eliminated under an applicable double-taxation treaty. The WHT may also be eliminated under certain domestic rules (i.e., the Luxembourg participation exemption).

Thin capitalization rules

There are no specific laws (or other legislative references) in Luxembourg dealing with thin capitalization, informally defined as an excess of debt over equity, other than transfer pricing rules.
Historically, Luxembourg tax authorities addressed thinly capitalized companies via an informal debt-to-equity ratio of 85:15. The thin capitalization rules aimed at restricting the deductibility of interest paid or payable by a resident corporation exceeding the 85:15 ratio. Under these rules, payments of interest that exceeded this debt-equity ratio may be re-qualified as dividend distributions for WHT purposes (WHT exemptions listed above remain available).

However, the OECD guidance on Financial Transactions, released on February 11, 2020, has become the new point of reference for the determination of appropriate debt-to-equity ratios in Luxembourg replacing the informal thin capitalization ratio described above and mandating the use of accurate delineation (focusing on a case-by-case study of the characteristics of a transaction within the broader commercial and economic landscape as described in Chapter 1 of the OECD Transfer Pricing Guidelines) to determine appropriate debt-to-equity ratios in Luxembourg.

**Anti-tax avoidance directive**

Further to the OECD recommendations on base erosion and profit-shifting initiative, an EU anti-tax avoidance directive has been adopted on July 12, 2016 (ATAD1), which provided several tax measures to be implemented by member states. Some of these tax measures include: controlled foreign company (CFC) rules, exit taxation rules, interest limitation rules, anti-hybrids and general anti-avoidance rules (GAAR). These rules have entered into force as of January 1, 2019.

On May 29, 2017, the EU adopted another anti-tax avoidance directive, ATAD2, amending ATAD1 by extending the scope of the anti-hybrid provisions. The ATAD 2 directive was incorporated in Luxembourg law on December 23, 2019. The provisions apply from January 1, 2020, except for the reverse hybrid mismatches provision, which will apply starting January 1, 2022.

**Interest limitation rule**

Pursuant to Luxembourg’s implementation of ATAD1, interest deduction limitation rules were incorporated into Luxembourg’s domestic tax legislation. Under such rules, the deduction of so-called “exceeding borrowing costs” are limited to: (i) 30% of EBITDA (generally referred to as earnings before interest, tax, depreciation and amortization but subject to a more specific definition in the law/directive), or (ii) €3,000,000, whichever is higher.

This rule should not negatively impact companies operating a back-to-back financing activity, receiving only interest payments or reporting a positive arm’s length margin, as the limitation will apply to exceeding costs—i.e., the difference between interest income less borrowing costs.

**Anti-hybrid rules**

Anti-hybrid rules address several categories of hybrid mismatches that exploit differences between tax systems. Hybrid mismatches resulting from two (or more) jurisdictions qualifying an entity, a financial instrument or a permanent establishment of an entity differently for tax purposes, can lead to so-called deduction/non-inclusion or double deductions outcomes (i.e., in situations where the same payment is deductible in more than one jurisdiction or where a payment is deducted from the tax base in one jurisdiction without a corresponding inclusion in the tax base in another jurisdiction).

The scope of the hybrid mismatch rules is, schematically, limited to mismatches arising between (i) associated enterprises (as defined in the anti-hybrid rules), (ii) a head office and its permanent establishment, (iii) two or more permanent establishments of the same entity or (iv) under a structured arrangement.

To neutralize these mismatches as per ATAD1 and ATAD2, Luxembourg may be required to deny the deduction of payments, expenses or losses, to include payments as taxable income or to deny relief from double taxation.

**Controlled foreign company rules**

Prior to the transposition of ATAD1 into domestic law, there were no CFC rules in Luxembourg.

Currently, Luxembourg CFC rules work to attribute the undistributed income of a non-resident, low-taxed entity that is “controlled” by Luxembourgish persons, towards the taxable basis of its Luxembourgish parent company or headquarters (in the case of foreign permanent establishments of a Luxembourg entity).

ATAD1 defines a “low tax” jurisdiction as one that employs a rate of (corporate) taxation that is lower than 8.5% (equivalent to half of the Luxembourg CIT rate in 2021). Furthermore, the term “controlled” is defined as a (direct as well as indirect) ownership threshold exceeding 50%.

Luxembourg has opted to limit the income of CFCs arising from non-genuine arrangements put in place for the
Corporate income tax

Corporate income tax and municipal business tax

Luxembourg companies are subject to CIT on their worldwide profits. The CIT is governed by the LIR dated December 4, 1967, as amended.

For 2021, Luxembourg companies are subject to Corporate Income Tax (CIT) on their worldwide profits. For taxable incomes totaling more than €200,000, the CIT rate is 17% plus a solidarity surcharge for the employment fund of 7%. Luxembourg companies with taxable incomes lower than €175,000 are subject to CIT at a rate of 15%, whereas companies with taxable incomes falling between €175,000 and €200,000 are subject to CIT as follows: (i) a flat €26,250; in addition to (ii) 31% of the tax base above €175,000.

In addition, Luxembourg levies a MBT on the net profits realized by Luxembourg companies. The MBT is governed by the municipal business tax law as amended dated December 1, 1936. Rates vary by municipality (the rate applicable for Luxembourg-City in 2020 and 2021 is 6.75%). For 2020 and 2021, the combined CIT and MBT rate is 24.94% for a company established in Luxembourg City. This rate may be progressively reduced in the future.

Net wealth tax

Luxembourg levies an annual NWT based on the unitary value determined in accordance with the net wealth tax law and valuation law dated October 16, 1934. The unitary value corresponds to the difference between the assets generally estimated at their fair market value and the liabilities with third parties as per a certain key date (in principle, on January 1 of each year).

The NWT rate is 0.5% of the unitary value, reduced at 0.05% for the NWT basis exceeding €500 million. From January 1, 2016, onwards, Luxembourg introduced a minimum NWT charged from €535 to €32,100. The minimum has been determined at €4,815 for companies whose financial assets, transferable securities and cash deposits exceed, cumulatively, 90% of their total balance sheet plus €350,000.

An NWT reduction can be claimed for the portion of NWT exceeding the minimum NWT, subject to certain conditions. Among these conditions, an amount corresponding to five times the NWT reduction must be allocated to a special NWT reserve in the balance sheet and maintained for the following five years.

Corporate residency

For the purposes of domestic tax law, a company is considered as a tax resident in Luxembourg if its statutory seat or its effective place of central administration is located in Luxembourg. Non-resident companies are subject to Luxembourg taxation only on its Luxembourg source income as listed in Article 156 LIR (subject to applicable double tax treaties).

Consequently, where a foreign company is resident in a country with which Luxembourg has a double-taxation treaty, the corporation will generally be exempt from Luxembourg taxation on its business profits, except to the extent that the profits were earned through a permanent establishment situated in Luxembourg. A corporation that operates through a Luxembourg permanent establishment (such as a branch) will be subject to CIT and MBT on income attributable to the Luxembourg permanent establishment.

Taxable base

A Luxembourg corporate taxpayer is subject to tax on its worldwide business income. Business income is defined by Article 14 of the LIR and includes all income derived by a company. As a general rule, the values on a company’s fiscal balance sheet should follow those found in the commercial accounts (except otherwise provided).

To obtain the taxable profit for a given year, the tax exemptions (e.g., due to any applicable participation exemption or treaty benefits) and possible differences in deductions or depreciations should be taken into account.
Deductions
A taxpayer is generally permitted to deduct most types of genuine business expenses, insofar as they are at arm’s length, exclusively incurred for the purposes of enterprise and not economically connected to tax exempt income.

Participation exemption regime

Inbound dividends
Generally, dividends received by a fully taxable Luxembourg resident company are taxable at a combined rate of 24.94% CIT and MBT (for companies established in Luxembourg City in 2021), unless the participation exemption applies. The LIR sets the following conditions under which the participation exemption applies:

i. The recipient company is either:
   a. A fully taxable Luxembourg resident corporation;
   c. A permanent establishment of a company resident in a country with which Luxembourg has a double-taxation treaty; or
   d. A permanent establishment of a company resident in an EU or European Economic Area (EEA) member state.

ii. The distributing company is either a fully taxable Luxembourg company or a company covered by the EU Parent Subsidiary Directive, or a non-resident capital company subject to a comparable tax (i.e., a tax levied at a rate equal to at least 50% of the CIT rate (i.e., 8.5%) on a tax basis that is comparable to the basis determined under Luxembourg tax rules); and

iii. The recipient company holds a direct participation in the share capital of the distributing company of at least 10% or with an acquisition price of at least €1,200,000 for an uninterrupted period of 12 months or commits itself to continue to hold such minimum participation for such minimum period.

Expenses, such as operating charges and interest payments that are economically connected to exempt dividend income are not tax deductible unless said expenses exceed the exempt income. In other words, costs related to tax exempt dividend income are only deductible insofar as said costs exceed exempted dividend income (and cause a net loss).

Outbound dividends
Generally, dividends paid by a fully taxable Luxembourg resident company are subject to a WHT of 15% (or 17.65% of the gross amount). The rate may be reduced under an applicable double-taxation treaty. Article 147 of the LIR allows a dividend WHT domestic exemption under certain conditions:

i. The recipient company is either a Luxembourg resident fully taxable company, or a company covered by Article 2 of the Parent Subsidiary Directive or a Luxembourg permanent establishment thereof, or a company resident in a country having a double-taxation treaty with Luxembourg and which is liable to a tax equivalent to the Luxembourg CIT (i.e., 50% of the Luxembourg CIT rate on a tax basis that is comparable to the basis determined under Luxembourg tax rules); and

ii. The recipient company holds a direct participation in the share capital of the distributing company of at least 10% (or a participation with an acquisition price of at least €1,200,000) for an uninterrupted period of 12 months or commits itself to continue to hold such minimum participation for such minimum period.

General anti-abuse rule (GAAR)

Luxembourg has also introduced a GAAR in the domestic provisions of the participation exemption, which stems from the revised version of the Parent Subsidiary Directive. As a consequence of this:

• Dividends/ profit distributions which are tax deductible in the hands of the subsidiary may not benefit from the participation exemption; and
• Dividends/profit distributions may not benefit from the participation exemption if they derive from an arrangement or a series of arrangements that have been put in place for the main purpose of obtaining a tax advantage that defeats the object or purpose of the participation exemption regime and are not genuine in light of all the relevant facts and circumstances.

It should also be noted that the GAAR only applies for inbound and outbound dividend exemption purposes but not for capital gain exemption and exemption for NWT purposes.

Capital gains

In principle, capital gains realized by a fully taxable Luxembourg resident company are subject to CIT and MBT at a combined rate of 24.94% (in 2019 and 2020 for companies in Luxembourg City). An exemption applies if the following conditions are met:

- The subsidiary must satisfy the same conditions as those applicable for the exemption of inbound dividends; and
- At the moment of the disposal, the parent company has continuously held a direct shareholding of at least 10% in the disposed company, or, the participation had an acquisition price of at least €6,000,000 and was held for an uninterrupted period of 12 months.

Expenses, such as operating charges and interest payments, incurred by a parent company in connection with the holding of its participations are tax deductible, in the absence of exempt income or to the extent that they exceed exempt incomes. When an exempt capital gain is realized, the latter will remain taxable up to the amount of the related expenses deducted for the participation transferred for the past years. This is called “the recapture rule” and is generally tax-neutral for a company holding only shares benefiting from the participation exemption regime, since the taxable gains (corresponding to related expenses deducted) should be offset by tax losses carried forward (constituted by the expenses deducted).

Net wealth tax

Participations held by a Luxembourg company are exempt from NWT provided that:

- The subsidiary satisfies the same conditions as those applicable for the participation exemption on inbound dividends; and
- The Luxembourg parent company holds a participation of at least 10% (or, failing that, of an acquisition price of at least €1,200,000).

The NWT participation exemption regime does not mandate a minimum holding period.

Tax losses

Tax losses can be carried forward for 17 years (for losses incurred from January 1, 2017; losses incurred prior thereto may be carried forward indefinitely). No carry-back is allowed.

Tax consolidation

A vertical and horizontal tax consolidation regime is available under certain conditions for companies for CIT and MBT purposes (but not for NWT purposes) under Article 164bis LIR. Affiliated Luxembourg resident companies can benefit from the tax consolidation to the extent that:

i. The consolidating company is either a resident company fully taxable or a Luxembourg permanent establishment of a non-resident company which is fully subject to tax comparable to Luxembourg CIT;

ii. The consolidated companies are fully taxable residents;

iii. The consolidating company holds directly or indirectly at least 95% (or 75% under certain conditions) of the consolidated companies for an uninterrupted period of at least five years as from the beginning of the first accounting period for which the regime is requested; and

iv. A written request must be filed to the Luxembourg tax authorities before the end of the first accounting period for which the tax consolidation regime is requested.
Following a decision of the CJEU dated May 14, 2020 (C-749/18), Luxembourg reformed its tax consolidation rules to include a temporary measure allowing a Luxembourg integrating parent company of a “vertical consolidation” to dissolve its existing fiscal unity, and to subsequently form a “horizontal tax consolidation” with its Luxembourg resident subsidiaries without any negative retroactive taxation for the existing members that would otherwise result from the dissolution of the original tax consolidation.

This temporary measure will be subject to the following conditions:

i. The integrating parent of the previous integrated group will become the integrating subsidiary of the new consolidated group;

ii. The change will increase the scope of the new integrated group compared with the previous integrated group; and

iii. The entities will have to be bound for at least five fiscal years before benefitting from the tax consolidation regime, unless they were already part of the previous integrated group.

This temporary measure will apply from the 2020 tax year to the 2022 tax year.

**Intellectual property regime**

Certain income from intellectual property assets benefit from a specific tax regime. This regime was amended as of March 2018 through article 50ter LIR to be in line with the nexus approach prescribed by the OECD (a grandfathering clause was also enacted to allow companies benefitting from the previous IP box regime to continue doing so until June 30, 2021).

The current rules allow for an 80% exemption on adjusted and compensated net income from qualified intellectual property for CIT and MBT purposes. Qualified intellectual property assets benefit from a 100% exemption for NWT purposes.

**Royalties**

Arm’s length royalties paid by a Luxembourg company are not subject to WHT.

**Income tax reporting & tax returns**

Luxembourg resident corporations are required to file annual income tax returns for CIT, MBT and NWT purposes. In principle, tax returns must be filed on or before May 31 of the following year in order to avoid late filing penalties. Similar obligations exist for non-resident corporations that carry on business through a Luxembourg permanent establishment, or that earn certain income or gains from Luxembourg sources.

That said, due to the extraordinary circumstances applicable to the COVID-19 pandemic era, Luxembourg’s tax authorities extended the deadlines for submitting the income tax returns for the 2020 financial year to June 30, 2021.

Dividend WHT returns need to be filed within eight days following the distribution of dividends.

Quarterly tax advances are required in respect of current-year taxes such CIT, MBT and NWT, the estimation of the tax due being made on the previous year. For new taxpayers, the tax advances correspond at least to the minimum net wealth tax.

The LTA may also require the taxpayer to provide an estimation of the expected taxable income.

Penalties for late filing may result in a fine up to €25,000. Late payment of fines may result in interest of 0.6% per month starting from the month following the due date.

In addition, Luxembourg has adopted several laws regarding mandatory automatic exchange of information in the field of taxation.

The law of December 23, 2016 related to the Country-by-country (CbC) reporting implements Luxembourg CbC obligations for Luxembourg ultimate parent entities controlling a multinational enterprise group (MNE group) - whose total consolidated revenue exceeds EUR 750 million in the previous year - to file a CbC report to the Luxembourg tax authorities. Other Luxembourg entities that are members of MNE groups might also have obligations to file a CbC report in Luxembourg under certain conditions.

More recently, the law of March 25, 2020 transposing Council Directive (EU) 2018/822 regarding reportable cross-
Cross-border payments

Transfer pricing

Luxembourg’s transfer pricing regime generally conforms to the OECD’s arm’s length principle and is codified in article 56, 56bis and 164 of the LIR. In addition, circular letter n°56/1 - 56bis/1 was issued by the LTA on December 27, 2016. This circular provides practical guidance on:

- The methods to be used to determine the arm’s length remuneration
- The minimum equity-at-risk required by the Luxembourg company in relation to its activities
- The substance and functions required by the Luxembourg company, especially on the management of the company where:
  
  i. A majority of the board should be residents of Luxembourg;
  
  ii. The management should be employing or have access to adequate employees with skills to perform the functions to run intragroup financing transactions and to take the appropriate decisions about its risks;
  
  iii. The key decision shall be taken in/from Luxembourg with at least one annual meeting in Luxembourg; and
  
  iv. The company shall not be considered as a tax resident in another state.

Luxembourg taxpayers are required to maintain transfer pricing documentation in respect of transactions subject to the transfer pricing rules.

Multilateral Instrument

Luxembourg is a signatory to the Multilateral Convention to Implement Tax Treaty (MLI) Related Measures to prevent Base Erosion and Profit Shifting. The MLI has been ratified and has entered into force as of August 1, 2019.

Luxembourg has agreed to adopt the minimum standards (modification to the preamble, principal purpose test and dispute resolution). Moreover, Luxembourg has adopted the following optional provisions: Article 3(1) (transparent entities and specifically the paragraph which refers to the persons covered by the convention), Article 5 Option A (Application of Methods for Elimination of Double Taxation), Article 6(3) (optional language in the preamble with respect to a desire to develop an economic relationship or to enhance co-operation in tax matters), Article 7(4) (optional language in the text with respect to the possibility for the competent authority to grant a benefit, that has been denied under a Covered tax agreement, to a person if the competent authority determines that such benefit would have been granted to that person in the absence of the transaction or arrangement), Article 13 Option B (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions) and Articles 18 to 26 (Mandatory Binding Arbitration).

Payroll taxes

Payroll taxes

In Luxembourg, employers are required to withhold wage tax on salaries of their employees.

Social security contributions

Employers must make social security contributions on behalf of their employees by withholding part of the employee’s salary. Employers and employees both contribute a part of the social security contributions. The taxable base includes
Indirect taxes

Value-added tax (VAT)

VAT is imposed on the final domestic consumption of most goods and services supplied in Luxembourg. VAT is neutral for companies having commercial activities. Those companies collect the tax on their own sales and deduct the tax they have paid on purchase of goods and services. The net VAT payable is the difference between collected VAT and deductible VAT. VAT credits can be reimbursed under certain conditions.

Intra-community acquisitions of goods and services may be self-assessed for Luxembourg VAT via the reverse charge mechanism unless such supplies benefit from a Luxembourg VAT exemption. Exports outside of the EU are VAT-exempt.

The VAT rules as applied in Luxembourg are derived from the provisions of EU directives on VAT and are governed by the Luxembourg VAT law dated February 12, 1979, as amended. Luxembourg applies the lowest standard rate available in the EU at 17%, along with an intermediary rate of 14%, a reduced rate of 8% for items such as, electricity and heating and a super-reduced rate of 3% that applies to household essentials such as, food, children’s clothing, books, broadcasting, etc.

The activities carried out by UCITS, UCIs, SIFs, securitization vehicles and AIF/RAIFs, along with the management of such entities, are generally exempt from VAT. The notion of management services for such entities generally includes the day-to-day management of investment portfolios as well as the provision of investment advice but excludes control and supervision services provided by a depositary.

Registration duties

Registration duties are either fixed (€12 or €75) or variable.

The amount of the registration duty will depend on the nature of the document to be registered. For example, a company must pay a €75 registration duty to increase its share capital, amend its articles of association or migrate out of Luxembourg.

A transfer of real estate assets located in Luxembourg is subject to registration duties of 7% (10% for real estate assets located in Luxembourg City, except residential assets, which remain subject to the 7% rate).

Contributions in kind involving Luxembourgish real estate assets in exchange for shares are subject to a 3.4% registration duty (4.6% for assets located in Luxembourg City).

Loans granted to, or debt instruments issued by Luxembourg companies do not need to be registered in Luxembourg. However, registration duties may be due in cases where the debt instruments are (i) voluntarily registered in Luxembourg, (ii) appended to a document that requires mandatory registration in Luxembourg, or (iii) deposited with the official records of a notary (déposé au rang des minutes d’un notaire).

Transfers and contributions of movable or immovable assets located outside Luxembourg are not subject to registration duties.

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