COUNTRY COMPARATIVE GUIDES 2021

The Legal 500 Country Comparative Guides

Luxembourg

TAX

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This country-specific Q&A provides an overview of tax laws and regulations applicable in Luxembourg.

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LUXEMBOURG
TAX

1. How often is tax law amended and what are the processes for such amendments?

With regard to tax matters, the Luxembourg legal framework is relatively stable compared to other European jurisdictions. In the course of 2021, no material changes have been made to Luxembourg tax law, except for the passing of (i) the law of 10 February 2021 implementing rules providing for the limitation of the deductibility of interest and royalties paid to entities residing in non-cooperative jurisdictions which qualify as associated enterprises. and (ii) the budget law of 19 December 2020 applicable as of 1 January 2021 (see corresponding procedure below) providing for a "real estate levy" applying to certain tax-exempt investment funds on income deriving from Luxembourg located real estate.

Further, the reverse hybrid mismatch rules provided for by EU Directive (EU) 2017/952 as regards hybrid mismatches with third countries ("**ATAD 2**") will apply as of 1 January 2022

Besides, in response to the COVID-19 pandemic, laws extending the deadlines in tax matters and the filing of annual accounts introduced in 2020 have been prorogated. Annual filing of income tax both for corporate and physical taxpayers have been extended from March 2021 to June 2021.

With regard to the legislative process, usually tax law amendments are embedded in the so called budget law. The budget law is submitted to the Luxembourg parliament in fall or winter of each year. Luxembourg laws may be submitted to the Parliament's vote either (i) by way of a draft bill issued by a member of the government or (ii) by a law proposal introduced by one or several members of Parliament. In both cases, the amendment is assigned to one or more parliamentary commission(s). Further, the bill is discussed and may be amended upon request of at least five members of the Parliament. During the parliamentary process, several professional organisations and the Council of State may produce comments, which are often taken into account in the final bill. The bill must be voted twice with a 3 months interval minimum by the Parliament. The second vote may be disregarded if the Council of State gives its approval. Following the approval of the Parliament and of the Council of State, the Grand Duke signs and passes the law which enters into force 3 days after its publication in the official gazette unless the law states otherwise.

2. What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?

Please see below the different procedural obligations and their deadlines summarised in a table:

1) Maintenance of records

Kind of document	Deadline[1]	Maintenance of records
Annual accounts: To be approved and filed with the Trade and Companies Register (*Registre de Commerce et des Sociétés*)	Approval by the shareholders' meeting or the partner's meeting (if applicable) – within 6 months after the end of the calendar year for companies, – At the end of the financial year for natural persons; Filing with the RCS within 1 month after the approval	10 years after the end of the financial year
Indirect taxes: – invoices and documents relating to deliveries or acquisitions of goods or services – VAT summary statement:	– To be filed before the 1st of May of the year following the taxable period – May be filed on a quarterly basis if the quarterly amount is below EUR 50,000	10 years after the end of the financial year
Direct taxes: – Annexes to the tax returns	To be filed with the tax return (see below)	10 years after the end of the financial year

2) Taxes

Taxes	Taxpayer	Relevant tax authority	Deadlines	Frequency
Personal income tax	- Natural persons - Partnerships - Sole proprietorships	*Administration des Contributions Directes (ACD)*	Before the 31st of March of the following calendar year	Yearly
Corporate income tax	Capital companies	ACD	Before the 31st of May of the following financial year	Yearly
Municipal business tax Proprietorship	- Capital companies - Partnerships and sole proprietorships	ACD	Before the 31st of May, together with the corporate income tax return	Yearly
Net wealth tax	- Capital companies	ACD	Before the 31st of May of the current year.	Yearly
VAT	VAT taxpayers (incl. companies, individuals carrying on a business activity, landlords if they have opted for VAT). If the turnover is: - < EUR 112,000 - > EUR 112,000 < EUR 620,000 - > EUR 620,000	*Administration de l'enregistrement et des Domaines et de la TVA* (***AED***)	- Before the 1st of May; - Before the 15th of January, April, July and October with an annual return to be filed before the 1st of May; - Before the 15th of each month.	- Yearly - Quarterly and yearly - Monthly and yearly
Subscription tax	Special Investment Funds	AED	Before the last day of March, June, September and December	Quarterly
Extensions	An extension to the above mentioned deadlines may be granted upon request.			
Forms and filing method	All tax returns can be found on https://impotsdirects.public.lu/fr/formulaires/collectivites.html and have to be filed electronically.			
Penalties	Failure to submit the tax return or late submission will lead to a penalty of 10% of the tax due and fines up to EUR 25,000.			

[1] In response to the COVID-19 pandemic, the Luxembourg tax authorities ("**LTA**") have extended the deadline for the filing of the 2019 annual tax returns for corporate income tax, municipal business tax, net wealth tax and personal income tax to 31 March 2021. The LTA further granted an extended deadline for the filing of the 2020 annual tax returns for corporate income tax, municipal business tax, net wealth tax and personal income tax to 30 June 2021.

3. Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?

In Luxembourg, three key regulatory authorities are in charge of taxation:

- The direct tax administration (*Administration des contributions directes)*. The ACD deals with taxation of companies and is responsible for fixing, controlling and collecting the applicable tax, fixing tax advances, issuing tax residence certificates, etc.
- The indirect tax administration (*Administration de l'enregistrement, des domaines et de la TVA).*
- The Customs and Excise Administration (*Administration des douanes et accises*).

The direct tax administration maintains 8 tax offices dealing with the taxation of companies and being responsible for controlling and fixing the applicable tax, fixing tax advances, issuing tax residence certificates, etc. The direct tax administration is in general easy to approach and meetings with the tax inspector in charge can be requested.

In 2015, Luxembourg provided a legislative framework to its tax ruling procedure. Since then, advanced tax rulings and advanced pricing agreements can be filed with the Luxembourg direct tax administration. Each request is then processed by the so called ruling committee consisting of between 4 and 6 tax civil servants. The ruling committee may contact the tax payer directly, in case it requests additional information or clarification. The committee provides a final binding answer within a timeframe of generally 2 to 3 months. Rulings are binding for a period of 5 years.

Rulings which have been granted by the ACD before 1 January 2015 are no longer binding after 31 December 2019. Taxpayers who have been affected by this provision may request a new ruling in accordance with the applicable standard procedure. A waiver has been granted to taxpayers who have a financial year diverging from the calendar year as the latter may file a ruling before the end of their 2020 financial year. As rulings may only be requested in relation to one or several specific transactions, a new filing can only be approved provided that the concerned transactions still take effect at the expiry date of the ruling. However, since the Luxleaks and other scandals (e.g., Panama papers, Openlux, etc), the number of rulings filed has significantly decreased. It appears to be a general downward trend corroborated over the years.

4. Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?

The rules applying to the proceedings against a tax assessment notice are embedded in the Luxembourg *Abgabenordnung* (the "**AO**"). The filing period for a complaint is very short and expires 3 months after receiving notice of the relevant tax assessment. A complaint has to be filed first with the relevant Luxembourg tax office.

The Luxembourg tax office does not need to answer to the complaint within any specific deadline. However, as per Luxembourg administrative law, if no formal decision or answer is provided by the Luxembourg tax administration after a period of 6 months, the relevant taxpayer can file a legal complaint in front of the Luxembourg administrative tribunal. Decisions of the *Tribunal Administratif* can also be appealed to the *Cour Administrative.* Concerning tax matters, the *Cour Administrative* is the final instance so that decisions taken cannot be further appealed.

Luxembourg administrative jurisdictions are subject to strict procedural deadlines, so that a court case is judged within a timeframe of 1 ½ to 2 years maximum.

With regard to tax matters, the filing of a complaint has no suspensive effect, so that even if a tax is challenged, it must still be paid when declared due. A payment deferral (*sursis de paiement*) may be granted upon request.

With regard to VAT matters, similar rules apply. Nevertheless, it should be noted that the District Court (*Tribunal d'Arrondissement*) (being part of the civil jurisdictions) is competent for complaints against decision of the VAT authorities.

Disputes that have arisen since 2018 relating to the interpretation and application of the EU Arbitration Convention and of intra-EU tax treaties fall under the scope of application of the Luxembourg law of 20 December 2019 implementing the EU Directive on tax dispute resolution mechanisms. Luxembourg taxpayers may submit their complaints within three years following the notification of the tax assessment, the audit report or any event triggering a tax dispute to the ACD. If the ACD does not resolve the dispute within 6 months following the receipt of the complaint; the latter must resolve such dispute by means of a mutual agreement procedure (MAP) within 2 years following the acceptance of the complaint. The LTA released the Circular L.G. – Conv D.I. n°601 dated 11 March 2021 providing for information on the articulation of MAPs with other procedures including judicial or administrative claims, and amicable procedures under different provisions like tax treaties and the EU Arbitration Convention. Upon a delay of the procedure, Luxembourg taxpayers may have recourse to the Luxembourg administrative procedure mentioned above.

5. Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?

Taxes	**Taxpayer**	**Relevant tax authority**	**Deadlines**	**Frequency**
Personal income tax	Natural persons Partnerships Sole proprietorships	ACD	On the 10th of March, June, September and December.	Quarterly advances
Corporate income tax	Capital companies	ACD	On the 10th of March, June, September and December.	Quarterly advances
Municipal business tax	Capital companies Partnerships Sole proprietorships	ACD	On the 10th of February, May, August and November.	Quarterly advances
Net wealth tax	Capital companies	ACD	On the 10th of February, May, August and November.	Quarterly advances
VAT	VAT taxpayers (incl. companies, individuals carrying on a business activity, landlords if they have opted for VAT). If the turnover is: - < EUR 112,000 - > EUR 112,000 < EUR 620,000 - > EUR 620,000	AED	- Before the 1st of May; - Before the 15th of January, April, July and October with an annual return to be filed before the 1st of May; - Before the 15th of each month.	- Yearly - Quarterly and yearly - Monthly and yearly
Subscription tax	Special investment Funds Holding companies	AED	To be paid before the end of each quarter	Quarterly

6. Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?

The Luxembourg tax administration is subject to professional secrecy requirements towards third parties which apply to information relating to foreign and national taxpayers.

However, the Luxembourg tax administration may disclose information to other tax administrations and judicial authorities. In that respect, Luxembourg has approved in 2014 the Paris Convention regarding the mutual administrative assistance in tax matters.

Luxembourg has also signed an intergovernmental agreement regarding the automatic exchange of information between the Luxembourg and US tax administrations within the FATCA, Model 1.

Luxembourg has transposed the Council Directive (EU)

2016/881 concerning automatic and mandatory exchange of tax information concerning the CbCR, with effect as of the fiscal year 2016.

Luxembourg is signatory to the Common Reporting Standard ("**CRS**") and has implemented the automatic exchange of information in tax matters as of 1 January 2016. In October 2020, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes has found the Luxembourg legislative framework on that matter in full compliance.

Luxembourg also transposed the Council Directive (EU) 2016/2258 regarding the automatic exchange of information relating to reportable cross-border arrangements ("**DAC 5**"), enabling the disclosure of beneficial ownership information to foreign European tax authorities. DAC 6 relating to mandatory disclosure rules for intermediaries and the automatic exchange of information on tax planning cross-border arrangements has been transposed into Luxembourg law with effect as of 1 July 2020. Whereas DAC 6 obliges professionals and taxpayers to disclose confidential information, the Luxembourg law implementing DAC 6 exempts lawyers, chartered accountants and auditors from such reporting obligations in conformity with their professional privilege.

Finally, as of 1 March 2019, Luxembourg has introduced its register of beneficial owners (the "**RBO**") with a six-month transitional period for Luxembourg entities to identify and register their ultimate beneficial owners ("**UBO**") in that said register. The information will be kept for a period of 5 years after the liquidation or winding up of the relevant entity. As from 1 September 2019 (at the end of the transitional period), information provided to the RBO will be accessible to the public, except for highly private information such as the address and the national identification number of the relevant UBOs. Under limited and exceptional cases (i.e., risk of threat, fraud, kidnapping, blackmail, violence or intimidation) the public access can be limited upon request by the UBO. Such restricted access is granted for a maximum period of 3 years. Based on information recently communicated by the RBO, only a hand few of restricted access requests have been granted until now. In addition to the RBO, the law of 10 July 2020 introduced a register of *fiducies* and trusts (the "**RFT**") with effect as of 10 July 2020. As for the RBO, the personal information on the beneficial owners of any trusts and *fiducies* having a fiduciary agent or a trustee which (i) resides in Luxembourg or (ii) are located outside Luxembourg but established a business relationship with a professional[2] or purchased real estate located in Luxembourg must be registered in the RFT.

Despite the mandatory disclosure rules listed above, the Luxembourg courts and the CJEU keep a watchful eye on fishing expeditions and protection of taxpayers' fundamental rights (see CJEU "Berlioz" decision dated 16 May 2017).

In the context of the Panama Papers however, very recent case law waved the professional secrecy of lawyers approached as third parties in the context of a tax audit carried out by the Luxembourg tax administration. This recent development is closely monitored by Luxembourg practitioners as potentially harmful to fundamental rights of tax payers.

[2] Professional within the meaning of the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

7. What are the tests for residence of the main business structures (including transparent entities)?

According to Article 159 of the Luxembourg income tax law ("**LITL**"), an entity is treated as a resident of Luxembourg for direct tax purposes if it has (i) its registered office (*siège statutaire*) in Luxembourg, or (ii) its central administration (*administration centrale*, i.e. the place of effective management) located in Luxembourg.

8. Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?

The Luxembourg tax authorities pay attention to cross border transactions between related parties, especially on intragroup financing activities.

Since the issuance of the Circular n° 56/1-56bis/1 and the renewal of the LITL, mentioning the basic principles to be followed in conducting a transfer pricing analysis (please refer to question 9 for more details), the Luxembourg tax authorities are keen on reviewing intragroup financing activities and whether they are secured with a transfer pricing study to prove its arm´s length character.

9. Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?

There is currently no legislation concerning the thin capitalisation ratio specifically but, in practice, the tax administration uses a debt-to-equity ratio of 85:15 for the intra-group financing of participations. In case a taxpayer fails to comply with this ratio, the surplus of interest may be requalified as a hidden dividend distribution. Such requalification would result in a lack of deductibility for those payments and possible application of a 15% withholding tax (subject to applicable tax treaty or participation exemption if applicable). Back-to-back financing is not subject to the abovementioned ratio.

Luxembourg transfer pricing rules are embedded in the revised Article 56 and 56bis LITL, which incorporate the concept of the arm's length principle based on Article 9 OECD MC. The amended provision, however, goes further and reflects the spirit set out in the BEPS Actions 8–10 such as the concept of comparability analysis and a general anti abuse rule that allows the disregarding of a transaction that has been made without any valid commercial or business justification.

On 27 December 2016, the Luxembourg tax authorities issued the Circular n° 56/1-56bis/1 which has reshaped the transfer pricing framework for companies carrying out intra-group financing activities in Luxembourg. The Circular provided additional guidance in terms of substance and transfer pricing requirements in line with the OECD Guidelines. In particular, it provided substantial details on how to conduct the comparability and functional analyses in a way consistent with the OECD principles. Furthermore, the Circular requires the performance of a comprehensive risk analysis in order to determine the adequate level of equity capital.

CFC rules have been introduced into Luxembourg law as of January 2019 upon the implementation of the Council Directive (EU) 2016/1164 ("**ATAD 1**") and have been detailed by a Circular issued by the Luxembourg tax administration on 4 March 2020. Under article 164ter LITL, entities may qualify as CFCs if they are permanent establishment or companies which are not subject to Luxembourg taxes or if their income is tax exempt in Luxembourg. It should be noted that also tax transparent entities which may be treated as permanent establishments of a Luxembourg company can also qualify as CFCs. Entities which qualify as CFCs but book an annual profit being lower than either (i) EUR 750,000 or (ii) 10% of their operating costs in their commercial balance sheet are excluded from the scope of the CFC rules.

Foreign entities shall qualify as CFCs when the following two conditions are cumulatively met:

- the Luxembourg taxpayer holds itself and / or with "associated enterprises" directly or indirectly more than (i) 50% of the share capital or (ii) of the voting rights in the CFC or (iii) owns the right to receive more than 50% of the profits of the CFC; and
- the taxation paid by the CFC is lower than the difference between (i) the taxation which would have been due in accordance with the LITL and (ii) the taxation actually paid by the CFC.

In accordance with article 164 (3) LITL, benefits perceived by the CFC which have (i) not been distributed to the Luxembourg taxpayer during the same financial year and (ii) result from non-authentic arrangements having the purpose of obtaining a tax advantage have to be included in the taxable income of the Luxembourg taxpayer.

10. Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?

Luxembourg has GAAR embedded in its legislative framework (Art. 6 *Steueranpassungsgesetz* "**StAnpG**"), which applies to any Luxembourg taxpayer (capital companies, individuals and partnerships). Specific GAAR was also introduced to implement the provisions of the Directive 2014/86/EC of 8 July 2014 amending the Parent-Subsidiary Directive introducing a GAAR on the participation exemption regime.

More recently, Luxembourg modified its existing GAAR under Art. 6 StAnpG to align it with the GAAR provided for by the ATAD 1. According to the amended rule, a misuse of forms and institutions of law (i.e., an "arrangement") which has been effected for the main purpose, or one of the main purposes, of achieving a tax advantage and which is not commercially genuine should be ignored. An arrangement is considered as not genuine if it has not been put into place for valid commercial reasons which reflect economic reality.

However, one shall remember that the GAAR is still subject to EU law and its interpretation by the CJEU. In this context the CJEU Cadbury Schweppes case-law and the notion of wholly artificial arrangements should be taken into account when applying the GAAR.

11. Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?

Since the release of the BEPS Action Plan, the European legislator issued several directives to combat tax avoidance and profit shifting within the EU. Most of the EU incentives are directly inspired or make a direct reference to the BEPS Action Plan. The most relevant ones are being the ATAD 1 and ATAD 2 providing for five main anti avoidance measures. At a Luxembourg level, national efforts are being made to introduce such measures and comply with certain of the BEPS recommendations. In details, Luxembourg implemented the following changes to align its law with the BEPS Action Plan:

- Action 1: implementation of EU VAT directive addressing VAT on business to customer's digital services.
- Actions 2-4: Implementation of ATAD 1, which deals with CFCs and interest limitation rules, which have been implemented into Luxembourg law as of 1 January 2019. Hybrid rules under ATAD 2 aiming to neutralize the effects of hybrid mismatch arrangements have been transposed into Luxembourg national law as of 1 January 2020. In addition, rules providing for the limitation of the deductibility of interest and royalties paid to entities located in non-cooperative jurisdictions have been implemented as of 1 March 2021.
- Action 5: Luxembourg introduced a BEPS-compliant new IP box regime as of the fiscal year starting in 2018.
- Action 6: on preventing the granting of treaty benefits in inappropriate circumstances. Action 6 will include minimum standards to combat contractual abuse.
- Action 7: prevention of the artificial avoidance of permanent establishment status
- Actions 8–10: introduction of the new Article 56bis in the LITL.
- Action 12: as per the transposition into domestic law of the DAC 6.
- Action 13: transfer pricing documentation as requested by the new transfer pricing rules; CbCR which is applicable in Luxembourg for financial years starting on or after 1 January 2016.
- Action 14: Luxembourg chose to opt for mandatory arbitration under the MLI which will be improved due to the new BEPS-MLI.
- Action 15: Luxembourg signed the MLI.

12. In your view, how has BEPS impacted on the government's tax policies?

As mentioned above, Luxembourg has made significant efforts to comply with the OECD recommendations in its BEPS Action Plan, as long as these become mandatory measures from the EU parliament initiative. However, as a competitive jurisdiction it does not plan to impose measures that would go beyond of the recommendations of the BEPS report. The interesting exception to that is the introduction of the mandatory binding arbitration, which is not required under the MLI instrument. Also, it is worth noting that the Luxembourg law on transfer pricing expressly makes reference to the OECD transfer pricing guidelines, when interpreting the national law.

13. Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?

The Luxembourg tax system follows mainly the OECD Model.

The LITL provides for eight categories of income that are taken into account for the determination of the taxable net income: income from commercial activities, income from independent activities (including directors' fees), income from agricultural/forestry activities, employment income, pension income, investment (dividend and interest) income, rental and royalty income and miscellaneous income (including capital gains).

<u>a) Business profit / capital companies taxation</u>

Luxembourg levies corporate income tax ("**CIT**") on the annual net worldwide profits of Luxembourg resident companies and on source-based profits of non-resident companies. Profits and charges are accounted for on an accrual basis.

As from the tax year 2019, income exceeding EUR 200,000 is taxed at a rate of 17%. In addition, a 7% solidarity surcharge for the employment fund and a

6.75% municipal business tax ("**MBT**") for companies registered in Luxembourg City are levied. For companies located outside of the Luxembourg City a different rate of MBT may apply.

The above amounts to an **aggregate tax rate** for Luxembourg-City domiciled companies of **24.94%**.

Since 1 January 2019, two intermediary CIT rates have been introduced:

- 15% for taxable income up to EUR 175,000, and
- EUR 26,250 plus 31% of the tax base above EUR 175,000, for taxable income between EUR 175,000 and EUR 200,000.

b) Employment income and pensions / individuals

Individuals tax resident in Luxembourg are taxable on their worldwide income (unless an applicable treaty determines otherwise). The calculation of Luxembourg income taxes depends on the taxable income and the individual's family status.

With regard to employment income not exceeding EUR 200,004, it is subject to progressive tax rates ranging from 0% to 45.78% (the threshold is of EUR 400,008 for couples taxed jointly). The income in excess is subject to 45.78%.

Pension income is subject to a specific tax regime where 50% of the life annuities is tax exempt. Lump-sum payments in the framework of pension may be paid tax free or are only taxable at 50% of the average tax rate, depending on the kind of the premiums paid.

c) VAT

Supply of goods and services are subject to VAT in Luxembourg. Currently four rates are applicable: 17% standard rate; an intermediary rate of 14%; a reduced rate of 8%; and a super-reduced rate of 3%.

Annexes A, B and C of the law of 12 February 1979 as amended (the "**VAT Law**") provide for a detailed list of services and goods that are subject to the reduced rates. Such Annexes are to be interpreted strictly. There are also custom and excise duties applicable for certain goods.

d) Savings income and royalties

Under Luxembourg general tax laws currently in force and subject to the law of 23 December 2005, as amended (the "**Relibi Law**") mentioned below, there is no withholding tax on payments of interest made to Luxembourg residents.

Under the Relibi Law payments of interest or similar income made or ascribed by a paying agent established in Luxembourg to an individual beneficial owner who is a resident of Luxembourg will be subject to a withholding tax of 20%. Such withholding tax will be in full discharge of income tax if the beneficial owner is an individual acting in the course of the management of his/her private wealth. Responsibility for the withholding of the tax will be assumed by the Luxembourg paying agent.

An individual beneficial owner of interest or similar income who is a resident of Luxembourg and acts in the course of the management of his private wealth may opt for a final withholding tax of 20% when he/she receives or is deemed to receive such interest or similar income from a paying agent established in another EU Member State (other than Luxembourg) or in a State of the European Economic Area (which is not an EU Member State).

Royalties are taxed as income following the rules as mentioned above.

e) Income from land

Rental income is subject to taxation at normal tax rates mentioned above (for companies or individuals).

f) Capital gains

For Luxembourg resident companies, in principle capital gains arising from the sale of assets are treated as ordinary income and taxed as such, unless participation exemption applies.

Capital gains exemption is available if, at the time the capital gains are realised,:

- the Luxembourg company has held a direct participation representing at least 10% of the nominal paid-up share capital of its subsidiary (or if below 10%, a direct participation having an acquisition price of at least EUR 6 million);
- it has held such qualifying participation for an uninterrupted period of at least 12 months; and
- the subsidiary entity is (i) a Luxembourg resident entity fully subject to Luxembourg income taxes, or (ii) a non-resident capital company liable for an income tax in its country of residence comparable to the Luxembourg CIT, or (iii) an entity resident in a Member State of the European Union (as defined in Article 2 of the EU Parent-Subsidiary Directive 2011/96, as amended (the "PSD")).

It is important to note that the GAAR does not apply to capital gains deriving from qualifying subsidiaries benefitting from the Luxembourg participation exemption, regardless of their location.

With regard to individuals, non-speculative gains on the sale of shares (if no important participation of 10% or more), are not taxable.

g) Stamps and/or capital duties

Under Luxembourg law, certain acts such as official acts, acts of estate agents and transfer of ownership of certain goods are required to be registered with the Luxembourg AED. Registration duties are fixed or proportional, depending on the nature of the acts and transfers that are subject to them.

Capital duty has been abolished in Luxembourg since 2008. Since then, a fixed registration fee of EUR 75 is due in some specific cases determined by law such as but not limited to: upon incorporation or subsequent capital increase and migration of a company to Luxembourg.

14. Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?

Luxembourg companies are taxed on their annual net profits as determined under Luxembourg general accounting principles (“**Lux GAAP**”) under which both upward and downward adjustments are allowed. As a general rule, the commercial accounts are used as a basis for the computation of the Luxembourg tax, unless a specific tax rule specifies otherwise (*principe de l’accrochement fiscal au bilan commercial*).

The main tax adjustments to the commercial balance sheet are as follows:

- tax-exempt profits (e.g. as per the participation exemption regime applicable for dividends and capital gains);
- add-back expenses (e.g. interest expenses on assets generating tax-exempt income);
- adjustment to the tax results from the transactions that were not at arm’s length (e.g. the interest rate set was not at market conditions, or interest payments were reclassified as hidden dividend distribution and hence not tax deductible anymore); and
- discrepancies between the application of different valuation rules in accounting and in tax (e.g. amortisation, rollover relief).

Luxembourg taxes retain and distribute profits in the same manner.

15. Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?

The qualification of Luxembourg companies for Luxembourg CIT follows a list/ catalogue approach. The LITL provides provisions defining all legal and corporate entities existing under Luxembourg laws as either tax opaque (Article 159 LITL) or tax transparent (Article 175 LITL).

The Luxembourg SA (*Société Anonyme)* and the Luxembourg S.à r.l (*Société à responsabilité limitée*) are the most commonly used company forms in Luxembourg. These company forms are opaque and fully taxable business entities.

With respect to partnerships, the Luxembourg limited partnership (*société en commandite simple* (“**SCS**”)) as well as the Luxembourg limited partnership without legal personality (*société en commandite spéciale* (“**SCSp**”)) which was introduced into Luxembourg law in 2013, are frequently used. The partnerships as mentioned before are tax transparent not being subject to corporate tax in Luxembourg. Taxation occurs at the level of the partners.

The SCSp is mainly used for the structuring of funds and real estate transactions, providing more flexible solutions compared to other corporate forms.

Luxembourg provides a wide range of investment vehicles. Luxembourg investment funds such as the Specialised Investment Fund (“**SIF**”), the Reserved Alternative Investment Fund (“**RAIF**”) or the investment company into risk capital (“**SICAR**”) have favorable tax regimes.

From a Luxembourg point of view, a SIF is a taxpayer but not subject to tax as its income is fully exempt from Luxembourg CIT.

Depending on their performed activity, RAIFs are subject to either the same income tax exemption regime as SIFs or the same tax regime as SICARs.

The SIF as well the RAIF are unrestricted with respect to eligible assets and can be used for all investment purposes.

The tax regime of SICARs depends on the chosen legal form. SICARs established in form of a SCS or SCSp are tax transparent and thus not subject to tax.

SICARs established in the form of an SA or an S.à r.l are fully taxable entities being subject to CIT. However, income resulting from securities that represent the risk capital held as well as income resulting from the transfer, contribution or liquidation of these assets does not constitute taxable income and is thus fully tax exempt.

SICARs are designed for investments in private equity and venture capital.

In principle, SICARs established under the corporate form benefit from the Luxembourg double tax treaty network. However, UCITS, SIFs and RAIF may or may not benefit from the provisions of a double tax treaty. Such benefit is to be checked on a case-by-case basis.

As of 1 January 2022, the reverse hybrid mismatch rules provided for by ATAD 2 are applicable in Luxembourg. As a result, entities which are transparent for Luxembourg tax purposes may be subject to corporate income tax under certain conditions.

16. Is liability to business taxation based upon a concepts of fiscal residence or registration? Is so what are the tests?

With regard to CIT and according to Article 159 of the LITL, commercial companies are considered as taxpayer residents in Luxembourg, being subject to corporate income tax on their worldwide profits, if their statutory seat or central administration is located in the Grand-Duchy of Luxembourg.

For MBT purposes, the tax applies to all companies carrying on commercial activities in Luxembourg.

17. Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?

In 2017, Luxembourg opened the so-called Freeport. The Freeport offers safe and secure storage for works of art, precious metals, wines, antiques, jewels, documents and archives (physical and digital), collection cars and other valuables.

For the goods as stored in the Freeport, a special VAT regime applies. In this respect and in line with the EU Customs and Tax Regulation, VAT and custom duties are suspended on goods introduced into the free zone from third countries or originating in the EU. The special tax regime is applicable as long as the goods remain stored in the Freeport.

Another interesting tax regime worth mentioning – next to the one applying to Luxembourg investment funds – is the one applying to securitisation companies. Under the LITL, payments or commitments to pay by a securitisation company to its investors (including shareholders) qualify as a tax deductible expense, so that the taxable basis of such company can be nil. That being said, careful attention should be paid to the impact of the ATAD 1 and 2 rules on securitisation structures.

18. Are there any particular tax regimes applicable to intellectual property, such as patent box?

Luxembourg reintroduced in 2018 in its LITL the new IP box regime that is now in line with the BEPS recommendations. In addition, the Luxembourg tax authorities published a circular on 28 June 2019, L.I.R. n° 50ter/1, clarifying the patent box.

Under the new Article 50ter LITL, 80% of the income derived from the commercialisation of certain intellectual property ("**IP**") rights is exempt, as well as fully exempt from NWT. The new rules are applicable as from the fiscal year 2018. Qualifying assets include the following IP rights:

- patents (broadly defined) and functionally equivalent rights that are legally protected by utility models, extensions of patent protection for certain drugs and phyto-pharmaceutical products, plant breeder's rights, and orphan drug designations; and
- copyrighted software.

In line with the BEPS – Action 5 recommendations, marketing-related IPs can no longer benefit from the IP box regime.

Qualifying income includes the following:

- income derived from the use of, or a concession to use, qualifying IP rights (i.e. royalty income);
- IP income embedded in the sales price of products or services directly related to the eligible IP asset. The principles of Article 56bis LITL must be used to separate income unrelated to the IP (e.g. marketing and manufacturing returns);
- capital gains derived from the sale of the

qualifying IP rights; and

- indemnities based on an arbitration ruling or a court decision directly linked to a breach of a qualifying IP right.

The regime applies on a net income basis, meaning that expenses relating to the qualifying IP assets need to be deducted from the gross qualifying income. The proportion of qualifying net income entitled to the benefits will be determined based on the ratio of qualifying expenditures and overall expenditures (nexus ratio). The previously-qualifying IP assets can continue to benefit from the old regime during the grandfathering period, running until 30 June 2021.

19. Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?

1) Fiscal unity for direct tax purposes

Luxembourg allows a group of companies to apply a fiscal unity (or tax consolidation). Under such regime, the respective taxable profits of each company in the consolidated group are pooled or offset to be taxed on the aggregate amount, which means that the group is effectively treated as a single taxpayer.

Generally, the conditions to qualify for a fiscal unity are as follows:

- each company that is part of the tax unity is a Luxembourg resident fully taxable company (the top entity may be a Luxembourg permanent establishment of a fully taxable non-resident company) (the "**Eligible Company**");
- at least 95% of each subsidiary's capital is directly or indirectly held by an Eligible Company;
- each company's fiscal year starts and ends on the same date; and
- the fiscal unity is applied for at least five financial years.

The taxable income/loss of the fiscal unity is calculated as the sum of the taxable income/loss of each constitutive entity. The vertical fiscal unity regime has been extended since 1 January 2016 in accordance with the CJEU case law in particular to allow horizontal integrations. Eligible Companies (at least two Luxembourg companies) that are held by a common parent established in any European Economic Area country and subject to tax comparable to Luxembourg's CIT in its country of residence are now also permitted to form a fiscal unity. Companies consolidated for CIT are also automatically consolidated for MBT. However, there is no tax consolidation for NWT purposes.

Securitisation entities and venture capital companies are excluded from the possibility to form a fiscal unity in order to prevent tax evasion schemes.

2) VAT Group

Since mid-2018, Luxembourg introduced a revised VAT group regime (in line with the CJEU Skandia case (C-7/13). Such VAT group regime treats all of the transactions between its members as "out of the scope" of the VAT. One of the major differences between the new and the former regime is that the VAT group regime is restricted to persons established in Luxembourg and Luxembourg branches of foreign companies, whereas the former regime allowed for grouping with other Member States of the EU.

Companies wishing to benefit from the VAT group regime must generally meet three requirements proving their bound: there must be (i) an economic (ii) financial and (iii) organisational link with the other VAT group company(-ies).

20. Are there any withholding taxes?

Dividends paid to residents as well as non-residents are in principle subject to a 15% withholding tax ("**WHT**") in Luxembourg. It is possible, however, to benefit either from a reduced rate or an exemption under a double tax treaty or from the domestic participation exemption regime.

Domestic participation exemption is granted if, at the time of the dividend distribution:

- the parent company is a Luxembourg fully taxable company, or a resident company of a Member State of the EU as defined in Article 2 of the PSD, or a Swiss resident capital company that is subject to an income tax in Switzerland without being exempt from tax, or a foreign joint-stock company which is subject in its country of residence to an income tax regime corresponding to the Luxembourg CIT;
- said company holds or commits to hold a participation of at least 10% (or with an acquisition price of at least EUR 1.2 million) in

the nominal share capital of the distributing company; and

- such qualifying participation has been held for an uninterrupted period of at least 12 months.

If the shareholder is an EU company within the scope of the PSD, the exemption applies subject to the additional specific GAAR below:

- the EU parent company is not used for the main purpose or as one of the main purposes of obtaining a tax advantage that defeats the object of the PSD.

Liquidation proceeds are not subject to dividend WHT. If properly structured a partial liquidation may as well not be subject to the WHT. In addition dividend payments made by certain type of vehicles, e.g. SPFs, SICAV, SICAR and securitisation vehicles are not subject to WHT.

There has been no WHT on royalties in Luxembourg since 1 January 2004. Furthermore, there is no WHT on arm's length interest payments in Luxembourg. Interest paid under certain hybrid instruments or not at arm's length may be subject to a 15% WHT if reclassified as dividend payments by the tax authorities.

21. Are there any recognised environmental taxes payable by businesses?

According to the latest Eurostat report, Luxembourg has collected the lowest shares of environmental tax revenue in the European Union. Following this, there is no recognizable environmental tax payable by businesses.

22. Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?

Dividend income received by a Luxembourg resident company is included in its taxable basis and fully taxable, unless a domestic or treaty exemption applies.

Under the domestic participation exemption, dividend income (and liquidation proceeds) is exempt if, at the time the income is put at the disposal of the taxpayer:

- the subsidiary entity is (i) a Luxembourg resident entity fully subject to Luxembourg income taxes, (ii) an entity resident in a Member State of the European Union (as defined in Article 2 of the PSD), or (iii) a non-resident capital company liable to an income tax in its country of residence comparable to the Luxembourg CIT;
- the Luxembourg company holds a direct participation representing at least 10% of the nominal paid-up share capital of its subsidiary (or if below 10%, a direct participation having an acquisition price of at least EUR 1.2 million); and
- it has held (or commits itself to hold) such qualifying participation for an uninterrupted period of at least 12 months.

If the dividends are distributed by an EU subsidiary which is listed in Article 2 of the PSD, the exemption applies subject to the two additional conditions below:

- the EU subsidiary is not used for the main purpose or as one of the main purposes of obtaining a tax advantage that defeats the object of the PSD (GAAR); and
- the dividend/profit distribution from the EU subsidiary have not been deducted from its taxable base (anti-hybrid rule).

23. If you were advising an international group seeking to re-locate activities from the UK as a result of Brexit, what are the advantages and disadvantages offered by your jurisdiction?

In the past years, Luxembourg has secured a leading position on the international financial scene. With more than 4 Trillion managed assets in 2019, Luxembourg is the largest investment fund centre in Europe and the second largest worldwide after the United States. In 2019, it has been estimated that 16.5% of the assets managed in Luxembourg are directly linked to UK asset managers[3].

Since the entering into the Trade and Cooperation Agreement ("**TCA**") between the EU and the United Kingdom on 24 December 2020, UK financial services suppliers will no longer benefit from the passporting rights under the EU legislation. The access to the EU single market may still be ensured by means of third country equivalence provisions and depends on the respective domestic rules of each EU Member State. However, the practical aspect of such third country equivalence provisions remains unclear. At this stage, the EU only granted equivalence decisions for the three UK central counterparties (CCPs) until June 2022.

In order to benefit from the EU passporting rights, UK financial service supplies may relocate a part of their activities and/or offices in the EU. Luxembourg represents an attractive destination as it offers many advantages in tax regimes with low tax rates, great double tax treaty network and corporate rules, but also in their management with accessible administrations.

[3] Source: Association of the Luxembourg Fund Industry (ALFI)

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