



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Luxembourg: Tax (4th edition)

This country-specific Q&A provides an overview to tax laws and regulations that may occur in Luxembourg.

It will cover withholding tax, transfer pricing, the OECD model, GAAR, tax disputes and an overview of the jurisdictional regulatory authorities.

This Q&A is part of the global guide to Tax. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/tax-4th-edition/>



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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 and, except for the decrease of the

corporate income tax rate over the past years, no material changes have been made to Luxembourg tax law. Since 2016 however, and due to the several European directives implementing the OECD BEPS action plan, Luxembourg has had to adapt its tax law to introduce or align certain rules, such as the interest deduction limitation rule, CFC rules, a general anti abuse rule, the exit tax, etc..

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 month 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 summarized in a table:

Maintenance of records

Kind of document

Deadline

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, 10 years after the end of the financial year
- At the end of the financial year for natural persons;

Filing with the RCS within 1 month after the approval

Indirect taxes:

- invoices and documents relating to deliveries or acquisitions of goods or services

- To be filed before the 1st of May of the year following the taxable period 10 years after the end of the financial year

- VAT summary statement:

- May be filed on a quarterly basis if the quarterly amount is below EUR 50,000

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

Taxes

Taxes	Taxpayer	Relevant tax authority	Deadlines	Frequency
Personal income tax	-Natural persons	<i>Administration des Contributions Directes (ACD)</i>	Before the 31 st of March of the following calendar year	yearly
	-Partnerships			
	-Sole proprietorships			
Corporate income tax	Capital companies	ACD	Before the 31 st of March of the following financial year	yearly
Municipal business tax proprietorship	- Capital companies	ACD	Before the 31 st of March, together with the corporate income tax return	Yearly
	- Partnerships and sole proprietorships			
Net wealth tax	- Capital companies	ACD	Before the 31 st of March of the current year.	yearly

	VAT taxpayers (incl. companies, individuals carrying on a business activity, landlords if they have opted for VAT). If the turnover is:			
VAT	- < EUR 112,000	<i>Administration de l'enregistrement et des Domaines et de la TVA (AED)</i>	- Before the 1 st of May;	- yearly
	- > EUR 112,000 < EUR 620,000		- Before the 15 th of January, April, July and October with an annual return to be filed before the 1 st of May;	- quarterly and yearly
	- > EUR 620,000		- Before the 15 th of each month.	- 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.			

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?

Luxembourg has three key regulatory authorities being in charge of taxation:

- the direct tax administration (*Administration des contributions directes*) ;
- 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 advances 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.

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.

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?**

Please see below the fiscal calendar summarized in a table:


Taxes	Taxpayer	Relevant tax authority	Deadlines	Frequency
Personal income tax	Natural persons			
	Partnerships	ACD	On the 10 th of March, June, September and December.	On a quarterly basis
	Sole proprietorships			
Corporate income tax	Capital companies	ACD	On the 10 th of March, June, September and December.	quarterly advances
	Capital companies			
Municipal business tax	Partnerships	ACD	On the 10 th of February, May, August and November.	quarterly advances
	Sole proprietorships			
	Capital companies	ACD	On the 10 th of February, May, August and November.	quarterly advances

	VAT taxpayers (incl. companies, individuals carrying on a business activity, landlords if they have opted for VAT). If the turnover is:		
	- < EUR 112,000		- Before the 1 st of May;
VAT	- > EUR 112,000 < EUR 620,000	AED	- Before the 15 th of January, April, July and October with an annual return to be filed before the 1 st of May;
	- > EUR 620,000		- Before the 15 th of each month.
Subscription tax	Special investment Funds	AED	To be paid before the end of each quarter
	Holding companies		

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 Foreign Account Tax Compliance Act ("**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 Standards and has implemented the automatic exchange of information in tax matters as of 1 January 2016.

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. The DAC 6 Council Directive (EU) 2018/822 relating to mandatory disclosure rules for intermediaries and the automatic exchange of information on tax planning cross-border arrangements will be soon transposed by the Luxembourg legislator as a draft bill has been introduced on 8 August 2019 to the Parliament.

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.

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).

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**”).

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 (ie, 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 Council Directive (EU) 2017/952 ("**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 are to be transposed into Luxembourg national law by the end of 2019 aiming to neutralize the effects of hybrid mismatch arrangements).
- 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).

a) Business profit / capital companies taxation

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 the 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) Stamp 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.

16. Is liability to business taxation based upon a concept of fiscal residence or registration? If 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 bond: 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 in anticipation of Brexit, what are the advantages and disadvantages offered?

It should be noted that Luxembourg is an important European financial centre – the second largest investment fund centre after the United States – having close ties with the UK, and more especially with London. It is anticipated that the Brexit will thus affect Luxembourg adversely.

On the other hand, Luxembourg is a stable political country with a strong and growing economy. With its AAA ranking, it is a reputable jurisdiction to implement and relocate financial and investment activities.

For foreign investors, Luxembourg offers many advantages through low tax rates, a simple and transparent tax system, a great treaty network, an



accessible tax administration, a flexible corporate law and corporate governance rules and a leading position for alternative investment funds structuring.