Luxembourg Country Profile

EU Tax Centre

February 2019

Key tax factors for efficient cross-border business and investment involving Luxembourg

EU Member State Yes

Double Tax Treaties With the following countries, territories and jurisdictions:

Albania[a]	Estonia	Kuwait[a]	Oman[a]	Sri Lanka
Andorra	Finland	Kyrgyzstan[a]	Pakistan[a]	Sweden
Armenia	France [c]	Laos	Panama	Switzerland
Argentina[a]	Georgia	Latvia	Poland	Syria[a]
Austria	Germany	Lebanon[a]	Portugal	Tajikistan
Azerbaijan	Greece	Liechtenstein	Qatar	Taiwan
Bahrain	Guernsey	Lithuania	Romania	Thailand
Barbados	Hong Kong SAR	Malaysia	Russia	Trinidad and Tobago
Belgium	Hungary	Malta	San Marino	Tunisia
Botswana[a]	Iceland	Mauritius	Saudi Arabia	Turkey
Brazil	India	Mexico	Senegal	Ukraine
Brunei	Indonesia	Moldova	Serbia	UAE
Bulgaria	Ireland	Monaco	Seychelles	UK
Canada	Isle of Man	Mongolia[b]	Singapore	US
China	Israel	Morocco	Slovakia	Uruguay
Croatia	Italy	Netherlands	Slovenia	Uzbekistan
Cyprus	Japan	New Zealand[a]	Spain	Vietnam
Czech Rep.	Jersey	North Macedonia	South Africa	
Denmark	Kazakhstan	Norway	South Korea	
Egypt[a]	Kosovo[a]		Sri Lanka	

Note: (a) Treaty initialed/signed/approved, but not yet in force
(b) Terminated by Mongolia with effect as from 1-1-2014
(c) Recently renegotiated

Most important forms of doing business Public limited liability company ("société anonyme - SA"), private limited liability company ("société à responsabilité limitée - S.à r.l.").

Legal entity capital requirements	SA: minimum share capital of EUR 30,000, 1/4 of which must be paid up at incorporation. Share capital may be represented by bearer and/or registered shares, as well as by voting and non-voting shares, redeemable shares or tracking shares. SARL: minimum share capital of EUR 12,000 fully paid up at incorporation. Capital is divided into registered shares and may be represented by redeemable shares or tracking shares.
Residence and tax system	Tax resident companies are subject to tax on their worldwide income and non-resident companies are subject to tax on income realized in Luxembourg through a permanent establishment (PE). A company is a tax resident in Luxembourg if its statutory seat or its place of central administration is in Luxembourg. With effect from January 1, 2019, new provisions on the definition of PEs located in treaty countries have been added to Luxembourg Law. These new provisions state that the treaty definition shall in general prevail and a PE shall be recognized if the taxpayer is engaged in an independent economic activity in the other country. The Luxembourg tax authorities shall have the right to request a certificate from the foreign tax authorities with regard to the recognition of the foreign PE.
Compliance requirements for CIT purposes	The tax year is the calendar year. Corporate tax returns (including corporate income tax, municipal business tax and net wealth tax returns) are due by May 31 (based on an administrative practice) of the following year (extension to December 31 possible). Advance payments of corporate income tax are due quarterly on March 10, June 10, September 10 and December 10. Advance payments of municipal business tax and net wealth tax are due quarterly on February 10, May 10, August 10 and November 10. The amount of the advance payment is based on the latest tax assessment. For certain payments (e.g. dividends), specific withholding tax returns are required.
Corporate income tax rate	For companies with a taxable income above EUR 30,000, the corporate income tax rate is 18 percent. The aggregate rate for these companies in Luxembourg-City is 26.01 percent, including municipal business tax of 6.75 percent and the contribution to the employment fund of 1.26 percent (i.e. 7 percent of the 18 percent CIT rate). For companies with a taxable income between EUR 25,000 and EUR 30,000, the corporate income tax due is determined as follows: a flat amount of EUR 3,750 (i.e. a 15 percent corporate income tax rate applied to a taxable base of EUR 25,000), plus 33 percent of the income exceeding EUR 25,000. In addition, these companies should be subject to municipal business tax of 6.75 percent (in Luxembourg-City) and to the contribution to the employment fund (7 percent of the CIT charge).

For companies with a taxable income below EUR 25,000, the corporate income tax rate is 15 percent. In addition, these companies should be subject to municipal business tax of 6.75 percent (in Luxembourg-City) and to the contribution to the employment fund (7 percent of the CIT charge).

The government is planning to decrease the corporate tax rate by 1 percentage point in 2019 and to broaden the tax base subject to the reduced 15 percent corporate income tax rate from EUR 25,000 to EUR 175,000.

Interest limitation

With effect from January 1, 2019, the net interest expense deduction of entities subject to corporate income tax will be limited to the highest of 30 percent of its tax EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) or EUR 3 million.

The definition of interest expenses includes all forms of debt and other costs economically equivalent to interest and expenses incurred in connection with the raising of finance.

The definition of interest income covers taxable interest revenues and other economically equivalent taxable revenues.

For tax unity groups, the limits are computed on a stand-alone basis. However, a new bill regarding the computation of the limits at the level of a fiscal unity and no longer on a standalone basis is expected to be released early 2019 and it would apply with retroactive effect as from January 1, 2019.

Luxembourg taxpayers that are part of a (financial) consolidated group will be able to apply an equity escape rule to fully deduct the net interest expense.

Luxembourg taxpayers are able to carry forward, without time limitation, exceeding borrowing costs and, for a maximum of five years, unused interest capacity, which cannot be deducted during the current tax period.

The net interest expense of stand-alone entities (i.e. not being part of a group of companies) will not be limited by this rule.

Long-term infrastructure projects in the EU as well as financial undertakings such as credit institutions, insurance or reinsurance, pension funds, AIFs, UCITS and securitization vehicles (within the meaning of Art. 2, 2 Regulation (EU) 2017/2402) will also be excluded from the rule.

Furthermore, loans concluded before June 17, 2016 are excluded from the new rules (grand-fathering period), but the exclusion shall not extend to any subsequent modification of such loans.

Please note that the current recapture rules have not been modified (e.g. expenses in connection with tax-exempt income remains non-tax deductible).

Withholding tax rates	On dividends paid to non-resident companies 15 percent (may be reduced, even to 0 percent, under applicable treaties or a domestic participation exemption regime). On interest paid to non-resident companies 0 percent (except for profit participating bonds). On patent royalties and certain copyright royalties paid to non-resident companies 0 percent. On fees for technical services No. On other payments Yes on certain payments (e.g. salaries, directors' fees, payments connected to non-residents' literary activities, artists' performances and sports activities in Luxembourg, in certain cases). Branch withholding taxes 0 percent.
Holding rules	Dividend received from resident/non-resident subsidiaries Participation exemption (100 percent) applies (at least 10 percent or acquisition price of EUR 1,200,000, minimum uninterrupted holding period of 12 months or commitment to hold for 12 months). Capital gains obtained from resident/non-resident subsidiaries Participation exemption (100 percent) applies (at least 10 percent or acquisition price of EUR 6,000,000, minimum uninterrupted holding period of 12 months or commitment to hold for 12 months).
Tax losses	Carry-forward of tax losses incurred as of January 1, 2017 is limited to 17 years. The older tax losses must be deducted first. Tax losses incurred between January 1, 1991 and December 31, 2016 can still be carried forward without any time limitation. No carry-back of tax losses possible.
Tax consolidation rules/Group relief rules	Yes, for corporate income tax and municipal business tax, but not for net wealth tax purposes. A Luxembourg parent share capital company (or a Luxembourg permanent establishment of a fully taxable non-resident share capital company) and its direct or indirect 95 percent subsidiaries (a Luxembourg share capital company or a Luxembourg permanent establishment of a fully taxable non-resident share capital company) can, under certain conditions, apply for fiscal integration.

As of the 2015 tax year, "horizontal" fiscal integration is possible, whereby domestic fully taxable share capital companies / permanent establishment of a fully taxable non-resident share capital company can consolidate under certain conditions without the parent company (which could be a fully taxable Luxembourg share capital company, a domestic permanent establishment of a fully taxable foreign share capital company, a fully taxable EEA share capital company, a fully taxable permanent establishment of a fully taxable EEA share capital company) participating in the fiscal integration.

Registration duties

Only a fixed fee of EUR 75 is due upon incorporation of a Luxembourg company, upon amendment of its by-laws and upon transfer of its statutory seat.

Transfer duties

On the transfer of shares

0 percent (provided the company is not a Luxembourg real estate property holding company).

On the transfer of land and buildings

The transfer of Luxembourg immovable property is subject to registration duty of 6 percent of the value of the real estate, plus an additional transfer duty of 1 percent.

For certain real estate in Luxembourg City, there is a supplementary municipal duty of 3 percent.

Stamp duties

On any deed that is registered, depending on the size of the document (mainly notarial deeds).

Exit taxation

With effect from January 1, 2020, exit tax rules provide for the taxation of the difference between the fair market value of the assets at the time of transfer less their value for tax purposes in the following cases:

- Asset transfer from a Luxembourg head office to a foreign PE,
- Asset transfer from a Luxembourg PE to a foreign PE or its head office,
- Luxembourg taxpayer transferring its tax residency to another state, or
- Luxembourg taxpayer transferring its business to another state.

This exit taxation occurs insofar as Luxembourg loses its taxation right.

The exit tax is not applicable in certain cases (e.g. assets pledged as collateral) of short-term transfers (i.e. when the assets are transferred back to Luxembourg within 12 months).

The Luxembourg taxpayer should be subject to immediate payment of the exit tax, but with a possible payment in linear installments over five years. However, this is only possible for transfers to another EU country or to an EEA country with which Luxembourg has concluded a mutual assistance agreement for the recovery of tax debts (i.e. Norway, Iceland and Liechtenstein). This deferral is not subject to a guarantee having to be provided or the payment of late interest.

It should be noted that tax deferrals granted before 2020 (with no time limit based on the current rules) will continue to apply and will not be impacted by the new rules.

Controlled Foreign Company rules

With effect from January 1, 2019, controlled foreign company (CFC) rules aim to attribute and tax undistributed profits from a low-taxed foreign subsidiary or PE (i.e., the CFC) at the level of its Luxembourg parent entity/head office. The CFC income will be subject to corporate income tax in Luxembourg (i.e. 18 percent in 2018), but not to municipal business tax.

The rule targets EU and non-EU CFCs if there is a 'direct or indirect' participation of more than 50 percent in voting rights, capital or profit entitlement and if the actual corporate tax due by the CFC is less than 50 percent of the corporate income tax that would be due in Luxembourg (i.e. in reference to the 18 percent corporate income tax rate).

The CFC income is income from non-genuine arrangements that have been put in place for the essential purpose of obtaining a tax advantage. The amount of CFC income to be reintegrated in the taxable basis of the Luxembourg taxpayer should respect the arm's length principle and should be limited to amounts generated through assets and risks linked to significant people functions carried out by the Luxembourg controlling company.

The following CFCs should be considered as out of scope of the rules:

- An entity or permanent establishment with accounting profits of no more than EUR 750,000 and non-trading income of no more than EUR 75,000.
- An entity or permanent establishment of which the accounting profits amount to no more than 10 percent of its operating costs for the relevant tax period.

Transfer pricing rules

General transfer pricing rules

The Luxembourg income tax law makes explicit reference to the arm's length conditions agreed between independent businesses as a standard for evaluating the conditions agreed between related parties. This standard is applied for both resident and non-resident parties and allows for upward or downward adjustments of profits for transfer pricing purposes. According to a circular for intra-group financing companies (issued December 27, 2016), a transfer pricing study should - based on a comparability analysis - identify the functions performed, the assets used and the risks related to the intra-group financing activity. The study should then determine whether the Luxembourg financing company has the financial capacity to manage the risks should they eventuate. The equity at risk should be appropriately remunerated and may be used to finance the company's loan portfolio or other assets. The return on equity at risk should, in principle, be subject to direct taxation in Luxembourg.

In general, particular attention is given to transfer pricing documentation.

Documentation requirement

Yes.

Thin capitalization rules

N/A

General Anti-Avoidance rules (GAAR)

With effect from January 1, 2019 Luxembourg amended its General Anti Abuse Rule (GAAR) according to the Anti-Tax Avoidance Directive (ATAD) 1.

The GAAR targets all non-genuine transactions (not put in place for valid commercial reasons that reflect economic reality) performed in a domestic or a cross-border situation.

It applies to transactions, which having been put in place for the main purpose or one of the main purposes of obtaining a tax advantage, which violates the object or purpose of the applicable tax law and are not genuine having regard to all relevant facts and circumstances.

Transactions considered as abusive will be ignored by the Luxembourg tax authorities, and taxes will be computed based on the ‘genuine route’ with regard to all relevant facts and circumstances.

Luxembourg tax authorities will first have to prove that the constituting elements of an abuse are identified. It would then be up to the Luxembourg taxpayer to provide sufficient valid commercial reasons that justify the transaction.

Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions/Anti-Hybrid rules

Yes, with effect from January 1, 2016, an anti-hybrid rule and a general anti-abuse rule have been included in the domestic participation exemption regime for profit distributions derived from participations falling within the scope of the EU Parent-Subsidiary Directive.

With effect from January 1, 2019 anti-hybrid rules relating to cross-border hybrid mismatches involving hybrid entities, hybrid instruments and structured arrangements within the EU (but not with third countries) have been included.

The rule provides that, when a structure includes a hybrid mismatch with a double deduction, the deduction shall only be recognized in the EU Member State where the payment has its source.

When a structure includes a hybrid mismatch with deduction without a corresponding inclusion of the payment, the EU Member State of residence of the payer shall deny the deduction of such payment.

This provision will be replaced by the broader anti-hybrid rules of ATAD 2 from 2020.

Advance Ruling system

Yes

IP / R&D incentives	The IP regime granting an 80 percent exemption on royalties and capital gains with regard to certain intellectual properties was repealed as of July 1, 2016 (with grandfathering rules until June 30, 2021). The new IP tax regime was implemented in March 2018 and follows the OECD nexus approach. It took effect as of January 1, 2018 and provides for an 80 percent tax exemption on net income derived from eligible patents and copyrighted software. Qualifying IP assets are also exempt from net wealth tax.
Other incentives	Investment tax credits - Incentives for new industrial activities - Venture capital investment certificates - SICAR - Securitization regime – Investment funds
VAT	The standard VAT rate is 17 percent, the intermediate rate is 14 percent, the reduced rate is 8 percent and the super-reduced rate is 3 percent.
Other relevant points of attention	On February 14, 2019 the Luxembourg Parliament passed the law on the ratification of the Multilateral Instrument (MLI) into Luxembourg domestic tax law. Luxembourg mainly implements the minimum standard provisions that were agreed as part of the BEPS initiative, i.e., the minimum standard for the prevention of treaty abuse (BEPS report on Action 6) and the minimum standard on more effective dispute resolution mechanisms (BEPS report on Action 14). It will apply to covered tax agreements concluded by Luxembourg as from January 1, 2020 at the earliest.

Source: Luxembourg tax law and local tax administration guidelines, updated 2019.

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