

## Administrative Tribunal:

## Judgment on Luxembourg Domestic Permanent Establishment

On 17 September 2025, the Luxembourg Administrative Tribunal (*Tribunal Administratif*, 17 septembre 2025, n°47603) (the “Administrative Tribunal” or the “Tribunal”) had to rule on whether a domestic permanent establishment (« PE ») existed, based on the facts and circumstances of the case.

## Summary of the case

In April 2018, the Luxembourg tax authorities issued a lump-sum assessment (*taxation d’office*) under §217 of the General Tax Law (*Abgabenordnung*, “AO”) against a law firm constituted under the legal form of a partnership (*société en commandite simple*, “SCS”) after the SCS had failed to file its tax return for the fiscal year (“FY”) 2015 in due course. In July 2018, the SCS filed an administrative claim seeking the annulment of the assessment, arguing that the taxable basis determined by the tax office was substantially different from reality. This claim was left unanswered by the Director of the Luxembourg tax authorities (*Administration des contributions directes*, “ACD”).

In parallel, between 2018 and 2021, the main shareholder of the SCS – a UK-incorporated entity (the “UK entity” or the “claimant”) – filed Luxembourg tax returns for the FYs 2015 to 2019. For Luxembourg tax purposes, the UK entity was treated as a collective entity comparable to a Luxembourg corporate taxpayer under the legal form comparison method (*Rechtstypenvergleich*). In April 2020 and May 2021, the tax office in charge issued the corresponding tax assessments, which were subsequently challenged by the claimant through several administrative claims.

The dispute primarily concerned the classification of the claimant’s income in Luxembourg (i.e. commercial income under Article 14 of the Luxembourg income tax law (“LITL”) vs. liberal profession income under Article 91 LITL) and, more fundamentally, the existence of a Luxembourg PE. The Luxembourg tax authorities took the view that the UK entity carried out professional activities in Luxembourg through a domestic PE, from which it managed its client base and generated Luxembourg-sourced business profits. On this basis, the authorities considered that the company was subject to corporate income tax (“CIT”) and municipal business tax (“MBT”) on the profits attributable to that PE.

In support of this position, the tax office relied on several factual elements, including:

- the claimant’s declared Luxembourg-sourced income,
- the existence of a Luxembourg address from which the activities were conducted,
- the role of its representative in Luxembourg in managing clients, and
- the claimant’s significant participation in the SCS through which the professional activities were performed.

Accordingly, the tax office reached the conclusion that the claimant was not merely a passive holder of the participation, but actually engaged in substantive professional activities in Luxembourg.

On the other hand, the UK entity argued that the declaration of domestic income in its tax returns should not be interpreted as an admission that it had a PE in Luxembourg. To the contrary, it explained that, due to the absence of a specific box in the tax return form,



it reported the income generated by the (transparent) SCS for the FYs 2015-2019 under the line relating to net income from the exercise of an independent professional activity in Luxembourg. This was also clarified in an annex to the tax return where the UK entity indicated that its profits derived from its participation in a Luxembourg transparent entity, which itself generated exclusively professional income. The claimant also argued that its organizational structure pursued legitimate commercial objectives – including international client development and partner liability protection – rather than tax avoidance.

In addition, the claimant maintained that both the UK entity and the SCS carried out purely civil/liberal professional activities and therefore should not be subject to MBT (the CIT charge, however, was not disputed between the parties). More specifically, the claimant contended that it did not have its own operational presence, staff or decision-making in Luxembourg and that the activities of the SCS could not be attributed to it. It further asserted that its income should be characterized as income from a liberal profession rather than commercial income.

In March 2022, the Director of the ACD issued a joint decision rejecting the administrative claims, thus confirming the tax office’s position. Dissatisfied with that outcome, the claimant subsequently brought an appeal before the Administrative Tribunal.

## Judgment of the Administrative Tribunal

In this case at hand, the main issue disputed by the parties was whether the Director of the ACD was correct in determining that the claimant had a PE in Luxembourg and that its income should be treated as commercial profits under Article 14 LITL and subject to MBT for the FYs 2015-2019.

## Existence of a domestic PE and MBT liability for FYs 2015-2019

The Tribunal began by looking at §2 of the MBT law (*Gewerbesteuerengesetz*, “GewStG”), which governs MBT. This provision sets out two criteria for tax liability:

- the activity must generate commercial profits under Article 14 LITL, and
- it must be carried out through a PE in Luxembourg.

For companies with share capital (corporations) however, §2 No. 2 GewStG overrides the first criterion, meaning that all activities, even non-commercial by nature, are treated as commercial solely by virtue of the company’s legal form.

The Tribunal emphasized that this rule applies equally to domestic and foreign companies with share capital, consistent with decades of German and Luxembourgish case law. It ensures that resident and non-resident companies are treated the same, and that

MBT captures all indigenous activity without regard to the company’s place of residence. In the case at stake, the parties were aligned on the fact that the claimant was a UK entity qualifying as a capital company based on Articles 159 and 160 LITL. The judges then examined whether the claimant had a PE in Luxembourg. The Tribunal observed that the claimant reported profits derived from the SCS that generated professional income. This income was not earned directly by the claimant itself, so the mere declaration should not be sufficient to prove the existence of a PE.

Allegations that the UK entity’s representative handled clients from Luxembourg were unsubstantiated. Evidence showed that he had been resident in Monaco since 2012, and no evidence was presented that he carried out any business on behalf of the claimant from Luxembourg.

The Tribunal further observed that the claimant disputed the allegation that it lacked professional premises and held that the tax authorities’ mere assertions in this regard, unsupported by objective evidence, were insufficient to demonstrate that the claimant carried on activities in Luxembourg in a manner satisfying the requirements of § 16 StAnpG to recognize a PE. The Tribunal therefore rejected the tax authorities’ position that a PE existed in Luxembourg and held that the claimant could not be subject to MBT.

Under Articles 160(1) and 156 of the Luxembourg income tax law (“LITL”), non-resident entities should only be taxed on domestic-sourced commercial income derived through a Luxembourg PE. In the absence of such a PE, the claimant could not be regarded as earning taxable commercial profits in Luxembourg.

## Characterization of the income as commercial income

Having denied the existence of a PE, the Tribunal turned to the nature of the income. The UK entity argued that the income derived from a liberal profession, not from commercial activity, and therefore should not be subject to Luxembourg MBT. On the other hand, based on Articles 160 and 156 LITL, the tax authorities were of the view that if the presence of a domestic PE were established, the income of the UK entity derived from the activities “exercised in Luxembourg” should be treated as commercial profit, regardless of the taxpayer’s characterization of its activities as civil/liberal profession income.

In that matter, Article 160 LITL<sup>1)</sup> indeed provides that “entities of a collective nature referred to in Article 159 that have neither their registered office nor their central administration in the territory of the Grand Duchy are subject to corporate income tax on their domestic-source income within the meaning of Article 156” while Article 156 LITL<sup>2)</sup> clarifies that the following “are considered domestic-source income of non-resident taxpayers:

1. commercial profits within the meaning of Articles 14 and 15:

(a) where such profits are realized directly or indirectly through a permanent establishment or a permanent representative in the Grand Duchy [...].”

However, having already excluded the existence of a PE, the Tribunal ruled that the claimant did not generate commercial profits subject to Luxembourg domestic taxation, thereby invalidating the tax authorities’ position.

Further to the above and for the sake of completeness, the judgment also clarified that the claimant’s positions regarding the potential applicability of a tax credit based on Article 152bis LITL and a net wealth tax reduction based on §8 of the net wealth tax law (*Vermögensteuergesetz*) should no longer be considered.

## Key takeaways

This decision is notable as it deals with the characterization of a domestic PE in Luxembourg, rather than the more commonly challenged scenario of foreign PEs<sup>3)</sup>. We are indeed used to seeing PE cases lost by taxpayers before the Administrative Tribunal due to the absence of sufficient evidence of the existence of foreign PEs. In this case, the Tribunal emphasized that the factual assessment remains the same: a PE exists only if there is clear evidence of a fixed place of business through which the company operates commercially in Luxembourg. Mere declarations of local income or the presence of a representative are not sufficient.

This is significant: first, because non-resident taxpayers may lack familiarity with Luxembourg’s specific tax compliance requirements (as illustrated in this case), and second, because representatives may be present for legitimate commercial reasons, not to create a PE. Had the Tribunal accepted such assumptions, it could have resulted in significant adverse tax consequences for the non-resident taxpayer. This decision reinforces the principle that domestic PEs, like foreign ones, require concrete operational presence; administrative filings or indirect involvement alone do not trigger PE status. Indeed, the burden of proof regarding PEs can be demanding and burdensome, whether for taxpayers or, in this case, the tax authorities.

On a side note, the Tribunal also considered a potential abuse of law under §6 of the tax adaptation law (*Steueranpassungsgesetz*, “StAnpG”) and reaffirmed in that regard that abuse cannot be inferred from unusual legal structures alone. To prove abuse, the tax authorities are legally required to demonstrate:

- the use of private law forms and institutions,
- a reduction of the tax burden,
- the use of an inappropriate path, and
- the absence of valid commercial (i.e., non-tax) reasons.

In the situation under review, the claimant provided a credible business rationale, including international client outreach and protection of partners’ liability, while the State offered only general, unsupported assertions. Consequently, the Tribunal found that the abuse allegation was unsubstantiated.

Finally, an appeal has been lodged against this judgment before the Administrative Court of Appeal. We stand ready, upon the release of this decision, to determine if the Court aligns its reasoning with that of the Administrative Tribunal.

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1) Unofficial English translation by the authors. Article 160 LITL : « Sont passibles de l’impôt sur le revenu des collectivités pour leur revenu indigène au sens de l’article 156, les organismes à caractère collectif de l’article 159 qui n’ont ni leur siège statutaire, ni leur administration centrale sur le territoire du Grand-Duché ».

2) Unofficial English translation by the authors. Article 156 LITL : « Sont considérés comme revenus indigènes des contribuables non-résidents :

1. le bénéfice commercial au sens des articles 14 et 15 :

a) lorsqu’il est réalisé directement ou indirectement par un établissement stable ou un représentant permanent au Grand-Duché [...] ».

3) On that topic, please refer to our other articles:

- E. Lebas and V. Plateau, “Administrative court judgement on tax ruling and permanent establishment”, AGEFI Luxembourg, October 2023, Page 8.  
- E. Lebas and V. Plateau, “Administrative Court – Judgement on re-qualification of interest-free loan as hidden capital contributions”, May 2025, Page 38.