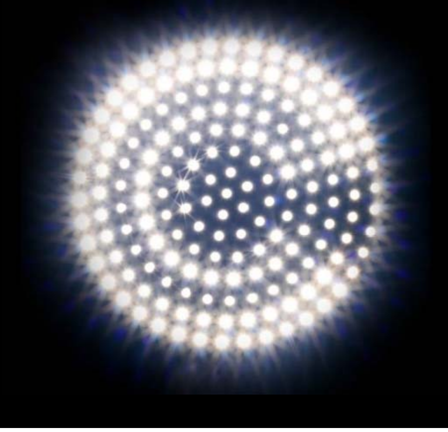
International Tax
Luxembourg Highlights 2018



Investment basics:

Currency – Euro (EUR)

Foreign exchange control – No

Accounting principles/financial statements – Luxembourg GAAP/IFRS. Financial statements must be prepared annually.

Principal business entities – Public company (*société anonyme* or SA), private limited company (*société à responsabilité limitee* or Sàrl), *Société par actions simplifiées* (SAS), partnership and branch of a foreign corporation.

Corporate taxation:

Residence – A company is resident in Luxembourg if its legal seat or central administration is in Luxembourg.

Basis – Residents are taxed on worldwide income; non-residents are taxed only on Luxembourg-source income. Foreign-source income derived by residents generally is subject to corporation tax in the same way as Luxembourg-source income. Branches are taxed in the same way as subsidiaries.

Taxable income – Taxable income is calculated based on the profit as stated in the commercial balance sheet, plus certain adjustments provided for under the tax law.

Taxation of dividends – Dividends received by a resident company are included in taxable income, unless the participation exemption regime applies.

Capital gains – Capital gains generally are included in taxable income and taxed at the standard corporate tax rate. However, capital gains derived from the sale of shares may be exempt from corporate income tax in certain cases.

Losses – Losses incurred up to the fiscal year that ended on 31 December 2016 may be carried forward indefinitely. Losses incurred as from 2017 are restricted to a period of 17 years. The carryback of losses is not permitted.

Rate – A corporate income tax rate of 18% applies to a company whose taxable income exceeds EUR 30,000. The rate is 15% if annual taxable income does not exceed EUR 25,000. A municipal business tax also may be levied (see “Other,” below).

Surtax – Corporate income tax is increased by a contribution of 7% to the unemployment fund.

Alternative minimum tax – No

Foreign tax credit – Foreign tax paid may be credited against Luxembourg tax if the foreign tax is comparable to Luxembourg corporate income tax. The credit is limited to the amount of Luxembourg income tax payable on the foreign income.

Participation exemption – Dividends and capital gains derived by a qualifying entity from a qualifying shareholding may be exempt from Luxembourg corporate income tax and municipal business tax if the entity deriving the income holds or commits to hold the participation, directly or indirectly, for an uninterrupted period of at least 12 months and the participation does not fall below 10% or below an acquisition price of EUR 1.2 million (EUR 6 million for capital gains) throughout that period.

Dividends received by an eligible Luxembourg parent entity from an eligible subsidiary located in another EU member state are not exempt under the participation exemption regime if the payments are deductible in the other member state. The benefits of the participation exemption regime also will not apply where the transaction qualifies as an abuse of law under the general anti-abuse rule.

Holding company regime – See “Participation exemption,” above.

Incentives – A global investment tax credit is available for 8% of the acquisition value of the first EUR 150,000 of investments made during the year, and 2% of the excess over EUR 150,000. A supplementary investment tax credit of 13% of the acquisition value of qualifying investments made during the tax year also is available.

Luxembourg’s intellectual property (IP) box regime was abolished in 2016. A new IP regime, which is expected to be voted on in 2018, likely would apply as from fiscal year 2018. Based on the draft law, the new regime would provide for an 80% exemption on income derived from the commercialization of certain IP rights, as well as a 100% exemption from net worth tax. However, under grandfathering rules, IP rights introduced before 1 July 2016 still could benefit, through 30 June 2021, from the old regime (under which 80% of income resulting from the exploitation of the rights and 80% of the capital gains arising from disposal of the rights are exempt from tax. Qualifying rights also would be exempt from net worth tax).

Qualifying investment fund vehicles are not subject to corporate income tax and municipal business tax.

Withholding tax:

Dividends – Dividends paid to a nonresident company generally are subject to a 15% withholding tax, unless the rate is reduced under a tax treaty. No tax is withheld on dividends paid to a qualifying company under the EU parent-subsidiary directive, unless the transaction qualifies as an abuse of law under the general anti-abuse rule. Luxembourg has extended the benefits of the directive to parent companies resident in non-EU tax treaty countries, provided conditions similar to those under the Luxembourg participation exemption are satisfied and the parent company is subject to a tax similar to Luxembourg corporate income tax.

Interest – Luxembourg does not levy withholding tax on interest. However, profit-sharing bonds and debt instruments with remuneration linked to the issuer’s profits are taxed as dividends at a 15% rate.

Royalties – Luxembourg does not levy withholding tax on royalties.

Technical service fees – Luxembourg does not levy withholding tax on technical service fees.

Branch remittance tax – No

Other taxes on corporations:

Capital duty – No. A registration fee of EUR 75 is imposed on incorporation or amendments to bylaws.

Payroll tax – No

Real property tax – Municipalities in Luxembourg impose a land tax of 0.7% to 1% on the unitary value of real property, including industrial plants. This is multiplied by coefficients fixed by each municipality and varies according to the type of real property.

Social security – Employers must make social security contributions (including for pension, illness and accident insurance) on behalf of their employees at a total rate of 12.45% to 15.20%, depending on various factors.

Stamp duty – Stamp duty is levied at various rates on the registration of notary deeds, bailiff deeds and certain action by a court.

Transfer tax – Transfer tax is applicable mainly to the transfer of immovable property. The basic rate is 6%, plus a 1% transcription tax. For real estate located in the municipality of Luxembourg, an additional charge amounting to 50% of the transfer tax is imposed. Exemptions are available.

Other – Municipal business tax may be imposed at rates ranging from 6% to 12%, depending on where the undertaking is located.

A net worth tax of 0.5% on total net assets up to EUR 500 million and 0.05% on total net assets of EUR 500 million or more (subject to the minimum net worth tax requirements described below) is imposed on taxpayers subject to corporate income tax, but an exemption from, or a reduction in, the tax may be available.

Luxembourg collective entities that own qualifying holding and financing assets exceeding both 90% of their total balance sheet and the amount of EUR 350,000 are subject to a minimum net worth tax of EUR 4,815; where the total balance sheet does not exceed EUR 350,000, the minimum net worth tax is EUR 535.

Other Luxembourg companies are subject to a progressive minimum net worth tax, depending on the total balance sheet asset value. The tax ranges from EUR 535 (for a total balance sheet up to EUR 350,000) to EUR 32,100 (for a total balance sheet exceeding EUR 20 million).

For tax-consolidated Luxembourg collective entities, all entities in the group are subject to the minimum net worth tax (payable by the parent entity). However, the aggregate amount due by a tax consolidated group is limited to EUR 32,100.

The minimum net worth tax is reduced by the corporate income tax due the previous year.

Other taxes include gift tax, customs duty, subscription tax and registration taxes (e.g. lease contracts and loan agreements).

Anti-avoidance rules:

Transfer pricing –Transactions between related parties are required to be conducted on arm's length terms. The tax authorities can request documents to examine transactions with related parties. Taxpayers should be able to justify their transactions and provide a valid business rationale, through transfer pricing documentation based on a functional and risk analysis. Reporting requirements apply (see "Disclosure requirements," below).

New tax measures have been introduced to support Luxembourg as a prime financial center, including new guidance and clarification on the transfer pricing rules for Luxembourg entities engaged in intragroup financing activities.

A company may request an advance pricing agreement from the Luxembourg tax authorities.

Thin capitalization – There is no specific legislation but, in practice, the tax administration uses a debt-to-equity ratio of 85:15 for the financing of participations.

Controlled foreign companies – No

Disclosure requirements – Country-by-country reporting, in line with the OECD's BEPS action 13, is required for fiscal years commencing as from 1 January 2016.

Compliance for corporations:

Tax year – The tax year for a company is either the calendar year or the company's accounting year ending in a particular calendar year.

Consolidated returns – Fiscal consolidation is allowed for corporate and municipal business tax purposes, but not for net worth tax purposes, except for the minimum net worth tax (see "Other taxes on corporations," above). A fiscal unity may be formed vertically by a Luxembourg company, or a Luxembourg permanent establishment (PE) of a foreign company that is subject to a tax equivalent to Luxembourg corporate income tax, and its wholly owned (at least 95%) Luxembourg subsidiaries/Luxembourg PEs of a foreign company that are subject to a tax equivalent to Luxembourg corporate income tax.

In certain cases, a horizontal fiscal unity may be formed between companies with the same direct or indirect parent company (without the parent company being part of the consolidation).

Filing requirements – Corporate income tax, net worth tax and municipal business tax returns must be submitted before 31 May of the following tax year. This date may be extended upon request. Tax returns must be stated in euros, although, in certain circumstances, a company may determine its taxable income in a currency other than the euro.

Capital companies (i.e. the SAS, Sàrl and partnership limited by shares) may be entitled to self-assessment.

As from fiscal year 2018, Luxembourg companies must file their corporate income tax, net worth tax and business tax returns via an electronic filing tool.

Penalties – A 0.6% monthly interest charge applies for failure to pay or for late payment of tax. Failure to submit the tax return, or late submission, results in a penalty of 10% of the tax due and a fine up to EUR 25,000. In the case of a late payment authorized by the tax authorities, the rate ranges from 0% to 0.2% per month, depending on the period of time.

Rulings – A corporate taxpayer may request an advance tax decision from the Luxembourg tax authorities.

Personal taxation:

Basis – Resident individuals are taxed on their worldwide income. Nonresidents are taxed only on Luxembourg-source income.

Residence – An individual is considered a resident of Luxembourg if he/she is domiciled in Luxembourg or his/her customary place of abode is in Luxembourg.

Filing status – Married individuals are subject to joint taxation. Individuals linked by a legal partnership also can opt for joint taxation provided certain conditions are fulfilled. As from 2018 (tax return filed in 2019) married taxpayers can elect to be taxed separately (strict deadlines apply).

Nonresident taxpayers can request to be assimilated to resident taxpayers under certain conditions. New rules concerning nonresident married taxpayers (in particular, the election of tax class and disclosure of foreign income) are applicable as from 2018 (tax return filed in 2019).

Taxable income – Luxembourg law distinguishes several categories of income, including income from employment, self-employment, business and agriculture. Losses from one category of income generally may be set off against income from another category in the same year. Investment income in the form of dividends is subject to withholding tax.

Capital gains – Short-term capital gains are taxed as current income (at progressive rates up to 42%); long-term gains receive more favorable treatment, including an exemption of EUR 50,000 for gains realized in a 10-year period and taxation of the remaining long-term gains at 50% of the taxpayer's global rate. Gains derived by an individual from real estate are considered long-term if the property was held for more than two years. A temporary regime is applicable until 31 December 2018 under which long-term gains for real estate are taxed at 25% of the taxpayer's global tax rate. Gains on an individual's private residence normally are exempt.

Gains derived by an individual on shares are long-term if the shares were held for more than six months, and are taxable only if the shareholding exceeds 10%. Gains on movable assets are exempt if the assets were held for more than six months.

Deductions and allowances – Subject to certain restrictions, deductions are permitted for the following: insurance premiums for life, accident and sickness policies; individual pension schemes; alimony and annuities; childcare and housekeeping costs; charitable contributions; interest on personal and mortgage loans; and home saving and loan schemes. Allowances are granted for employment income, dividend and interest income and pension income. Single parents may benefit from an additional abatement.

Rates – Progressive rates up to 42% apply. Income tax due is increased by: (1) a contribution of 7% to the employment fund (9% for income exceeding EUR 150,000); and (2) a 1.4% dependency contribution.

Investment income in the form of dividends is subject to a 15% withholding tax. See also "Capital gains," above.

Other taxes on individuals:

Capital duty – No

Stamp duty – Stamp duty usually is levied on the registration of notary deeds, bailiff deeds and certain actions by a court.

Capital acquisitions tax – Certain gifts and donations must be registered (notably, those involving immovable property). The rates range from 1.8% to 14.4%, depending on the relationship between the donor and donee.

Real property tax – Municipalities in Luxembourg impose a land tax of 0.7% to 1% on the unitary value of real property, including industrial plants. This is multiplied by coefficients fixed by each municipality, and varies according to the type of real estate.

Inheritance / estate tax – Inheritance tax is levied in Luxembourg if the deceased was resident in Luxembourg at the time of his/her death. The tax base is the market value of the entire net estate inheritance at the time of death. Rates range from 0% to 48%, depending on the proximity of the relationship and the amount of the assets bequeathed to each beneficiary. Exemptions are applicable in certain cases.

Net wealth / net worth tax – No

Social security – Social security contributions apply to wages and salaries and are due from both the employer (at rates of approximately 12% to 15%) and the employee (at 12.20 to 12.45%). Contributions for both employers and employees are computed on a capped basis (approximately EUR 119,915.16 for 2018), and must be withheld by the employer. Self-employed individuals must register for social security purposes and pay approximately the same rates as the combined rates for an employer and an employee.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – Tax returns are due by 31 March of the year following the tax year. The filing deadline may be extended at the taxpayer's request. Self-employed individuals must make quarterly prepayments of tax, in amounts that are fixed by the tax authorities based on the most recent final assessment.

A taxpayer may request an advance tax decision from the Luxembourg tax authorities. An administrative fee will apply if the request is in connection with individual business matters.

Penalties – Late payment of tax triggers automatic default interest of 0.6% per month. Failure to submit a tax return, or late submission, is subject to a penalty of 10% of tax due and a fine up to EUR 25,000. If late payment is authorized by the tax authorities, the rate ranges from 0% to 0.2% per month.

Value added tax:

Taxable transactions – VAT is levied on the supply of goods and services.

Rates – The standard rate is 17%. An intermediate rate of 14% applies, e.g. to the management and safekeeping of securities, the sale of wine and printed advertising materials. A reduced rate of 8% applies, e.g. to the supply of gas and electricity; and a super reduced rate of 3% applies, e.g. to the sale of books, the supply of water, pharmaceuticals, most food products and radio and television broadcasting services. Certain services are exempt, e.g. financial, health and medical services and the leasing of immovable property.

Registration – In principle, taxpayers must be VAT registered (a derogation may apply under certain conditions).

Filing and payment – A taxpayer must file at least an annual VAT return. Depending on annual turnover, a taxpayer may be requested to file monthly or quarterly VAT returns, in addition to the annual return. Monthly and quarterly VAT returns must be filed within 15 days of the end of the period and the annual VAT return, depending on the taxpayer's situation, must be filed before 1 March or 1 May of the following year.

Other – Taxpayers with an annual turnover of less than EUR 30,000 benefit from a VAT franchise regime, but they still must register for VAT and file an annual VAT return.

The tax authorities can impose a fine ranging from EUR 250 to EUR 10,000 in cases where returns are not filed or are filed late, and a penalty of up to 10% per year in cases of the late payment of VAT. Additionally, a fine up to of EUR 25,000 per day can be imposed for failure to provide information or documents when requested.

Source of tax law: Law of 4 December 1967, as amended, on Income Tax; Law of 12 February 1979, as amended, on Value Added Tax, Law of 16 October 1934, as amended, on Net worth tax, Law of 1 December 1936, as amended, on Municipal Business Tax, *Abgabenordung* dated 22 May 1931 and *Steueranpassungsgesetz* dated 16 October 1934

Tax treaties: Luxembourg has 80 effective tax treaties. Luxembourg signed the OECD MLI on 7 June 2017.

Tax authorities: Administration of Direct Contributions, the *Administration de l'Enregistrement et des Domaines* (VAT and other indirect taxes) and the Administration of Customs & Excise

Contact:

Raymond Krawczykowski
(rkrawczykowski@deloitte.lu)