

The Luxembourg
shipping business
Closely connected
to the sea, whatever
the distance



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Preface



The United Nation Convention on the Law of the Sea (UNCLOS) of 1982, in its article 90 on the right of navigation, stipulates that: "Every state, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas..." Acknowledging these rights and responsibilities to the use of the world's oceans, Luxembourg has developed an attractive and reliable jurisdiction for shipping since the signing of the Maritime Act in 1990, when ships flying the 'Red Lion'(*) have started navigating the seven seas.

It is the role of the Luxembourg maritime administration (*Commissariat aux affaires maritimes*), to support the maritime sector in a spirit of service while respecting national, European and international regulations. The administration offers a quality service which, since 2000, has led to ISO 9001 certification. It was the first such certification for a governmental agency in Luxembourg. Indeed, Luxembourg being a landlocked country, quality has always been a prime priority for its maritime register. This has led to the country being listed on the sector's relevant 'white lists' (i.e. on Port State Control or STCW).

Luxembourg legislation has constantly evolved in order to encourage the development of various activities around maritime affairs. This movement took yet another dimension in 2004, when the administration was placed under the authority of the Ministry of Economy and Foreign Trade. Numerous synergies involving the financial, insurance and logistics sectors have since then emerged. These have led to the creation of the Luxembourg Maritime Cluster, and today a developing maritime sector fits in with the Luxembourg government's economic development policy.

On 19 September 2011, Luxembourg became the 5th country of the European Union to ratify the International Labour Organization's Maritime Labour Convention, the 4th pillar of international maritime law.

In recent years, the number of ships registered in the Luxembourg maritime register has constantly increased and today, more than 240 vessels approaching a gross tonnage of 2 million tons are registered in the Grand-Duchy. Over the last 20 years, the Luxembourg maritime legislation has certainly proven its effectiveness and I am convinced that the Luxembourg shipping sector will continue to grow even in an environment of a continuously changing global economy.

Robert Biver

Commissaire du Gouvernement aux affaires maritimes

Commissariat aux Affaires Maritimes

Grand-Duchy of Luxembourg

(*) The Luxembourg maritime flag shows a red lion on a blue and white striped background.



The Grand Duchy of Luxembourg, a niche maritime player.

In the early 1990s, Luxembourg took the first steps towards what today is recognised worldwide as a successful maritime regime. After ratifying the majority of conventions governing safety, working conditions and environmental protection, Luxembourg rose to the ranks of European nations possessing a serious and attractive maritime flag.

Over the years, more and more groups operating in the maritime business have discovered the unique balance that the Luxembourg maritime regime strikes between regulation and flexibility.

As pointed out by the European Commission in its Green Book on a new maritime policy for the Union, even if most maritime activities are concentrated around coastal areas, the impacts of the maritime economy reach far beyond the coastal regions. A well-established connection with maritime actors in landlocked regions is therefore of great importance.

The Luxembourg maritime regime is the perfect example of a maritime business operating away from the coastal area, bringing the maritime economy inland, yet still keeping close contact with the coastline as the Grand Duchy has major European ports within a reach of less than 300 kilometres. Moreover, the Luxembourg's maritime industry benefits from a number of other critical resources, including one of the largest financial sectors in Europe enabling it to offer high quality and customised financing solutions to meet maritime needs.

The shipping business should be considered in the perspective of the development of the logistics sector, i.e. to enhance and foster Luxembourg as a major intercontinental logistics hub in Europe for high added-value services.

In this fourth edition of our brochure on the Luxembourg maritime regime, the intention is, rather than offering an exhaustive review of Luxembourg's maritime regulatory and legislative regime, to provide a useful guide to the numerous legal and tax advantages offered to maritime companies operating under the Luxembourg ensign.

Henri Prijot

Partner

International Tax Service Line

Deloitte Luxembourg

Administrative environment and key players

The *Commissariat aux affaires maritimes* is in charge of the guidance, with respect to the Maritime Act of 1990, as amended in 1994, to all key players of the Luxembourg maritime industry as well as the organisation and the structuring of the public maritime register itself.

Commissariat aux affaires maritimes

The *Commissariat aux affaires maritimes* reports to the Minister of Economy and Foreign Trade and is responsible for:

- Guiding applicants through the process of successfully requesting and receiving permission to register their vessel and fly the Luxembourg flag
- Overseeing maritime companies and marine managers, issuing required documentation and certificates as well as invoicing maritime companies regarding fees and duties for registration
- The correct application of managing the Maritime Act of 1990, as amended in 1994
- Ensuring Luxembourg maritime laws and regulations are in compliance with changes in international regulatory and legal regimes as well as attending meetings and taking action regarding IMO, ILO, PSC and the EU
- Presiding over the appeals against disciplinary actions taken by ships' captains

The Public Maritime Registry

The Public Maritime Registry is responsible for maintaining the Public Maritime Register, including the listing of all vessels as directed by the *Commissariat aux affaires maritimes*. The register is also responsible for registering merchant vessel underwritings. Since the registry is public, the register furnishes copies or extracts of all vessel registration documentation upon request. The register also processes the payment of duties and fees for new registrations and extensions.

Accreditation of maritime companies and marine managers

Maritime companies are defined as those commercial ventures involved in the purchase, sale, chartering and management of seagoing vessels, including related commercial and financial operations.

The law provides for the activities of maritime companies to be performed by either individuals or corporations. Before commencing its activities, the maritime company must be accredited by the Minister of Economy and Foreign Trade.

The two most widespread legal forms of incorporation as defined by Luxembourg law in the maritime industry are as a Société Anonyme (public limited company) and a Société à Responsabilité Limitée (private limited company). A schedule summarising the main characteristics of the Société Anonyme (S.A.) and the Société à Responsabilité Limitée (S.à R.L.) can be found on page 7.

The *Commissariat aux affaires maritimes* is responsible for overseeing maritime companies and must be kept informed of important events including the publication of annual financial statements, changes in external auditors, extensions or modifications to commercial activities, as well as changes in legal status.

To ensure this conformity with the requirements, an accredited marine manager (*dirigeant maritime*) must be appointed. Marine managers are licensed to engage in a wide range of maritime company supervisory activities including management, representation, and domiciliation. The position of marine manager may be held by either individuals or corporations, but will generally be held by 'management companies'.

The accredited marine manager must reside in Luxembourg and be licensed. Applicants must provide evidence of their personal probity and professional experience, showing an unblemished reputation and past performance of comparable duties, as well as a high level of responsibility and managerial autonomy.

Growth in the Luxembourg shipping industry has been matched by increases in the number of licensed maritime management companies.

The Luxembourg Maritime Cluster

Luxembourg and its main economic players have gathered to create the Luxembourg Maritime Cluster in order to contribute to the development of the maritime sector and its related services in Luxembourg, and implement promotion and communication strategies in Luxembourg and abroad.



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Main characteristics of the S.A. and the S.à r.L.:

Shipping companies		
	Public limited companies (<i>Société Anonyme</i>)	Private limited company (<i>Sociétés à Responsabilité Limitée</i>)
Incorporation	Notarised Articles of Association/Bylaws	Notarised Articles of Association/Bylaws
Notary fees	See Annex 1	
Notice in official journal	Entire Articles of Association/Bylaws must be published in the 'Mémorial' (official journal)	
Shareholders	Minimum of one, no maximum	Minimum 1 associate Maximum 40 associates
Shares	Registered or bearer Freely transferable	Registered shares Assignment and sale subject to agreement
Legal capacity	Upon incorporation	
Minimum capital stock	€31,000 or equivalent amount in another currency, minimum 25 % paid up	€12,500 or equivalent amount in another currency, fully paid
Types of contribution	In cash or in kind (contributions in kind to be supported by independent auditor evaluation)	In cash or in kind
Purpose	The purchase, sale, chartering or management of seagoing vessels and directly or indirectly related commercial and financial operations	
Governance	Board of directors: Minimum 3 members	At least one managing director or managing partner
Executive leadership	Accredited marine manager required (may also be a member of the Board)	Accredited marine manager required
Executive leadership powers	As clearly defined by the Chairman of the Board of directors, subject to oversight by the <i>Commissariat aux affaires maritimes</i>	
Accounting audit	"Commissaire aux comptes" Licensed statutory auditor (chartered accountant) if the company exceeds two of the following three criteria: - Total assets > €4,400,000 - Turnover > €8,800,000 - Average annual full time employees > 50	
Financial statements	Annual financial statements must be approved at an Annual Shareholders Meeting held in Luxembourg	Financial statements approved by the partners
Ministerial license	Required prior to the commencement of maritime activities; the <i>Commissariat aux affaires maritimes</i> must be notified of significant changes	
Permission to operate as a business	Not required assuming receipt of maritime licence and as long as the purpose of the company remains limited to the above definition	

The above has been deliberately limited to the two main forms of incorporation.

“It is the Luxembourg regime’s ability to offer customised solutions

in the field of investments, banking and tax, and easy ‘access’ to the Luxembourg institutions and authorities which are amongst the main reasons for the Jan De Nul Group’s choice of Luxembourg for its headquarters. The Luxembourg maritime regime also offers great advantages for the type of vessels operated by the Jan De Nul Group, in comparison to other regimes applying a tonnage tax system.”

David Luty

Jan De Nul Group

The Group was established in 1938 and, over the years, has developed into a world-leading dredging company operating its maritime business from Luxembourg.

The Luxembourg merchant navy

Merchant ships

Merchant ship registration requirements

Further to the Maritime Act of 1990 as amended in 1994, vessels with a tonnage of at least 25 tons, used or intended for use in the transport by sea of persons or things for any gainful seafaring activity, shall be entered in the Luxembourg shipping register.

The Maritime Act provides for three types of registration: full registration, bareboat in registration and bareboat out registration. To be registered, ships must be majority-owned by European Union nationals or a corporation headquartered in an EU member state (full ownership registration). The vessels may be chartered on a bareboat basis, or operated by an authorised person, operating on behalf of the owner. Provided that all or a significant part of the management is carried out in Luxembourg, these vessels are eligible for entry into the Luxembourg shipping register. Any EU maritime company is entitled to register

vessels in Luxembourg directly from an office elsewhere in a member state, provided that an accredited marine manager is appointed in Luxembourg.

A registration certificate is valid for a maximum of two years (renewable). A provisional certificate may be issued for vessels still under construction or while in the process of supplying all necessary information required for the registration.

Vessels exceeding 15 years of age from the date when the keel was laid cannot be registered in Luxembourg. An exception applies where a waiver is specifically given by the Minister of Economy and Foreign Trade, for vessels that have been subject to a major overhaul and upgrade to compliance with the standards of the conventions ratified by Luxembourg.

Registration applicant	Ship	Management
<ul style="list-style-type: none"> - Owner - Operator - Freight operator 	<p>Requirements:</p> <ul style="list-style-type: none"> - Less than 15 years old at the date of the first registration (unless exempted) - Constructed or under construction - Destined for commercial operations <hr/> <p>Additional requirements (choose one):</p> <ul style="list-style-type: none"> - Majority-owned by EU nationals - Majority-owned by company with registered office in an EU member state 	<ul style="list-style-type: none"> - Entirely or significantly Luxembourg-based - Luxembourg representative required



Respect of high technical standards

In common with the majority of other maritime nations, the Grand Duchy of Luxembourg is a signatory to most of the international agreements governing seagoing vessel safety and environmental protection. The technical norms regarding safety and environmental protection stipulated in these various regimes, including SOLAS, MARPOL and COLREG, are therefore applicable to Luxembourg vessels in accordance with their size and type.

Additionally, Luxembourg's membership of the European Union means that the relevant EU laws and regulations regarding merchant marine safety and environmental protection apply to Luxembourg-registered vessels. Indeed, some of these European laws and regulations apply to all ships, regardless of nationality operating regularly or occasionally in EU waters.

The Grand Duchy of Luxembourg has delegated to Classification Societies the authority to survey and certify compliance with technical and environmental standards.

All the companies recognised by the Luxembourg maritime authorities are members of IACS (International Association of Classification Societies), and include: the American Bureau of Shipping (ABS), Bureau Veritas (BV), Det Norske Veritas (DNV), Germanischer Lloyd (GL), Nippon Kaiji Kyokai (NKK), Lloyd's Register of Shipping (LR), and the Registro Italiano Navale (RINA).

The *Commissariat aux affaires maritimes* also has a network of flag state inspectors pursuant to its obligations as an IMO member.

Registration of bareboat in charters

The definition of a charter party is a maritime contract entered into between a ship owner and a charterer regulating the use of an entire or substantial part of a ship or ships. It sets the terms, conditions and exceptions governing transportation.

The bareboat or demise charter (*affrètement en location coque-nue*) is an agreement where the owners let the bare ship when fixing her on bareboat charter terms. The bareboat chartered ships must be registered to fly the Luxembourg flag, which is referred to as a "bareboat registration."

Registration procedure

Prior to the registration procedure of a ship under the Luxembourg flag, the ship owner must select the structure to be used for the ship. Where possible, this decision must be made before the registration of the ship. The help of a local, specialised company could result in substantial savings.

The procedure for the registration of a ship under the Luxembourg flag does not differ greatly from that of other maritime administrations. The documents to submit to the Luxembourg maritime authorities are: the registration application forms and the relevant ship's certificates. This is a specific type of mutual insurance coverage, called "Protection and Indemnity", which ship-owners usually take out.

The technical certificates required, certify that the ship complies with the maritime conventions ratified by Luxembourg. For certain types of ships or in certain cases, a preliminary inspection may be required. It will usually be done by a recognised Classification Society acting on behalf of the Luxembourg maritime authorities or the inspectors of a national inspectorate.

Luxembourg was one of the first countries to offer a legal framework adapted for commercial yachts.

The registration fees are paid to the Registration of Mortgages (see Annex 2). The actual registration procedure can be simple and quick if the file is carefully and scrupulously completed. For efficiency and speed, it is highly recommended that a local company specialised in the maritime sector be used to carry out this procedure.

A request to renew the registration certificate must be filed each year or every two years on the anniversary of the first registration. Specific documents certifying that the ship is compliant with the provisions enacted since its first registration must also be supplied.

Chartering in of a foreign ship by a Luxembourg company:

Original Place of Registration	Contract	Charter	Luxembourg registry
Abroad	Charter-Party	Approved Luxembourg maritime business	'Bareboat' registration Suspension of original foreign registration and registration in the Luxembourg register

Guarantees on the Ship	Flag Sailed under following Registration	Registration Conditions in Luxembourg
Primarily for registration in the maritime register in the country of origin	Luxembourg	Prior agreement with the foreign authorities, if necessary, and mortgage creditors

Chartering out of a Luxembourg registered ship to a foreign entity:

Original place of registration	Contract	Charter	Luxembourg registry
Luxembourg	Charter-party	Abroad or in Luxembourg	Suspension of Luxembourg registration and registration in the foreign register

Guarantee on the ship	Flag Sailed under following Registration	Registration Conditions in Luxembourg	Safety Onboard	Social Fee
For registration in the Luxembourg register Authorisation of mortgage creditors and owners	Authorisation of Ministry and mortgage creditors	Abroad	Legislation of the country whose flag the ship sails under applies but the ship must be maintained at the levels set forth in agreements ratified with Luxembourg	Maintenance of Luxembourg social standards if chartered with crew

The crew of merchant ships

Certification and composition of the crew

Sea-going vessels registered in the Luxembourg maritime register should have a crew that is compliant with STCW 95 and the master of the ship should be an EU national. However, waivers may be granted and are fairly easy to obtain, if in compliance with STCW 95.

There are no requirements as to the nationality of the officers or crew. The *Commissariat aux affaires maritimes* issues a document of safe manning that must be annexed to the registration certificate. The document will specify the minimum number of officers and crew and the qualifications they require, based on the features of the ship, its automation status and its navigation zone.

Luxembourg recognises the relevant qualifications issued by the authorities of the member states of the European Union, which are certificates issued by states that have ratified the STCW 95 convention and are included on the IMO white list.

Labour law

The law of 9 November 1990, as amended in 1994, regarding the Luxembourg Maritime Public Registry, defines the applicable labour and social rules for a seafarer employed onboard a ship flying the Luxembourg ensign.

Based on this law, the relationship between the crew member and the ship owner (or the latter's representative) is governed by a maritime labour contract. The provisions regarding labour laws supersede common law unless otherwise stated.

Each seafarer employed onboard a ship flying the Luxembourg flag must be the holder of a Luxembourg seaman's book, issued by the *Commissariat aux affaires maritimes*. To obtain a seaman's book, each seafarer must provide various documents including a medical certificate certifying that he/she is physically fit for duty.

The collective labour agreement regarding the use of working hours at sea was declared mandatory in 2003. Based on this agreement, the minimum number of rest hours cannot be less than 10 hours per 24-hour period and 77 hours per 7-day period (ILO Convention No. 180).

In less than 20 years, the Luxembourg maritime legislation has proven its effectiveness and the Luxembourg shipping sector continues to grow even in an environment of a continuously changing global economy.

In 2006, the maritime companies and the Ministry of Economic and Foreign Trade signed a charter for the industry which declared the common values to be respected, particularly in the fields of maritime safety, respect for labour conditions and social standards, and the promotion of social dialogue between representative organisations.

All measures are aimed at making the economic sector of maritime transport in Luxembourg more competitive, more efficient and safer.

Luxembourg has adopted most of the applicable maritime conventions of the ILO. The international standards defined by the ILO are generally ratified by Luxembourg and applied to the crew on ships flying the Luxembourg flag.

Additionally, Luxembourg has also ratified on 20 September 2011 the ILO's consolidated Maritime Labour Convention of 23 February 2006*, which is a draft of a maritime labour

code, intended to unify most of the existing conventions. The convention also establishes new minimum social regulations to meet the need for specific protection given the sector's international nature.

Social protection

Officers and crew employed onboard ships sailing under the Luxembourg flag benefit from excellent social protection. The table below describes the different applicable regimes based on the nationality of each seafarer.

They are also covered by the social security provision contained in the agreement with the European Economic Area, as amended, applying to EU countries as well as Iceland, Norway and Liechtenstein.

Nationality of the sailor	Applicable social security regime
From Luxembourg	Luxembourg Social Security
From a member state of the EU	Luxembourg Social Security subject to the application of EU regulation. In this case, EU Regulations 883/2004 and 987/2009 apply ¹
From a country that has signed a bilateral or multilateral agreement on social security with Luxembourg (outside the EU) ²	Benefits and/or affiliation with the Luxembourg social security regime subject to the provisions of the agreement in question

(1) Regulations 1408/71 and 574/72 apply for sailor native of Norway, Island, Liechtenstein or Switzerland.

(2) Countries having signed a bilateral or multilateral agreement with Luxembourg:

Bosnia and Herzegovina, Brazil, Canada, Croatia, Cape Verde, Chile, the USA, Quebec, Serbia, Macedonia, Montenegro, Tunisia and Turkey

* This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33%.

Contribution rate - Applicable from 1 January 2012.

Distinction between private employee/worker

Previously, officers were considered as white collar workers while ratings were considered as blue collar workers. As from 1 January 2009, this distinction is no longer applicable except for health insurance contributions purposes.

Insurance share	Employee's share	Employer's
Health insurance ¹	2.80 ² / 3.05%	2.80 ² / 3.05%
Mutual insurance (officers) ¹	Nil	0.62 - 2.38% ⁴
Mutual insurance (ratings) ¹	1% ³	0.62 - 2.38% ⁴
Pension insurance ¹	8.00%	8.00%
Family allowances	Nil (for Governments accounts)	
Health at work insurance ¹	Nil	0.11%
Accident insurance ¹	Nil	1.15%
Dependence insurance ⁵	1.4%	Nil
<p>(1) Capped for both employee and employer to an annual ceiling of €105,543.72 (cost of living index 719.84); tax deductible (2) Certain remunerations such as benefits in kind, benefits in cash, are subject to a contribution of 5.60%, i.e. 2.80% for the employee's part and 2.80% for the employer's part (3) The contribution will be due as follows: • 1% in 2012 • 0.5% in 2013 (4) Depends on the average rate of absenteeism of the employer (5) Not capped; not tax deductible. Applies to gross wages minus monthly abatement of €439.39 (for 173 hrs) or pro rata</p>		
Monthly minimum social security basis		€1,801.49
Monthly social security ceiling		€9,007.43 (5 * 1,801.49)
Annual social security ceiling		€108,089.16 (min. monthly * 12 * 5)



Personal income tax

Luxembourg residents

Progressive income tax rates range from 0% to 39% with a surcharge of 4% for the employment fund. The exempt band covers the first €11,265 for single taxpayers and €22,530 for married taxpayers.

The marginal rate applies above a threshold of €41,793 for single taxpayers and €83,586 for married taxpayers. The rate at which income tax is assessed depends not only on the application of the progressive rate scale, but also on marital status and age.

Children being part of the household give the right to a monthly allowance of €76.88 per child.

Taxation of income relating to employment (either in cash or in kind) is operated by way of a monthly withholding under the responsibility of the employer. Withholdings are computed based on the income tax schedule and

the employee's personal status, such that, where the taxpayer has no further income, the withholding is normally the final tax. Withholding rules and procedures are governed by a complex legislation.

Non-residents

Remuneration earned by crew members employed by a Luxembourg shipping company who are not resident in Luxembourg may under certain conditions benefit from a lump-sum taxation regime.

Gross remuneration reduced by 10% and a tax credit of €1,800 per month or €72 per day, is subject to a final tax at a rate of 10%.

“In 1993, the Cobelfret Group established its shipping activities in Luxembourg

and the Group has since then operated and supervised an increasing part of its maritime activities from Luxembourg. Cobelfret is a European-wide shipping and logistics group with major interests in dry bulk shipping (raw materials) and short-sea (roll-on/roll-off) shipping.

It was the substantial benefits and the great flexibility offered to ship owners as well as ship operators, in comparison to the general environment in the neighbouring countries, which were the main reason for setting up its business in Luxembourg.”

F.A. Bracke

Cobelfret

The Group currently manages and operates on average 35 dry bulk carriers (Capesize and Panamax) worldwide out of its Luxembourg office, as well as several regular ro-ro lines in North-Western Europe (North Sea, Irish Sea).

The shipping business: aspects of taxation



Attributing the power to tax the operating profit of a maritime company

In general, double tax treaties or specific maritime agreements between countries grant the right to tax a maritime company in the country where it has its fiscal residence.

Luxembourg has signed around 60 double tax treaties (see attached annex) which are currently in force. The treaties signed by Luxembourg contain the provisions for the taxation of maritime company profits. In general, the provisions are similar to Article 8 of the OECD Model, which grants the right to tax, exclusively to the country where the seat of management is located. Consequently the profits from the operation of ships international traffic shall be taxed only in the Contracting state in which the place of effective management of the enterprise is located.

These profits include those earned from participating in a pool, joint-venture or international entity.

The profits related to the lease of a ship, equipment and crew must be handled in the same manner as the profits from transporting passengers or merchandise.

The criterion of 'place of effective management' that determines the taxation right, on which the double tax treaties are based, is clearly essential. Such criteria refer to the place from which the company is actually managed, based on factual elements, not a legal situation.

The special case of profits from the bareboat of a ship

The question of granting the right to tax profits from a bareboat is a delicate matter, as it deals with qualifying such income in terms of the double tax treaty.

In general, this income is not the same as income from the use of the ship. Thus, Article 8 of the OECD Model cannot be applied.

Double tax treaties signed before 1992 generally consider this type of income as royalties, under Article 12, whereas new treaties (negotiated according to the model after 1992 and based on the 1994 amendment to the OECD Model) consider it as company profits under Article 7, which is linked to Article 5 on the permanent establishment.

Nevertheless, the most recent double tax treaties consider that Article 8 (tax in the country where the place of effective management is located) applies to this income, as it is only an occasional source of profits for a maritime company.

Since, it cannot be assimilated to a specific article, particularly when a ship is leased bareboat and then subleased to a third party, the profits from the bareboat lease will be considered, based on the type of agreement applicable, as business profits pursuant to Article 7 (and thus, cannot be taxed in principle by the country where the place of effective management is located) or considered as royalties from the lease of equipment.

The tax regime applicable to Luxembourg maritime companies

Luxembourg shipping companies come under the general tax regime applicable to companies operating in Luxembourg. However, the existence of various special applications allows the possibility to ensure an optimisation of tax efficiency for maritime companies.

This brochure focuses on the highlights amongst the various rules and regulations of the tax regime. The following is a description of the most important concepts and applications to be considered when entering Luxembourg as a maritime company.

The current tax rate in Luxembourg applicable to Luxembourg resident entities on worldwide income amounts to 28.80%. The rate consists of both Corporate Income Tax (CIT), including the contribution to the employment fund, of 22.05% as well as the Municipal Business Tax (MBT), which varies depending on the commune in which the company holds its registered address, currently 6.75% for Luxembourg City. Over the last ten years, the Luxembourg Government has continuously reduced the tax rates, as a way of keeping Luxembourg one of the most attractive jurisdictions in Europe for setting up a business.

Luxembourg resident companies are also subject to Net Wealth Tax (NWT), applied at a rate of 0.5% of the net asset value of the company, determined according to specific valuation rules, at year end.

a) Exemption from municipal business tax for maritime companies

Luxembourg MBT is levied based on the municipality where the company is located. Due to the fact that the business of a Luxembourg shipping company is carried out mainly outside the commune where it holds its registered address, shipping companies are exempt from MBT on income in relation to the use and lease of ships operating in international traffic.

The effective tax rate applied on shipping companies is therefore currently 22.05%.



b) Determination of the taxable basis

The taxable basis of a Luxembourg shipping company is computed in the same manner as for all Luxembourg-resident entities on the financial statements prepared under Lux GAAP but may be subject to tax adjustments such as the non-deductibility of expenses in relation to exempt income. In addition, depreciation expenses and provisions for large-scale repair and maintenance work are considered as deductible expenses for shipping companies.

c) Depreciation rules

Two types of depreciation are available under Luxembourg law, linear depreciation and accelerated depreciation.

Linear depreciation: Vessels held by a Luxembourg shipping company, are depreciated over their useful life. For example, a vessel with a useful life of 12 years (minimum depreciation period for a vessel) will be depreciated at a rate of 8.33% of its purchase price, every year.

Accelerated depreciation: Shipping companies may accelerate the linear depreciation by up to three times the linear depreciation rate, however, without exceeding 30%. Applied to a vessel with a useful life of 12 years, the depreciation may be increased to 25% of the purchase price in a year.

d) Provisions for large-scale repair and maintenance work

Luxembourg companies may establish provisions based on charges in relation to the business performed. The general rules state that the company is required to determine the charge precisely, and that it must refer to



The combination of the exemption from municipal business tax, and the benefit from an investment tax credit puts Luxembourg maritime companies in a position where nil taxation can be achieved.

the year in which the provision is booked. A more flexible approach is available for maritime companies where the company is allowed to book a more general provision based on reasonable charges that can be expected due to large-scale repair or maintenance work being undertaken. The Luxembourg tax authorities will then allow the company to deduct the provision in the year that it is booked.

e) Carried forward losses

There is no specific tonnage tax regime applicable in Luxembourg (fixed allowance). In case of decrease of the activity, the company will incur losses. These losses, as determined tax-wise, may be carried forward indefinitely and offset future positive tax results.

f) Investment tax credit

In addition to the beneficial rules regarding depreciation and provisions booked for large-scale repair work available for maritime companies, Luxembourg law offers the opportunity to resident companies to apply for two types of tax credits on investments made: the global investment tax credit and the complementary investment tax credit which applies generally for all Luxembourg companies, in the case of capital expenditure made for investments to be used on Luxembourg national territory or within the European Economic Area.

However, the application of this investment tax credit has been extended to include the Luxembourg shipping companies, as the investment tax credit applies also to vessels which are operating in international traffic and that form part of the net invested assets (Article 152 bis Income Tax Law). The investment tax credit is granted for investments in both new and previously used ships, when demonstrated that an old vessel has not benefited from the investment tax credit in the past.

The investment tax credits apply in the following manner and are calculated on the following basis:

- **Credit for complementary investment:**

The rate applicable for the complementary investment is maximum 13% and applies by comparing the net book value of the qualifying assets for the current year with the average net book value of these assets over the last five years as a reference basis

- **Credit for global investment:**

The credit for global investment is applied with a rate of 7% for the first €150,000 of the investment and with another 3% on the part of the investment exceeding this amount. This credit only applies to new investments made during the financial year. Any part of the investment tax credit which cannot be used by the company during the financial year in which the acquisition took place, may be carried forward and used within the next ten years.

g) Net wealth tax reduction

Under the Luxembourg net wealth tax law, Luxembourg companies may reduce the net wealth tax due in a year, through the booking of a special reserve. In order to benefit from a reduction of NWT due for a given tax year, the company must allocate part of the profits to a special reserve, referred to as the NWT reserve, and such reserve must be kept in place for five years. The actual reduction of the NWT obtained is equal to one fifth of the reserve created however capped to the amount of the CIT charge of the same year.

The net wealth tax reduction is applicable at any time when the company shows profits accounting wise and is not influenced by any possible reductions made through other tax credits. Through its application, companies may reduce the NWT liability to zero.

h) Roll-over provision

Luxembourg shipping companies may, under certain conditions, transfer capital gains arising from the sale of a ship to fixed assets purchased or established by the company through a roll-over provision based on the sale price. This allows maritime companies to renew the fleet on a regular basis, and offers the opportunity to opt for an ecological and environmentally-friendly approach for the business.

This possibility allows maritime companies, apart from reinvesting in another ship used for international traffic, to diversify their assets so that the reinvestment does not necessarily involve an asset of the same kind as the one sold.

Fixed assets for which the capital gain can be notably used include real estate (located in Luxembourg), amortisable fixed assets and equity holdings in other companies.

The shares in which the sale proceeds are reinvested can be either in a resident or a non-resident company.

It must be noted that the capital gain transferred to the purchased or established fixed asset reduces the purchase price or income of this fixed asset.

i) Fiscal consolidation regime

Under the rules of the Luxembourg Income Tax Law, Luxembourg resident entities have the possibility of entering into a fiscal consolidation, where the profits or losses of one company may be set off against the profits or losses of another company that is part of the tax entity. The regime has been developed over the years and is now applicable to Luxembourg resident companies and also to Luxembourg permanent establishments of non-resident entities.

The criteria for companies to enter into a tax consolidation are firstly the requirement of a holding of at least 95% in the subsidiary entity (75% in certain cases, with approval from the Luxembourg Ministry of Economy, but subject to more severe conditions). Secondly, the tax entity must be kept in place for at least five years, and is entered into by application to the Luxembourg direct tax authorities before the end of the first year during which the tax entity is applied.



j) Repatriation of company profits and the taxation of investors

Dividend

The distribution of profits from a Luxembourg shipping company in the form of dividends is subject to withholding tax in Luxembourg of 15%.

However, the Luxembourg participation exemption regime allows the distribution of dividends to investors, free of Luxembourg withholding tax. The exemption applies in circumstances where the following criteria are fulfilled:

- The distributing company is a Luxembourg-resident, fully taxable entity with a collective character or a Luxembourg-resident fully taxable capital company*
- The receiving company has one of the following characteristics:
 1. A collective entity falling under the scope of the Parent-Subsidiary Directive (90/435/EEC)
 2. A capital company resident in Luxembourg and liable to tax not listed in the annex of Article 166, 10 of the Luxembourg Income Tax Law
 3. The state, municipalities or other national public entities
 4. A permanent establishment of any of the entities referred above

* i.e. Public limited company, private limited company, partnership limited by shares and the European company.



5. A collective entity liable to a tax corresponding to Luxembourg Corporate Income Tax and which is resident in a tax treaty country, as well as its Luxembourg permanent establishment
 6. A capital company resident in Switzerland, subject to and not exempt from corporate income tax in Switzerland
 7. A capital company or cooperative resident in a member state of the European Economic Area (EEA) other than an EU member state (i.e. Norway, Liechtenstein and Iceland) which is liable to a tax corresponding to Luxembourg Corporate Income Tax
 8. A permanent establishment (either in Luxembourg or outside) of a capital company or of a cooperative resident in an EEA member state other than an EU member state
- The recipient entity must have a shareholding of at least 10% or an acquisition price of €1,200,000 for no less than 12 months, in the Luxembourg resident distributing entity

Interest

Interest paid by a Luxembourg company to a foreign investor is not subject to withholding tax in Luxembourg. Exceptions apply for certain profit participating instruments where withholding tax may be levied in specific cases. The same applies for the payment of interest to individuals not resident in an EU or EU-affiliated country.

Interest paid to an individual resident for tax purposes in the European Union comes under the EU Savings Directive 2003/48/EEC and is thus subject to withholding tax.

Royalty

No withholding tax is due in Luxembourg on royalties paid by a Luxembourg company. An exception applies to royalties paid to artists or sportsmen and sportswomen for any performances in Luxembourg.

k) Example of Luxembourg taxation on a Luxembourg shipping company

Shipping Company Luxembourg S.A.
 Assumption: ownership of one new vessel
 Purchase price: €3,000,000

Gross income (time charter out)	800,000
General expenses	(80,000)
Provision for necessary repairs	(110,000)
Linear depreciation of the vessel (8% of 3,000,000)	(240,000)
Financial charges (interest on loans)	(250,000)

Net income	120,000
Tax on net income before investment tax credit (22.05%)	26,460

Tax credit calculation

- Complementary tax credit	
Net book value	2,760,000
Less average book value 5 previous years (minimum)	(1,850)
Plus depreciation of new acquisition	240,000
	2,998,150
Complementary tax credit (13%)	389,759.50
- Global investment tax credit	
7% on first €150,000	10,500
3% on the excess	85,500
	96,000

Total investment tax credit	485,759.5
Effective tax paid	0
Carried forward tax credit	459,299.5
Effective tax rate on gross income	0%

VAT

Supplies of services in relation to vessels assigned to navigation on the high seas, used for carrying travellers for consideration or for the exercise of commercial, industrial or fishing activities, or for rescue or assistance at sea, are VAT exempt in Luxembourg.

Supplies which can benefit from this VAT exemption are for example, overhaul and upgrading, repairs, maintenance, charter and lease of ships used in the conditions stated above.

“The industry-friendly and helpful approach

from the Luxembourg administration and especially the support from relevant governmental offices, are important reasons enabling Luxembourg Marine Services S.A. to provide its customers with the best of services. Moreover, the flexibility of the system and the quick decision paths with direct response from the authorities are only two of the many advantages with the Luxembourg maritime regime.”

Raymond van Herck,

Luxembourg Marine Services S.A.

Since 1995, LMS has offered a full range of services inclusive of ISM/ISS and mortgages to maritime companies operating in Luxembourg, particularly focusing today on companies operating with sea-going vessels and commercial mega-yachting.

The mortgage regime and maritime liens

The mortgage regime

Registration	Registration upon presentation of the deed or registration by the master during the voyage, by telegram, telex or fax subject to presentation of the act within three months
Status of the ship	Completed or being constructed
Object of the mortgage	Ship and, unless otherwise set forth, apparatuses, devices, machinery and other accessories
Guarantees	Capital and three years of interest
Rank	By date and order of registration
Conservation	Registration is valid for 10 years
Renewal	Upon request before the end of the 10-year period
Abatement/satisfaction	By certified act, private deed or ruling
Redemption	By termination of the principal obligation By waiver of the debt By forced sale of the ship By voluntary sale of the ship and respect for a series of formalities

The lien regime

Type of debt	<ol style="list-style-type: none"> 1. Legal fees, ship conservation fees or sale, tonnage, lighthouse, port, pilots, maintenance and conservation fees in the last port, taxes and duties 2. Salaries of the master, crew and other persons employed onboard 3. Compensation for rescue and common repairs 4. Compensation for miscellaneous material damage caused by the ship and physical damage caused to passengers and the crew 5. Debts incurred by the captain as per his post
Subject of lien	Ship and freight of voyage during which the lien debt is incurred and on the ship and freight's accessories purchased after the start of the voyage
Rank	In the order in which the debts are ranked below and for each number, in proportion to each debt if the price is insufficient
Redemption	Same as the regime applicable to mortgages
Rank of creditors	Liens always have priority over mortgages

Applicable tax fees

The tax fees are a fixed registration fee of €12.39 and a tax stamp duty of €1 per page.

The maritime mortgage registration is exempt from any fee, except for the salary of the registrar of mortgages. (2 * €12.39)

Eventual legal opinion: PM

Annex 1

Company capital (in €)	Contribution fee of 0.5%	Notary fees (basic rate, VAT not included) ¹	Memorial collection C (circa) ²	Registration in the trade registry	Total (before taxes)
12,394.68	61.97	123.95	247.89	132.39	566.20
24,789.35	123.95	198.31	371.84	132.39	826.55
30,986.69	154.94	210.71	371.84	132.39	869.88
49,578.70	247.90	247.89	371.84	132.39	1,000.02
74,368.06	371.84	297.47	371.84	132.39	1,173.54
99,157.41	495.78	347.05	371.84	132.39	1,347.06
123,946.76	619.74	396.63	371.84	132.39	1,520.60
148,736.11	743.68	446.21	371.84	132.39	1,694.12
173,525.47	867.63	495.79	371.84	132.39	1,867.65
198,314.82	991.58	545.37	371.84	132.39	2,041.18
223,104.17	1,115.52	594.94	371.84	132.39	2,214.69
247,893.52	1,239.47	644.52	371.84	132.39	2,388.22

(1) Other charges for various fees (attorney, fiduciary, domiciliation, administration, additional notary services) will be added

(2) Cost varies based on the length of the statutes

Annex 2

The registration fees are calculated as follows:

A fixed annual fee of €2,000 to which a proportional fee is added, based upon the age and tonnage of the ship (measured in net tons).

For the first year (in € per ton)

Age of the Ship			
Net Tonnage	0-5 years	5-10 years	10-15 years
25-500	0.90	0.95	1
501-5,000	0.85	0.90	0.95
5,001-25,000	0.80	0.85	0.90
25,001+	0.75	0.80	0.85

For the following years (in € per NT)

Age of the Ship			
Tonnage	0-5 years	5-10 years	10-15 years
25-500	0.55	0.60	0.65
501-5,000	0.50	0.55	0.60
5,001-25,000	0.45	0.50	0.55
25,001+	0.40	0.45	0.50

Deloitte is a cofounder and a member of the board
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