INTRODUCTION


GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The Guide to Going Global series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper’s Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and nonresident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper’s global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.
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RESIDENCE AND BASIS FOR TAXATION

A company is considered as a resident if its legal seat or central administration is in Luxembourg.

Domestic

A resident company is taxed on its worldwide income, unless a double tax treaty provides for an exemption.

Foreign

A non-resident company is only taxed on Luxembourg-source income.

TAXABLE INCOME

Domestic

Taxable income is calculated based on the profit as stated in the commercial balance sheet, plus certain adjustments provided under the tax law (e.g., non-deductibility of taxes, exemption for dividends, etc).

Foreign

A corporate non-resident entity is subject to corporate income tax only on income generated in Luxembourg.

Income from Luxembourg sources include commercial income realized by a permanent establishment/representative in Luxembourg, income from the lease of property, securities income, etc.

TAX RATES

For the fiscal year 2020, the corporate income tax (CIT) is 17%, leading to an overall tax rate for companies of 24.94 in Luxembourg City (taking into account the solidarity surtax of 7% and including 6.75% municipal business tax rate applicable and which may vary depending on the seat of the company).
TAX COMPLIANCE

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

Corporate income tax, net worth tax and municipal business tax returns must be submitted before 31 May of the following tax year.

Failure to submit a tax return or a late filing is subject to a penalty of 10% of the tax due and a fine up to EUR 25,000.

Under the Country-by-Country (CbC) law, a Luxembourg tax resident entity that is the ultimate parent entity of a multinational group with consolidated group revenue of EUR 750 million or more in the previous fiscal year and prepares consolidated financial statements must file a CbC report with the Luxembourg tax authorities within 12 months after every fiscal year-end of the group. A Luxembourg tax resident entity can be appointed as a surrogate parent entity to file a CbC report in Luxembourg on behalf of the group.

ALTERNATIVE MINIMUM TAX

Not applicable for this jurisdiction. However, please see the developments on minimum wealth tax discussed below.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

Luxembourg operates a system known as Advance Tax Agreement (ATA), enabling taxpayers to request an advance tax decision from the Luxembourg tax authorities. An administrative fee will apply.

Advance tax agreements granted before 1 January 2015 were, according to the former practice of the Luxembourg tax administration, not limited in time. Such advance tax agreements became automatically null and void as from the end of the 2019 tax year.

Taxpayers relying on advance tax agreements granted before 1 January 2015 will benefit from the provisions of such agreements for the last time when filing their tax return for 2019. Henceforth, new advance tax agreement requests will have to be introduced in accordance with the new procedure which has been applicable since 1 January 2015. This new procedure already contains a 5 year validity period for advance tax agreements.

Tax incentives

Various incentive programs exist in Luxembourg in the areas of risk capital, audiovisual activities, environmental protection, R&D (experimental development, experimental development and cooperation, industrial research, industrial research and cooperation or fundamental research), intellectual property, professional training and
recruitment of unemployed persons. Most of the incentives are granted as tax credit.

Intellectual property may benefit from the new Intellectual Property (IP) regime introduced in March 2018. The Luxembourg tax law provides for a partial exemption of 80% on the net income derived from eligible IP assets, as well as a 100% exemption from net wealth tax. Under this law, patents and copyrights on computer software, among others, are eligible assets for the preferential tax treatment. Eligible income that will qualify for preferential tax treatment includes net income from direct use, royalties from the granting of licenses or income from the sale of eligible IP assets. The IP activity of the company should be properly documented to demonstrate the link between the eligible IP assets and the related expenses. The taxpayer must also be ready to share this information with the Luxembourg tax authorities, if requested.

Furthermore, several incentive programs exist for certain entities: investment funds (which are subject to several exemptions), private wealth management company (Société de gestion du Patrimoine Familial or SPF) (which is exempt from Luxembourg taxation on income and NWT in Luxembourg), securitization companies (which are exempt of NWT), venture capital companies (Société d’Investissement en Capital à Risque or SICAR) (incorporated under a corporate form, the SICAR is subject to income tax at the normal rate with the benefit of an exemption on income and gains (eg, dividends, capital gains, liquidation proceeds, interest) under certain conditions) and shipping companies (which are not subject to municipal business tax and can benefit from investment tax credits and accelerated depreciation).

CONsolidation

A group of companies, under certain conditions, may apply the tax consolidation regime in Luxembourg. In practice, the tax consolidation regime enables the group to pool or offset the respective taxable profit of each company in the group and to be taxed on the aggregate amount (ie, a group of companies is treated as a single taxpayer). Losses incurred by one company of a group may accordingly be offset by the profits realized by another group company.

The main requirements are the following:

- A minimum shareholding (95%) must be held without interruption from the beginning of the financial year to which the tax consolidation regime is applied;
- Group companies must begin and end their financial years on the same date;
- The companies concerned must be grouped for at least 5 financial years;

Tax consolidation is requested jointly to the tax authorities.

Participation exemption

Dividends and gains derived by a Luxembourg entity from a qualifying participation (broadly any entity subject to a corporate income tax rate of at least 8.5% applied on a tax base determined by the application of rules similar to those existing in Luxembourg) may be tax exempt if certain conditions in terms of shareholdings are met.
CAPITAL GAIN

Capital gains generally are taxed as ordinary income at the standard corporate tax rates. Nonetheless, capital gains derived from the sale of shares may be exempt from corporate tax if the conditions for the participation exemption are met.

DISTRIBUTIONS

Not applicable for this jurisdiction.

LOSS UTILIZATION

Carry-forward: Losses generated from January 1, 2017 can be carried forward for a maximum period of 17 years.

Point of interest: Losses generated before this date are not subject to these limitations and may be carried forward indefinitely.

Carry-back: Not applicable for this jurisdiction.

TAX-FREE REORGANIZATIONS

Luxembourg tax law allows for tax neutrality company reorganization in the following cases:

- Transformation of the corporate form of an entity into another corporate form;
- Merger or demerger of Luxembourg or EU resident companies;
- Exchange of shares when the acquiring company gets the majority of voting rights in the acquired company or increases the majority of voting rights already held.

ANTI-DEFERRAL RULES

Luxembourg has introduced controlled foreign company (CFC) rules in the context of the transposition of the EU Anti-Tax Avoidance Directive 2016/1164 of July 12, 2016 (ATAD). The CFC rules are applicable from January 1, 2019. The CFC rules attribute net income to a Luxembourg taxpayer when its subsidiary or permanent establishment is located in a low-tax or no-tax jurisdiction, even if this income is not distributed. Such income will be subject to CIT at a rate of 17%.

A CFC can be either:

- A collective entity in which the Luxembourg taxpayer holds a direct or indirect participation of more than 50%; or
- A permanent establishment.
CFC rules will be triggered if the tax paid by the CFC is lower than the difference between the CIT that would have been paid on the same profits in Luxembourg and the actual CIT paid in the CFC state.

The CFC rules do not apply to a CFC whose profits do not exceed:

- EUR 750,000, or
- 10% of its operating costs within the tax period.

If the CFC rules are triggered, the CFC’s undistributed income will be taxed in Luxembourg provided that such income arises from non-genuine arrangements that are put in place essentially for the purpose of obtaining a tax advantage.

FOREIGN TAX CREDITS

A Luxembourg tax resident company is taxed on its worldwide income. Foreign-source income is taxable in Luxembourg, unless a double tax treaty (DTT) provides for an exemption. Dividends from foreign subsidiaries are also taxed, unless a DTT provides for an exemption.

Profits of a foreign branch that are not exempt under a DTT may benefit from a foreign tax credit. Taxes paid in excess of the tax credit are deductible as expenses.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Municipalities impose a land tax of 0.7% to 1% on the unitary value of real property.

A transfer tax is applied to a transfer of immovable property. A 6% basic rate and a 1% transcription tax are applicable. For real estate located in Luxembourg City, an additional charge amounting to 50% of the transfer tax (i.e., 3%) is imposed (exemptions are available).

TRANSFER PRICING

According to the Luxembourg transfer pricing legislation, transactions between related parties (both located in Luxembourg as well as where one party is taxed in a foreign jurisdiction) have to be governed by the "arm's length principle." This obliges the taxpayer to report in its tax return either an upward or downward adjustment of profits whenever transfer prices do not reflect the arm’s length principle. The Luxembourg tax authorities may request from the taxpayer all facts relevant for verifying a tax liability. Therefore, the taxpayer should provide all necessary supporting documentation to facilitate the task of tax authorities.

The circular L.I.R. n° 56/1 – 56bis/1, published by the Luxembourg tax authorities on 27 December 2016, focuses on the transfer pricing requirements for intermediary, intra-group financing activities in Luxembourg. A strong emphasis is put on the analysis of the risks assumed by the companies performing intra-group financing transactions. Companies should perform an analysis to determine the necessary capital at risk using the accepted
methodologies in this area. These companies must have the financial capacity to assume such risks. Furthermore, the Circular provides that in order to be able to control the risks, the company performing intra-group financing transactions should comply with specific substance requirements.

Moreover, a company may request an advance pricing agreement (APA) from the Luxembourg tax authorities. Fees apply, varying from EUR 3,000 to EUR 10,000 (depending on the complexity of the matter).

**WITHHOLDING TAX**

**Dividends, royalties, interest, rents, etc.**

Dividends paid to a non-resident company generally are subject to withholding tax at 15%, unless the rate is reduced under a tax treaty.

No tax is withheld on dividends paid to a qualifying company under EU parent-subsidiary directive (2003/123/CE), except if the transaction qualifies as an abuse of law under the general anti-abuse rule. The benefits of the directive have been extended to parent companies resident in non-EU tax treaty countries (under certain conditions).

Luxembourg does not levy withholding tax on **royalties**.

Luxembourg does not levy withholding tax on **interest**, except for interest payments to Luxembourg resident individuals, in certain cases. Nonetheless, profit-sharing bonds and debt instruments with remuneration linked to the issuer’s profits are taxed as dividends (15%), and interest payments can be requalified into dividends (and are then subject to a 15% withholding tax) where a Luxembourg company is over-indebted in light of thin capitalization rules or where a Luxembourg company does not comply with transfer pricing regulations.

Interest payments made by Luxembourg resident paying agents to Luxembourg resident individuals are subject to a 20% WHT. There is an exemption from WHT if the amount due does not exceed €250. Where interest payments are made or credited by foreign paying agents located in a member state of the EU or in a state of the European Economic Area, the Luxembourg resident taxpayer may opt for a 20% WHT.

**Service fees**

Luxembourg does not levy withholding tax on **service fees**.

**CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX**

No capital duty is levied in Luxembourg (except in particular cases). A registration fee of EUR 75 is imposed on incorporation or amendments to bylaws.

There is no stamp duty in Luxembourg.

A transfer tax is applied to a transfer of immovable property. A 6% basic rate and a 1% transcription tax are applicable. For real estate located in Luxembourg City, an additional charge amounting to 50% of the transfer tax (i.e., 3%) is imposed (exemptions are available).
EMPLOYMENT TAXES

Social security contributions apply to wages and salaries and are due from both the employer (rates approximately: 12/15%) and the employee (circa 12%). Contributions for both employers and employees are computed on a capped basis 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.

OTHER TAX CONSIDERATIONS

Net Wealth Tax (NWT)

Both Luxembourg resident companies and Luxembourg branches of non-resident companies are subject to NWT. As of January 1, 2016, a new scale of rates has been introduced as follows:

- 0.5% up to EUR 500 million
- 0.05% over EUR 500 million

Luxembourg companies are subject to a minimum NWT. Luxembourg companies having a total balance sheet exceeding EUR 350,000 and which consists of more than 90% of financial assets, transferable securities and cash at bank should be subject to a minimum flat tax amounting to EUR 4,815. If the 90% threshold and the EUR 350,000 threshold are not met, a minimum NWT ranging between EUR 535 and EUR 32,100 is due.

Interest deduction limitation

In practice, the tax administration uses a debt-to-equity ratio of 85/15 for the financing of participations. Luxembourg has introduced an interest limitation rule in the context of the transposition of ATAD. As from January 1, 2019, excess borrowing costs (i.e., tax-deductible borrowing costs which exceed underlying interest income and economically equivalent income) are only deductible up to the higher of 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) of the taxpayer and EUR 3 mio.

Excess borrowing costs which are not deductible in a tax period may be carried forward without time limitation. Unused interest capacity in a given tax period may be carried forward for five years.

The interest limitation rule is not applicable to excess borrowing costs:

- On loans concluded before June 17, 2016
- On loans to finance EU long-term public infrastructure projects or
- On loans incurred by standalone entities and "financial undertakings"

Intra-EU hybrid mismatches

As from January 1, 2019, hybrid mismatch provisions apply in an intra-EU context as a result of ATAD.

The rule aims at preventing hybrid mismatches which result in a double deduction (i.e., a deduction of the same
expenses both in Luxembourg and in the other EU member state) or a deduction without inclusion (ie, a deduction of expenses in Luxembourg and no corresponding inclusion of the income in the taxable basis of the other EU member state).

The anti-tax avoidance directive provisions provide that when a structure includes a hybrid mismatch with double deduction, the deduction shall only be granted in the EU member state where the payment has its source. When a structure includes a hybrid mismatch with deduction without inclusion, the EU member state of residence of the payer shall deny the deduction of such payment.

Hybrid mismatches with third countries (ATAD 2) and covering a wider range of intra-EU mismatches have been implemented and came into force on January 1, 2020. The reverse hybrid mismatch rule will not come into force before January 1, 2022.

DAC 6

On August 2019, the Luxembourg Government published a legislative proposal to implement the Mandatory Disclosure Directive (DAC 6). DAC 6 creates an obligation for intermediaries to disclose cross-border tax arrangements to the tax authorities. The reporting obligations apply as from 1 July 2020 but will also cover arrangements that started being implemented after 25 June 2018.
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