LUX-1

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Part I General Law

Introduction

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LUX-1 Luxembourg is of significant interest in relation to international financial matters for both the legal entity and the individual. This can be attributed to a number of factors including location, language, infrastructure and a favourable legal and fiscal environment for investment.

In addition, Luxembourg shares some common characteristics with certain of its neighbours, most notably language, currency and legal system. The official languages are French and German although the national language is Luxembourgish. However, English is also widely used, especially in business, and it is usual for all professional firms and the state and regulatory authorities to be fluent in most, if not all, of the above languages.

Footnotes

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LUX-2 The currency is the Euro.

Monetary policy is governed by the Central Bank of Luxembourg which was established on the transformation of the Luxembourg Monetary Institute.[1] The Central Bank of Luxembourg has been integrated in the European System of Central Banks.

A highly developed international banking sector exists in Luxembourg with currently more than 100 credit institutions being established in the state.

Generally, there are no restrictions on opening a bank account with a Luxembourg bank beyond certain requirements and procedures laid down by the Commission for the Supervision of the Financial Sector[2] regarding the prevention of money-laundering (AML), and of course those imposed by the individual bank itself. The AML requirements are for the most part specified in the CSSF Circular 13/556 regarding the combating of money laundering and terrorist financing and the prevention of the use of the financial sector for the purpose of money laundering and terrorist financing. This Circular follows on from the CSSF Regulation n°12/02 on the fight against money laundering and terrorist financing and also the two laws of 12 November 2004[3] and 27 October 2010 on the fight against money laundering and terrorist financing. Circular 13/556 replaced Circulars CSSF 08/387 and 10/476, although they retained their structure and the general approach. On 26 April 2017, the Luxembourg Government tabled a draft bill (n°7128) before the Luxembourg Parliament (Chambre des Députés) aiming at implementing the 4th AML Directive in Luxembourg. On 6 February 2018, the draft bill 7128 was affirmatively voted and should soon become Law after Council of State clearance, followed by observance of signature and publication requirements.

First, the Circular provides for standard customer due diligence procedures which professionals of the financial sector (PSF), which include banks, must systematically apply but the precise extent of

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which may be adapted on a risk-sensitive basis. For example, there is a limited number of specific cases when simple customer due diligence is sufficient. Conversely, when there is a higher risk of money laundering or terrorist financing, re-enforced customer due diligence must be applied in addition to the standard measures: this is the case in situations that are treated as such by PSFs and in several specific cases expressly covered by the law where the risk of money laundering or terrorist financing is particularly high.

The Circular specifies the steps to be followed in order for a bank credit institution in Luxembourg to enter into a commercial relationship with a client. A Luxembourg bank may not carry out any significant operations with a client unless it has received due verification of the status and identity of its client prior to commencement of any business relationship. Satisfaction of the requirement to verify a client's identity is stipulated in the Circular. In the case of an individual, it is based on the individual's identity papers such as a passport or identity card, although for foreign investors the former is most likely to be required. For legal entities, the relevant incorporation documents will be required.

In the case of companies, the identity of the ultimate beneficial owner is also required. Therefore, where an intermediary or representative is used or a legal entity could act as a screen, both the client itself and the ultimate beneficial owner will need to be disclosed. Finally, it must be pointed out that credit institutions and the other PSFs and their employees must co-operate with Luxembourg authorities responsible for combating money laundering by providing those authorities, at their request, with all necessary information and by informing the Financial Intelligence Unit (CRF) of Luxembourg, on their own initiative, of any suspicious transactions which might constitute an indication of money laundering. In this last case, audit institutions and the other financial sector professionals have to refrain from carrying out suspicious transactions until they have notified the CRF.

It must be also noted that the Luxembourg government has enacted legislation sanctioning severe punishment for financial sector employees (management and staff) who participate in or contribute to the laundering of the proceeds of drug trafficking, abduction of minors, sexual offences against minors, procuring, bribery of public officials, offences under arms and ammunitions legislation, crimes committed within the context of or in connection with an association formed for the purpose of doing harm to persons or property or within the context of or in connection with a criminal organization.

The Law of 23 December 2016 introduced amendments to Luxembourg Tax Law and Criminal Code so that tax crimes relating to direct and indirect taxes are considered as predicate offences in line with the 4th AML Directive. Two tax offences ("fraude fiscale agravée" and "escroquerie fiscale") were introduced as money laundering offences. Circular 17/650 issued by the CSSF on 17 February 2017 provides guidance for CSSF regulated entities on the application of the 2004 Law to predicate tax offences.

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Footnotes

1 ML Circular 89/57 dated 15 November 1989.

2 Commission de Surveillance du Secteur Financier.

3 A Grand-Ducal Regulation of 1 February 2010 provides more detail on the application of this law.

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LUX-3 Infrastructure

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Infrastructure

LUX-3 Luxembourg enjoys both political and social stability. There are two principal political parties in the state and the government is normally made up of a coalition. A common feature of both parties is their long-term commitment to the development of Luxembourg as a financial centre.

Luxembourg is a constitutional monarchy. Executive power is exercised by the Government and the Grand-Duke. Legislative power, however, is exercised by the elected Parliament together with a Council of State appointed by the Grand-Duke upon proposal by the government. Bills are submitted to the Council of State for advice and become effective following assent from the Monarch and publication in the Official Gazette (*Mémorial*).

Foreign investment is encouraged and there are no restrictions on foreign ownership of property. Foreign investors are fully entitled to take advantage of the several different forms of government assistance available to promote and develop investment and growth in Luxembourg.

Similarly, at present there are no registration requirements in respect of foreign capital, nor any restrictions on the repatriation of capital or earnings. There are a substantial number of investment incentives which include both tax incentives and incentives in the form of grants and subsidies.

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LUX-4 Legal system

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Legal system

LUX-4 In common with its neighbours Belgium, Germany and France, Luxembourg is a civil law jurisdiction with the legal system being essentially based on the Code Napoleon which was established in Luxembourg during the period spanning the end of the eighteenth century and beginning of the nineteenth, when Luxembourg formed part of France.

Today, Luxembourg law is embodied in a number of codes, primarily the Civil Code, the Penal Code and the Fiscal Code. There are also numerous special laws relating to specific matters, such as the Law of 10 August 1915 on Commercial Companies and the Income and Corporation Tax Law of 4 December 1967.

The judiciary also constitutes an additional source of law and legal opinion and the jurisprudence from Belgium and France can often be of indirect use.

Circulars and Codes of Practice are produced by regulatory authorities such as the Luxembourg supervisory authority of the financial sector ("the Commission de Surveillance du Secteur Financier") and the Luxembourg Stock Exchange. While these may not strictly have the force of law they have significant persuasive authority.

Legislation and judicial decisions can be found at http://vww.legilux.public.lu.

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LUX-5 Corporate entities

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Corporate entities

LUX-5 The basis of company law in Luxembourg can be found in the Law of Commercial Companies of 10 August 1915 (as amended). The main amendments to this fundamental law are the Law of 18 September 1933, which established the private limited liability company; the Law of 23 November 1972, which adopted the First EC Directive relating to corporations (EC 68/51); the Law of 4 May 1984, adopting the Fourth EC Directive relating to corporations, and the Law of 12 July 2013 introducing the Société en Commandite Spéciale (SCSp), a special partnership. As far back as June 2007, Bill No.5730 was tabled in the Luxembourg parliament with a view to modernising the company law of 1915.

On 13 July 2016 the Luxembourg parliament adopted the bill of law 5730 ("the New Company Law") amending the law of 10 August 1915 on commercial companies, the Civil Code and the law of 19 December 2002 on the trade and companies' register and on the accounting and annual accounts of undertakings. The New Company Law entered into force on 23 August 2016 and the new regime is immediately applicable to all companies incorporated after its entry into force. Existing companies have 24 months to adapt their articles of incorporation. There are currently two main types of limited liability companies: the public limited liability company (société anonyme or SA) and the private limited liability company (société responsabilité limitée or Sàrl). The New Company Law made important changes to these two types of companies and introduced a new type of company: the simplified public joint stock company (société par actions simplifiée) inspired by the French structure of the same name (see below for more details).

Liability in respect of these corporate forms is limited by shares where the shareholders are liable only up to the amount of the capital contributed to the company.

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The amendments introduced by the New Company Law that concern all companies are indicatively the possibility for any type of company to issue bonds, the recognition of tracking shares (shares that track the performance of specific activities or assets), the one-step dissolution (without liquidation) for companies with a sole shareholder, a new set of rules regarding the conversion of companies, a new regime for invalidity of resolutions adopted at ordinary general meetings and the recognition of the “conventions de portage”.

Public limited company (société anonyme or SA)

LUX-6 Such a company must be formed by a deed prepared by a notary. This deed must contain certain minimum information including the articles of association, which set out the powers and regulations of the company; information concerning the subscription of shares; and the appointment of the first directors and of the supervisory auditor (commissaire aux comptes).

The articles of association themselves must contain certain minimum information including the name and form of the company; duration; its purpose or object; its registered office; issued and (if applicable) authorised share capital and the extent to which the share capital is paid in at formation; the nature, type and number of shares and the rights attaching thereto; and the persons acting as subscribers at incorporation and the costs relating to incorporation.

Shareholders

LUX-7 Luxembourg Law provides the possibility of incorporating an SA with a sole shareholder.

There are no restrictions on the residency or nationality of shareholders. Similarly, shares may be acquired and held by nominee shareholders or under trust.

Share capital

LUX-8 The minimum paid in share capital for a public limited liability company is €30,000 (subject to specific capital requirements for certain special types of institution such as banks, savings institutions, insurance and reinsurance companies and investment funds).

The share capital may be denominated in any currency (provided it is equivalent to at least the stipulated minimum amount in Euros). The financial statements of a company must generally be denominated in the same currency as the share capital.

Partly paid shares may be issued provided the issued share capital of the company is paid up to at least 25 per cent of the total nominal value of the issued share capital. However, any

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share premium must be paid in full. Where partly paid shares are issued for any period of time, then each year, for as long as partly paid shares are held in the company, certain additional information is required to be published in the Official Gazette (*Memorial*). This information includes details of the number, value and amount of the company's subscribed share capital together with the names of those shareholders who hold partly paid shares and the amount outstanding still to be paid in by those shareholders.

Shares

LUX-9

Shares in a public limited company may be in either bearer or registered form subject to any restrictions contained in the articles of association. On 16 July 2014, Luxembourg Parliament voted a law aimed at changing the regime of bearer shares in response to recommendations by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes. As a result, in order to ensure the transparency of shareholdings and to combat fraud and tax evasion, bearer shares must be deposited with a depositary and registered. The management body of the issuing company has to appoint a professional depositary who will keep a record of all necessary information to identify the holders of bearer shares.

If in bearer form the transfer of the shares simply takes effect by the delivery of the share certificate(s). For registered shares title may be transferred by a private agreement to transfer the shares.

Subject to the requirement for the founders of the company to be named in the deed incorporating the company and where partly paid shares are held in the company, there are no subsequent publication requirements relating to or including details of the shareholders of the company.

Bearer shares may not be issued in respect of shares which are only partly paid.

The shares of a public limited company may be offered to the public and may be listed or quoted on a recognised stock exchange subject to compliance with the prospectus and other appropriate regulatory requirements.

The New Company Law introduced, amongst others, the possibility for the general meeting (or the board of directors within the authorised share capital) to issue shares without nominal value, with a subscription price below their accounting par value as well as a more flexible regime of non-voting shares and a new regime on the preferential subscription rights of shareholders.

Moreover, under the New Company Law, the rights of minority shareholders are reinforced.

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Management

LUX-10 Except where the company has been formed by a single shareholder, a public limited company must have at least three directors although there are no residency or nationality requirements from a corporate perspective. From a tax perspective, the residency of the directors may have an impact on whether the level of activity in Luxembourg is sufficient to render the company tax resident in Luxembourg. Following the Circular LIR 56/1 dated 27 December 2016 (focused on group financing companies), the majority of the members of the board of directors, directors or managers should be residents or have their professional residency in Luxembourg. In case a legal entity is a member of the board of directors, it must have its statutory seat and its central administration in Luxembourg. The powers and responsibilities of the management of the company by its directors are usually contained in the articles of association.

The appointment of directors is decided by the shareholders in a general meeting and additional requirements may be laid down in the articles of association. Similarly, the termination of a director's appointment is decided by the shareholders in general meeting in accordance with the relevant terms of the articles of association.

It is also a legal requirement for a public limited company to have a supervisory auditor whose role is to supervise the accounts of the company. The supervisory auditor is named in the articles of association.

Dissolution

LUX-11 This may take place by law in the two following circumstances:

(a)upon expiry of any term stipulated where the duration of the company is limited in the articles of association;

(b)upon decision of the shareholders in general meeting, in the event of a loss equivalent to half of the company's issued share capital.

Liquidation will also take place where either the shareholders in general meeting decide as such (voluntary liquidation); or the company is declared bankrupt, contravenes the criminal law or has substantially infringed significant provisions of the company law.

Voluntary dissolution without liquidation

This is now recognised by the New Company Law. All the company shares must be held by a single shareholder and the company must obtain certificates from various governmental authorities confirming that the company is in compliance with its obligations relating to the payment of social security contributions, taxes and duties as at a date which may not be earlier

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than three months before the date of the instrument of dissolution. The voluntary dissolution without liquidation causes the universal transfer of all assets and liabilities to the company's sole shareholder.

Accounts

LUX-12 The main source of accounting regulation is specified in the Law of 10 August 1915, which reflects Luxembourg's adoption of the Fourth and Seventh EU Directives, re-casted by the Directive 2013/34/EU. The accounting reference period is generally one calendar year but alternative 12-month periods may be chosen. The annual accounts must be audited and be approved at the annual general meeting of the company and filed with the Commercial Register.

Private limited company (société à responsabilité limitée or Sàrl).

LUX-13 A private limited company must also be formed by notarial deed. Although similar in many ways to the public limited company, the rules relating to the private limited company are not as detailed as for the public limited company and certain of the more sophisticated elements of company law do not apply. The New Company Law applied some of these elements to the private limited company.

Shareholders

LUX-14 A private limited company may be formed or held by one or more shareholder with a maximum of 100 shareholders. There are no requirements as to either the nationality or residency of shareholders from a corporate point of view (see however para.10 *above* from a tax point of view).

Share capital

LUX-15 A subscribed share capital of a minimum of €12,000 is required. Partly paid shares are not permissible. The company's securities cannot be listed or quoted on any stock exchange.

Shares

LUX-16 Shares may be held in registered form only. Under the New Company Law, the issuance of redeemable shares is introduced and, moreover, the transfer of corporate units to a third-

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party may be approved with a reduced voting majority of 50 per cent of the corporate capital (instead of 75 per cent, if provided as such in the articles of the company).

Management

LUX-17 The management of the company is carried out by one or more managers (gérants) who need not be shareholders. The first manager or managers are named in the deed of incorporation and thereafter are appointed by the shareholders in general meeting. Similarly, dismissal or termination of appointment is decided by the shareholders in general meeting and is subject to the dismissal being for legitimate reasons. The meetings of the board of managers may take place via videoconference.

Dissolution

LUX-18 This may take place by law in the three following circumstances:

- upon expiry of any term stipulated where the duration of the company is limited in the articles of association;
- where the number of members exceeds the legal maximum;
- upon decision of the members in general meeting, in the event of a loss equivalent to half of the company's issued share capital.

Liquidation will also take place where either the members in general meeting decide as such (voluntary liquidation); or the company is declared bankrupt, contravenes the criminal law or has substantially infringed significant provisions of the company law.

Voluntary dissolution without liquidation

This is now recognised since the introduction of the New Company Law and the procedure is as described above in relation to public limited companies.

Accounts

LUX-19 The rules are broadly similar to those for a public limited company except that a private limited company which has fewer than 60 shareholders is not required to hold an annual general meeting at which the accounts are approved.

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LUX-20 Simplified private limited company (société à responsabilité limitée simplifiée or Sàrl-S)

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Simplified private limited company (société à responsabilité limitée simplifiée or Sàrl-S)

LUX-20 It is also possible, under certain conditions, to incorporate a Simplified p*rivate limited company* (société à responsabilité limitée simplifiée or Sàrl-S), with a share capital in the range of €1 to €12,000, since the introduction of the law of 23 July 2016. The Sàrl-S can be incorporated via a notarial deed or a private deed. Only individuals can be shareholders of an Sàrl-S.

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LUX-21 Simplified company limited by shares (Société par Action Simplifiée or “SAS”)

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Simplified company limited by shares (Société par Action Simplifiée or “SAS”)

LUX-21 This new type of company in essence follows the same regime as for the SA, however, it benefits from greater contractual freedom, in particular with respect to the determination of its corporate governance rules and policy or the rights attached to its shares (including with respect to their transferability). The issuance of shares to the public is not possible for the SAS. SAS is anticipated to become an alternative to Sàrl for the private-equity industry.

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LUX-22 Partnership

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Partnership

LUX-22 There are four forms of partnership all governed by the Law of 10 August 1915, as amended.

General partnership (“Société en Nom Collectif” of “SNC”)

LUX-23 Each partner is jointly and severally and without limit liable for the partnership’s debts. The partnership is formed by private deed under seal and partner’s shares are not usually freely transferable. All partners are subject to personal income tax to the extent of their share in the partnership property and income.

Common limited partnership (“Société en Commandite Simple” or “SCS”)

LUX-24 An SCS is a partnership established by contract, for a limited or unlimited duration, between one or more general partners with unlimited and joint and several liability for all obligations of the partnership, and one or more limited partners with limited liability, who commit to contributing a certain amount, constituting partnership interests, represented or not by a security instrument, in accordance with the provisions of the limited partnership agreement. An SCS has legal personality but is fully tax transparent for the purposes of corporate income tax and net wealth tax. Partners are subject to personal tax on their corresponding share of partnership property and income.

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Partnership limited by shares ("Société en Commandite par Actions" or "SCA")

LUX-25 This type of partnership has a similar form to the SCS. An SCA is a company established by notarial deed with one or more general partners with unlimited and joint and several liability for the obligations of the company and one or more limited partners who only contribute a certain amount. However, the capital of the limited partners consists of freely transferable shares. The SCA has legal personality and is subject to corporation tax and net wealth tax.

Special limited Partnership ("Société en Commandite Spéciale" or "SCSp")

LUX-26 The main feature of the SCSp is that, unlike the SCS and the SCA, it is not vested with legal personality. The SCSp, which has many of the features of the Anglo-Saxon Limited Partnership, is characterised by its corporate flexibility and the tax transparency that it provides.

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LUX-27 Other forms of legal entities

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Other forms of legal entities

LUX-27 The remaining forms of legal entities existing under Luxembourg law are considered below.

Non-profit making associations

LUX-28 This form of organisation, which may not carry out any industrial/ commercial activity or earn profits for the benefit of its members, is governed by the Law of 21 April 1928, as amended.

Non-commercial company

LUX-29 This type of company is subject to the Civil Code and is usually used by professionals. Individual partners are subject to personal income tax.

Joint venture

LUX-30 Luxembourg law does not stipulate the specific form that a joint venture must take. The law provides the possibility of incorporating different forms of partnership which allow several partners to carry out one or more specific commercial operations without trading under a commercial name:

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(a)association momentanée (unregistered partnership) which does not acquire legal personality and where members are jointly and severally liable to third parties with whom they do business;

(b)association en participation (joint venture) which is defined as a partnership where one or more persons have an interest in operations which one or more persons handle on their behalf; the managers are jointly and severally liable to third parties with whom they do business.

Joint ventures may, at the parties' option, take any of the available corporate forms or simply be a contractual arrangement between the parties.

The Law of 25 March 1991 introduced into national law EC Regulation 2137/85 of 25 July 1985 on European Economic Interest Groups (EEIGs) and thus a joint venture can be set up as an EEIG.

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LUX-31 Trusts and fiduciary arrangements

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Trusts and fiduciary arrangements

LUX-31 On 16 October 2003, Luxembourg ratified the Hague Convention of 1 July 1985 on the law applicable to Trusts and their recognition (the "Hague Convention"). However, the Grand-Duchy of Luxembourg does not have any separate legal framework for trusts save for some rules introduced by a Grand- Ducal Decree of 19 July 1983 dealing with fiduciary agreements concluded by Luxembourg credit institutions.

The ratification of the Hague Convention by Luxembourg has several consequences.

(a)The Luxembourg courts are in a position to deal with international issues involving trusts. The Hague Convention allows the free choice of the proper law by the settlor and the most closely connected law may apply if the settlor makes no valid choice (the "Proper Law"). If the trust adopts the law of another trust jurisdiction, it shall be governed by the proper law of the jurisdiction chosen and shall be interpreted and be enforceable accordingly.

(b)Foreign countries who are parties to the Hague Convention are required to recognise Luxembourg fiduciary agreements. Although the Convention does not apply if the Proper Law does not recognise the concept of trust and although some differences exist between the trust and fiduciary agreements and Luxembourg regulations do not provide for the trust as such, fiduciary agreements fall within the scope of the Hague Convention.

Although Luxembourg law may recognise the existence of a trust in accordance with general principles of private international law it is possible that the forced heirship rules may negate the effect of any settlement or any transaction thereunder.

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LUX-32 Private Foundation

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Private Foundation

LUX-32 A Bill of Law (No.6595) was submitted to the Luxembourg parliament at the end of July 2013. It aims to introduce a new private wealth management vehicle named Fondation Patrimoniale (the Private Foundation). The Private Foundation will have a legal personality but will be an “orphan” structure as it will have no shareholders. It will be a fully taxable vehicle, in principle subject to the ordinary income tax, but it should benefit from a number of exemptions regarding direct tax. It is presented as an alternative to the Dutch Stichting Administratiekantoor. It remains unclear when the Bill will be passed into law.

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LUX-33 Financial investment companies (Soparfi)

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Financial investment companies (Soparfi)

LUX-33 A tax regime for the so-called Soparfi has been in place for many years and provides an exemption for dividend income and capital gains in relation to substantial shareholdings (*see* para.126 *below*).

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LUX-34 Investment funds

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Investment funds

LUX-34 Luxembourg is one of the leading centres for the formation and operation of investment funds. This is partly due to the early transposition of EC Directives 2001/108 and 2001/107 amending the Directive 85/611 of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for the collective investment of transferable securities.

The present law relating to undertakings for collective investment is contained in the Law of 20 December 2002. This law distinguishes between two types of investment fund: mutual funds and investment companies.

In addition, on 13 February 2007, the Luxembourg Parliament approved a new law (the "SIF Law") concerning specialised undertakings for collective investment (specialised investment funds) reserved for institutional investors, professional investors, and sophisticated investors. The SIF Law replaced the law of 19 July 1991 (the "1991 Law") dealing with undertakings for collective investment (UCIs) which were not intended to be marketed to the public. The SIF Law provides in particular a more flexible framework for specialised investment funds and a lighter regulatory regime than the one that applied for UCIs (*see* para.36 *below*).

Mutual funds

LUX-35 Mutual funds (fonds commun de placement) bear a strong resemblance to an English unit trust or an American mutual fund. The structure comprises the fund itself and a management company. The law also requires that there be an approved custodian in respect of the assets of the fund.

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The fund itself constitutes any investments which make up the investment portfolio at any time upon the basis that the risk inherent in the portfolio is spread among the owners of the fund. Ownership of the fund is represented by units in the fund.

A set of management regulations governs the operation of the fund and provides the terms on which the assets are managed. Therefore the fund itself is only accountable for the obligations imposed upon it by the management regulations. The management company must be incorporated in Luxembourg and have a minimum paid up capital of €125,000.

Investment companies

LUX-36 The Law of 20 December 2002 distinguishes between investment companies with a variable share capital (SICAV) and other investment funds, including closed-ended investment funds and foreign funds.

All such investment companies are distinguished from the mutual fund by virtue of their having a separate corporate identity. The term “variable capital” implies that the share capital of the company remains equal to the net asset value of the company.

Investment funds constituted in this form are themselves subject only to two types of tax.[1] Similarly distributions made by the fund to its unit-holders are not subject to any tax deducted at source and are not taxable in Luxembourg where received by non-residents.

Private Equity/Venture Capital Fund Vehicle (“SICAR”)

LUX-37 The SICAR regime was established by the Luxembourg law of 15 June 2004, which was amended in October 2008 and by the AIFM Law. It is a regulated, fiscally efficient structure designed for private equity and venture capital investments. The legislation limits the object of a SICAR to investment in venture capital and private equity investments that involve an element of risk. These are defined very broadly to include any investment either directly or indirectly in an entity in order to finance its launch, further development or listing.

Reserved Alternative Investment Fund (“RAIF”)

LUX-38 The law on reserved alternative investment funds of 23 July 2016 entered into force on 1 August 2016. It introduced a new type of Luxembourg investment vehicle which is restricted to alternative investment funds (AIFs) subject to the full AIFMD[2] requirements and that

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are managed by an authorised external alternative investment fund manager (AIFM). RAIFs are reserved for 'well-informed investors', benefit from the full AIFMD passport but are not regulated by the CSSF. This makes them attractive from a time-to market perspective. A RAIF combines features of the SICAR and SIF regime providing a new legal, fiscal and regulatory regime. Similar to the SICAR and SIF, all Luxembourg corporate, partnership and contractual legal forms are available to set up a RAIF.

From a tax perspective, the RAIF may either fall within the annual subscription tax at a rate of 0.01 per cent (or a nil rate in certain circumstances [3]) or fall within the applicable for SICARs tax regime.

Securitisation Vehicle ("SV")

LUX-39 The law of 22 March 2004 on securitisation provided a specific legal framework in Luxembourg for risk securitisation. Luxembourg law defines securitisation as the transaction by which a SV acquires or assumes, directly or through another undertaking, the risks relating to claims, other assets or obligations assumed by third parties or inherent to all or part of the activities of third parties and issues securities, whose value or yield depends on such risks. These risks may relate to all kinds of assets whether movable or immovable, tangible or intangible. The risk may also result from obligations assumed by third parties or inherent in all or part of the activities carried out by third parties. The risks may be held by the SV either by purchasing the assets, guaranteeing the liabilities or by entering into a similar type of obligation.

The Luxembourg law allows the securitisation vehicle to take the legal form of either a company or that of a fund run by a management company. The securitisation company can take the form of a public company (société anonyme), a private company (société a responsabilité limitée), a partnership limited by shares (société en commandite par actions) or a co-operative company (société coopérative sous forme de société anonyme). The securitisation fund can be organised as a joint ownership or as a fiduciary property. Both, the securitisation company and the securitisation fund can be set up as an "umbrella" structure, i.e. comprising compartments with segregated classes of assets and liabilities, which may be liquidated separately.

Luxembourg law ensures the tax neutrality of securitisation vehicles. While securitisation companies are fully taxable, payments made to investors are fully tax deductible. Securitisation funds are treated as investment funds and are exempt from tax. The investors are taxed according to the rules in force in their country of residence.

While securitisation companies can benefit from EU directives and double tax treaties, securitisation funds cannot do so.

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Specialised Investment Fund (SIF)

LUX-40 Under the SIF Law and by contrast with the older UCI, a fund promoter is not required to be approved by the regulatory authority, the fund may be marketed to a greater range of investors, and there is greater flexibility in terms of permitted investments. Accordingly, the regime can be chosen by vehicles investing in any type of assets and pursuing any type of investment strategies.[4] The SIF Law specifies that specialised investment funds are subject to the principle of risk spreading.[5] SIFs are subject to an annual subscription tax at a rate of 0.01 per cent based on the total net assets valued at the end of each calendar quarter (or a nil rate in certain circumstances[6]).

Footnotes

1. *See* para.117.
2. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.
3. Investment in (i) another fund subject to subscription tax or (ii) in a money market or (iii) microfinance fund or (iv) pension fund pooling vehicle.
4. Bill of law (6936) deposited on 18 January 2016 with the Luxembourg Parliament restricts the investment by a SIF into tangible assets which are not reserved to professional investors
5. Risk diversification requirements are defined by CSSF Circular n° 07/309
6. See fn.5.

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LUX-41 Definition and characteristics

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Forms of ownership

Definition and characteristics

LUX-41 Ownership involves, in essence, the following elements:

(a)a real right (droit réel) which is universally enforceable. This includes two main attributes, the first being an action, claim or right (droit de suite) which enables the owner to pursue and to assert his interest in all circumstances and, secondly, a preference right whereby the legal owner has priority over any holder of any debt, right or claim against the property in the event of any contest over such rights;

(b)an absolute right of use (usus) and enjoyment, including the collection of income (fructus) and an entitlement to the proceeds on a subsequent disposal of the property (abusus), provided that there is no use prohibited by law or any applicable regulations;

(c)an individual or exclusive right (except where joint ownership exists);

(d)a continuing right without any time limit together with no risk of loss by non-use. However, an owner can be deprived of this right under the doctrine of prescription. [1]

Footnotes

1 *See* para.45.

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LUX-42 Presumptions of ownership

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Part I General Law

Forms of ownership

Presumptions of ownership

LUX-42 There are three main presumptions inherent in the nature of ownership under Luxembourg law:

First, the right of use (usus), which includes all uses except those prohibited by law or cases of an abuse of the right and where exercise of the right is with the sole aim of creating a nuisance or is in conflict with any easements incumbent or attaching to the property.

Secondly, the right of use also includes the right of enjoyment and possession of the property and the right to collect all the income arising from the property (fructus). In the case of a separation of the right of use from ownership, the concepts of profit and income must be distinguished. Income constitutes regular revenue which does not involve the consumption of the essence of the property, while profits comprise irregular and non-periodic revenue and give rise to a consumption of the essence of the property when collected. There are a number of examples of an allocation of the income upon a splitting of the real right of ownership (the droit reel) and where they are themselves real property rights, for example easements, the usufructus, the antichrèse and the emphythéose.

A possessor, who does not have the right of enjoyment has no right to either the profits or the income and must reimburse them to the owner except where he has acted in good faith. Good faith in this context implies the existence of an imperfect transfer of ownership where the possessor is unaware of the defect.

Thirdly, the right of use or of disposal of the property (abusus), save where the right is *inalienable (e.g. due to a supervening third party claim). These rights can be limited by planning and zoning regulations, as can the right of destruction, especially of classified monuments and landscapes*.

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LUX-43 Joint ownership

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Part I General Law

Forms of ownership

Joint ownership

LUX-43 Joint ownership[1] under Luxembourg law is the form of ownership where the legal right to ownership of the property is divided between several parties. Joint ownership can be voluntary or inherent depending on the nature of the property concerned and the nature of any applicable contractual arrangement or exclusive rights.

Joint owners have full rights to deal with the property and to use it in certain circumstances with the approval of the other joint owners. Joint ownership does not constitute a divided ownership but a sole right with a distinct nature. By unanimous agreement, the joint owners can exercise full ownership rights over the property.

Where shares are jointly owned, any agreement between the joint owners as to dealings with the shares will not be recognised by the company unless the articles of association specifically contain provisions relating to joint ownership.

Joint ownership of buildings may be either subject to the specific law of co-propriété immobilière, or the relationship may simply be governed by general principles of property law. Joint owners of buildings may form either a trusteeship, or appoint a legal representative of the joint ownership, who will have a recognised legal status. A trustee is appointed by a general meeting of joint owners for a period not exceeding three years. He represents the association of joint owners for all purposes and may do so before the courts. He executes the resolutions of the general meeting of joint owners.

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Footnotes

1 The Law of 16 May 1975 and the Law of 19 March 1988, as amended.

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LUX-44 Forms of acquisition of ownership

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Part I General Law

Forms of ownership

Forms of acquisition of ownership

LUX-44 Ownership can be obtained or transferred in the following ways [1] :

(a)succession under the law of inheritance (*see* para.56 *below*);

(b)disposal inter vivos or under the terms of a will [2] ;

(c)contractual obligation;

(d)accession or incorporation;

(e)*prescription*;

(f)*possession of movable assets*.

Acquisition as a result of contractual obligation

LUX-45 Transfer of ownership as a result of contractual obligations may take effect in a number of ways, e.g. where the consideration for the transfer of ownership is not entirely in cash but either consideration in kind, exchange (with the balance in cash) or by virtue of a court ruling. [3]

Transfer

LUX-46 The property is acquired by the purchaser by right as soon as a binding agreement exists. This is independent of both the form of transfer and physical possession of the property (provided

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the property is in existence at the time of sale, is definite or determinable, belongs to the seller except where an immediate transfer of the ownership is not required) and irrespective of whether the property has been delivered or the price paid (provided the price is fixed, definite or determinable by objective elements, and genuine although not necessarily being equivalent to the value of the asset sold). Transfer can, however, be delayed in certain circumstances depending upon the nature of the property or by agreement between the parties.

The parties have to agree on all terms of the agreement. A written agreement may be required under law or by custom where, for example, the value of the property concerned exceeds a certain value; due to the nature of the property (such as real estate which by virtue of its "public" nature implies the existence of a legal deed); or where the legal capacity of the parties involved requires it.

Cancellation

LUX-47 The sale can be cancelled if the consent of either party is defective. The sale becomes voidable in the event of duress, fraud, wilful misrepresentation or deliberate error or mistake.

Types of sales

LUX-48 Sale of property or goods can be subject to the completion of certain conditions (as agreed) by one or both parties to the transaction. Conditional sales are either contingent sales or approval on sale or return or where the sale is subject to contingent terms or takes the form of a promissory sale (one-sided creating no agreement; two-sided being authentic sales; call options implying no transfer of ownership; and where the transfer is only realised upon the exercise of the option and preference pacts), promissory purchase acts, sales with payment of deposit and sale by instalment, réméré, sales with *command* declaration, credit sales, hire purchases.

Obligations

LUX-49 A binding sale agreement creates a number of obligations which the seller owes to the purchaser and which include, under the Civil Code, due delivery of the property or being put at the disposal of the purchaser, and providing:

1. an eviction guarantee [4] which cannot be excluded;
2. a "hidden defects guarantee concerning the material defects, prior to the sale, and which are not known and not accepted by the purchaser";

The principal obligation of the purchaser is to pay the agreed price, [5] to take delivery of the property and generally to bear the costs of the sale. [6]

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Acquisition by accession or incorporation

Accession of immovable property [7]

LUX-50 This relates to the permanent addition of an attachment or a necessary immovable in nature which thereby becomes an integral part of the property as a result of human action or intervention. An example is buildings or plant constructed or assembled on land.

The general rule is that fixtures follow the principal property, therefore the owner of the land becomes owner of the buildings and fixtures on that land.

Where any addition to the property does not constitute a fixture, the purchaser is required to pay to the seller a form of indemnity based on the total cost of the materials at the date of their use, and damages if there are any faults or damage to the property.

If the buildings and other fixtures are attached to land owned by a third party, the owner of the land can either:

(a)Agree to maintain the fixtures subject to reimbursement of the cost of construction or acquisition including material costs.

(b)Require their removal and, in the event of any consequential damage caused by the removal, in the absence of good faith obtain damages. In this case damages will consist of the cost of materials together with the manpower costs. Alternatively, the gain in value of the land should be reimbursed.

(c)Agree to the adhesion creating a property right. In relation to improvements to the property which are permanently affixed the following rules apply:

(i)necessary expenses incurred in the provision of such improvements should be reimbursed;

(ii)useful expenses should be reimbursed up to an amount equal to the gain in value of the property resulting from the improvement or the amount expended by the party making the improvement; and

(iii)no entitlement arises in respect of additional expenses incurred for modifications of a luxury nature.

Movable additions to property [8]

LUX-51 The rights attaching to additions to property which are not affixed to the property are subject to the general equitable principle that accessories follow the principal (property).

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Prescription

LUX-52 Generally, the right of ownership is not prejudiced by non-use. However, it is possible for a party in possession of the property to acquire ownership by prescription.

Ownership by prescription arises where property is acquired by virtue of actual possession over a significant period of time. This may be irrespective of the existence of title deeds to the property held by a third party. By operation of law, a party in possession of real estate will effectively become owner after a period of 30 years, even without title deeds. [9, 10]

A person who acquires real estate in good faith and through a deed of title will obtain ownership to that property following the expiration of 10 years where the actual owner resides in the jurisdiction of the Court of Appeal in which the real estate is located, or after 20 years if he is domiciled outside the jurisdiction. [11]

Ownership in these circumstances is acquired with effect from the first day of the prescription period.

Possession of movable property

LUX-53 The law states that, in respect of movable property, “possession is equivalent to a title deed” [12] and as a consequence creates a means of immediate acquisition of ownership in which a presumption is created in favour of the possessor. This principle applies only to corporal movable property transferable by physical delivery. In order to perfect title to the property, the possession thereof must satisfy the following conditions:

(a)the possessor must be a true possessor;

(b)the possession must be valid and in good faith (i.e. with an absolute, if erroneous, belief on the part of the possessor that the seller was the rightful owner of the property).

By obtaining immediate acquisition in this context, any claim by the actual owner is prohibited except in circumstances of lost or stolen property. For example:

(a)in relation to a thief or possessor in bad faith, for a period of 30 years;

(b)in relation to a possessor in good faith, for a period of three years with the possibility of the owner obtaining a reimbursement if the goods have in the meantime been purchased.

A presumption exists in favour of the possessor in the case of property purchased from the true owner without the protection of a title deed.

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In the event of successive transfers of the property, the person who receives actual possession of the property must take precedence even if his title is subsequent provided that he has acted in good faith.

Footnotes

1 The Law of 16 May 1975 and the Law of 19 March 1988, as amended.
2 Articles 711 and 712 of the Civil Code.
3 *See* para.60.
4 Arts 1626–1640 of the Civil Code.
5 Art.1650 of the Civil Code.
6 Art.1593 of the Civil Code.
7 Art.1552 of the Civil Code.
8 Art.565 of the Civil Code.
9 Art.565 of the Civil Code.
10 Art.2219 and following of the Civil Code.
11 Art.2265 of the Civil Code.
12 Art.2279 of the Civil Code.

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LUX-54 Definition

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Part I General Law

Lifetime gifts

Civil law

Definition

LUX-54 The subject of gifts made between living persons ("lifetime gifts") is regulated by art.893 and following of the Luxembourg Civil Code. According to art.894 Civ.c., lifetime gifts are defined as "*an act by which the donor deprives himself, actually and irrevocably, of the item given to the receiver who accepts it*". Both movable and immovable assets can be the object of a gift.

The general interpretation of art.894 Civ.c. which refers to the essential characteristics of the lifetime gift is, however, slightly different. The validity of the gift depends on both the donor and the receiver being alive and of sound mind. Hence, it excludes those persons who are legally "incapable". Article 906 Civ.c. states that "*to be capable to receive a lifetime gift means that it is sufficient for the person to have been conceived at the moment the gift is made*". The gift will only have full effect if the person, the receiver, is expected to live (né viable). Article 906 Civ.c. tends, therefore, slightly to modify the conditions of the acceptance of the gift by the receiver. In the same manner, when one defines the gift as an act by which the donor deprives himself, actually and irrevocably, of the item given to the receiver who accepts it, this does not in any way prevent the fact of giving a gift being subject to certain preceding or contingent conditions, provided that they are not impossible or contrary to the law or to good order as laid down in art.900 Civ.c.

The same applies to the *don manuel* (literally "manual gift"), which essentially means an item which the owner can hand over or transfer by delivery and possession of which remains valid according to the law.

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The overriding characteristic of a lifetime gift is that it must give rise to an impoverishment. It is necessary, according to the law, that the donor deprives himself of the item given.

As per art.931 Civ.c., any deed of donation must be passed in front of a notary (in Luxembourg or abroad). A private deed of donation is of not force. As an exception to this rule, no notarial deed is required in the case of a *don manuel* or an indirect donation.

Except in some specific circumstances set out by law, gifts are irrevocable.

Tax legislation

Registration duty (gift tax) —droit d'enregistrement

LUX-55

In practical terms, registration and the associated duty affects registrable items, which are instruments in writing presented to the authorities. It is compulsory to submit to the registration authorities the following:

(a)a public (notarial) deed effecting a gift;

(b)a deed effecting a gift of real estate.

If a gift involves an item which the owner can hand over by delivery and possession and which is not mentioned in a written instrument to be presented to the authorities, then the act itself does not need to be registered (but could be voluntary registered). The consequence of registration is that the deed will become, at the time of registration, enforceable against any third party.

As explained above, gifts are in principle made by notarial deed. If the deed is passed in front a Luxembourg notary, it will need to be registered with the registration authorities and thus will be subject to a registration or gift tax (i.e. droit d'enregistrement [1]). The tax becomes applicable as soon as a gift is made, even if the gift itself is, from a civil point of view, null and void. Moreover, a gift, which parties may have wanted to disguise as something else, may be "requalified" as a gift by the authorities and can become subject to tax. [2] Tax has to be paid whether the gift is in the form of real estate or movable property.

Gifts in respect of foreign immovable property are always exempt from Luxembourg gift tax even if they are recorded by notarial deed.

In principle, the *don manuel* or gifts made in the presence of a foreign notary are also not subject to gift tax.

LUX-56

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The rate of registration tax due varies between a minimum rate of 1.8 per cent and a rate of 14.4 per cent, depending on the family relationship between the donor and the donee.

It should be noted that a gift made to a corporation will, in principle, be taxable at a rate of 14.4 per cent which applies generally to gifts between nonrelatives. However, derogations have been decreed, notably by the law of 29 December 1971, concerning gifts to certain Luxembourg associations such as the Luxembourg Red Cross and the Church.

Finally, a further tax (transcription) will *in principle* be levied on real estate gifts at a rate of 1 per cent in addition to the registration tax already mentioned.

Gifts between spouses

LUX-57 Gifts made between a husband and wife are normally taxed at a rate of 4.8 per cent, however, they can benefit from a reduction by half of the tax applicable, if the gift is made by means of a marriage contract.

Succession law

LUX-58 Even though succession law is covered at paras 56 *and following below*, there are certain gifts that are relevant to succession law. Gifts made by the deceased in the year preceding his death are considered as part of his succession, if the gifts have not been subjected to registration fees established for gifts. This is an example of why it can be advisable that a gift be registered even if it is not required by law.

Net worth tax

LUX-59 Luxembourg law has a net worth tax. However, since 1 January 2006, only legal entities are subject to this tax. The donor and the receiver are obliged to account for these changes in fortune by means of tax declarations to this effect.

Conclusion

LUX-60 In principle, gifts are subject to registration tax at a variable rate depending on the circumstances. The major exception is the transfer of items by delivery and possession. While gifts may have some effect as far as net worth tax is concerned, there is no immediate effect as far as income tax is concerned.

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Footnotes

1 *See* para.109.
2 Vol.5 Pt 2 Ch.VIII of the Fiscal Code.

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LUX-61 Succession

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Part I General Law

Estates of deceased individuals

Succession

LUX-61 The process and attendant rights of succession commence upon the death of an individual. [1]

Written notice of due succession must be given to the appropriate office dealing with the administration of estates for the region in the Grand Duchy in which the deceased was domiciled at the time of his death. [2]

With regard to principles of private international law, the applicable law in relation to the devolution of movable property will be determined according to the last domicile of the deceased. The judicial authorities with jurisdiction over the administration of the deceased's estate will also depend on the civil domicile of the deceased. [3]

Luxembourg law will apply to the devolution of immovable property situated in Luxembourg.

Formalities prior to succession

LUX-62 Under the Civil Code, the heirs may request the court for the estate to seal off any property [4] subject to succession rights and may ask for an inventory of the deceased's property to be compiled. [5]

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Legal requirements for due succession

LUX-63 For a beneficiary to succeed, it is necessary for that person to be alive at the commencement of the succession. It is not possible for an individual who at this date has either not been conceived, who is subsequently born dead or is incapable of sustaining life to succeed under the law. [6]

Where persons die in circumstances in which it is not possible to determine who died first and one is due to succeed the other under the applicable law, they are deemed to have died at the same time. [7]

Certain persons are excluded from succession. These include:

(a)a person who is convicted of the murder or attempted murder of the deceased;

(b)a person who has made a slanderous accusation against the deceased;

(c)any heir, provided he has reached the age of majority, who has knowledge of the murder of the deceased and has not disclosed it to the authorities. [8]

Acceptance of the right to succeed

LUX-64 A beneficiary is not under an obligation to accept a part of the deceased's estate.

A beneficiary who accepts an asset under the succession may accept the asset either exactly as it exists at the date of commencement or without liability for debts attaching to the asset prior to it being devolved upon him. [9]

In the latter case, the beneficiary in question must declare that he takes the asset free of prior liability before the clerk of the court of first instance in the district in which the administration of the estate is being conducted.

Heirs have a period of three months from the date of commencement of the succession to compile an inventory. An heir has a further period of 40 days at the end of the three months or from the date on which the inventory is completed to confirm his acceptance or renunciation of the inheritance. [10]

The consequences of this procedure include the following:

(a)the heir is normally liable for the debts of the estate up to the value of the assets received by him. However, he will not be so liable in the event that the whole estate is transferred to legatees or creditors;

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(b)the personal assets of the heir remain separate from that of the estate during the course of the administration and he retains the right to claim for the payment of his debts. [11]

The heir administers the estate and is obliged to give an account of the administration to both legatees and creditors. [12]

Although there is no presumption of renunciation by the heir, he is entitled to renounce his interest in the estate. [13] He must declare such renunciation before the clerk of the court of first instance in the district in which the administration of the estate is being conducted.

Once the heir has renounced his interest, he is treated as never having been heir at all. The proportion of the estate to which he was entitled is then divided between his co-heirs. If there are no co-heirs then the proportion of the estate attributable to the renouncing heir devolves on those persons entitled in succession after the heir and his co-heirs.

However, where an heir who renounces is the only person entitled to succeed, or all coheirs of equal status under the succession also renounce, then the children of the heir or heirs who have renounced will become entitled to the inheritance.

Foreigners

LUX-65 Foreign beneficiaries are entitled to succeed, receive and dispose of estate assets in the same manner as Luxembourg nationals. [14]

In the case of foreigners sharing in the same succession as Luxembourg nationals, they will take from the estate located in the Grand Duchy of Luxembourg a portion equal to the value of the estate located in a foreign country from which they may be excluded in accordance with law and local customs of that country. [15]

Voluntary devolution of succession rights

LUX-66 It is prohibited by law (including under a marriage settlement) to either exclude the rights of succession or to alienate any future rights of succession to which a person may subsequently become entitled. [16]

However, as an exception to this, both the constitutional documents of a company and the terms of a partnership agreement may stipulate that, upon the death of a shareholder or partner, the company or partnership will continue with the heirs or with the remaining partners.

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Footnotes

1 Art.718 of the Civil Code.
2 Art.110 of the Civil Code and art.4 Law of 27/12/1817.
3 Arts 770, 784, 793 and 822 of the Civil Code.
4 Art.907 of the Civil Procedure Law.
5 Art.941 of the Civil Procedure Law.
6 Art.725 of the Civil Code but see also arts 1082, 1048 and 1049 of the Civil Code.
7 Arts 720–722 of the Civil Code. Luxembourg has also ratified the Benelux Agreement on Commorientes dated 29 December 1972.
8 Art.727 of the Civil Code.
9 Arts 744 and 793–810 of the Civil Code.
10 Art.795 of the Civil Code.
11 Art.802 of the Civil Code.
12 Art.803 of the Civil Code.
13 Arts 874–792 of the Civil Code.
14 Art.1 Law of 29 February 1872.
15 Art.2 Law of 29 February 1872.
16 Art.795 of the Civil Code.

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LUX-67 Disposition by will

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Part I General Law

Estates of deceased individuals

Disposition by will

LUX-67 An individual may dispose of his estate by will through the appointment of either an heir, or a legatee or by any other such denomination as reflects his intent. [1]

A will is a deed by which a testator disposes of his estate subsequent to his death. It is unilateral in nature due to the disposal of property being upon the death of the testator. [2] A will may be revoked by the testator himself.

A will may take a number of different forms:

(a)a written will which is signed and dated under the hand of the testator;

(b)a will dictated by the testator to a notary in the presence of two witnesses;

(c)a secret testament.

There are also several forms of legacies [3] :

(a)a universal legacy by which the testator leaves to certain named persons the whole of his estate;

(b)a legacy whereby the testator leaves a portion of his estate. The portion may comprise, for example, all his real property or all his movable property, or a portion of each;

(c)specific legacies which are any legacies not coming within (b) above.

Any legacy must be to a person with capacity who can be identified with sufficient certainty.

For a will to be valid, the testator must have been of sound mind when he made it. [4]

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All individuals, unless excluded by law, may dispose of their property or receive property under a will. Persons disqualified to dispose of property by will are those who are under a legal or judicial disability. However certain exceptions apply in respect of minors. [5]

The following persons are not capable of benefiting under a will:

(a)persons not living at the date of distribution;

(b)persons not yet conceived at the date of death of the testator; [6]

(c)doctors and priests who administered to the needs of the deceased during any illness from which he may have suffered within the limits of the law [7] and which subsequently resulted in death.

Certain bequests made in favour of the state or certain legal entities will be authorised provided they are authorised by a Grand-Ducal Decree. However, such authorisation is not required in respect of bequests of movable property not exceeding €12,394.68 in value. [8]

Any disposition in favour of a person without capacity is treated as null and void where made in the name of a third party. [9]

The onus of proof as to whether a legacy is null and void lies on the party alleging it. That party must bring evidence as to the nature of the incapacity. [10]

The subject of the legacy must be lawful, exist and be identified with certainty and must belong to the testator. In the event that a will contains impossible provisions which are illegal or contrary to public interest, then the will is construed as if they had never been included. [11]

Any bequest made with the intention that the legal heir or legatee retain property and then transfer it to a third party will be treated as null and void.

A Fideicommissaire substitution, whereby a bequest is made to a successive number of persons, is prohibited. A bequest will, however, be valid where a third party receives the property due to the legal heir of legatee being unable to do so. [12]

Reserved rights of inheritance

Definition

LUX-68

The law reserves a part of the estate [13] for certain specific heirs. These rights of succession will override any contrary provisions in a will.

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Characteristics

LUX-69 The law on reserved rights of succession essentially protects legal heirs against gifts but not against sales for valuable consideration.[14] The legal heirs have a legal entitlement to a reserved portion of the estate of the deceased.[15]

Descendants

LUX-70 Gifts either inter vivos or by will may not exceed the following freely disposable portion of the estate of the donator/deceased:

(a)one-half of the estate when the deceased is survived by one child;

(b)one-third of the estate when the deceased is survived by two children;

(c)one-quarter of the estate if he is survived by three or more children.

If there are no direct descendants, gifts made by the deceased may comprise the whole of the estate.

Ascendants of the deceased are not entitled to any reserved rights of succession.

Reduction

LUX-71 Any bequests which will exceed the portion of estate which the testator is free to bequeath at his discretion will be reduced to such portion when the will is going through probate.

The persons being entitled to obtain the reduction are those in favour of whom the reserve rights apply.

Calculation of the reserved rights[16]

LUX-72 The whole estate existing at the time of the death of the deceased is taken into account. The debts of the estate are then deducted. Assets which have been given by gift inter vivos are then added to the estate taking account of their condition at the date of the gift and their value as at the date of commencement of probate. In a case where any property has been disposed of, its value at the time of the disposal is also taken into account. If there was a replacement of the gifted property, the value of the new asset at the time of the commencement of probate is taken into account.

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The portion of his estate, which the deceased may freely dispose of at his discretion, can then be determined (see para.65).

If reductions are to be made, any gifts are deducted after the legacies due to the irrevocable nature of the gifts. The legacies are deducted in aggregate and if the total remaining value is over the "available proportion", the legacies will be re-instated proportionately. If gifts are to be deducted, the most recent gifts will be reduced first followed by the earlier gifts.[17]

Revocation of a will

LUX-73 The revocation of a will[18] can only be done through another will but may be express or implied. Revocation may be implied in the event of the provisions of a later will being incompatible with the provisions of the older will or in the event of the disposal of the property which has been bequeathed under the will.

Judicial revocation may be requested by the legal heirs of the deceased either for non-payment of liabilities[19] or for ingratitude[20] or for a serious abuse of the memory of the deceased.[21]

A bequest under a will is null and void if the legatee in question dies before the deceased or when the property which is bequeathed no longer exists or when the legal heir or the legatee renounces it or is incapable of receiving it.[22]

The legal devolution of the succession (ab intestate)

Persons who may inherit

LUX-74 These are as follows:

(a)The legal heirs[23]: descendants; surviving spouse; ascendants; remote descendants;

(b)The successor who is not a heir must request the judicial envoi en possession or the delivery of their portion to the succession.

Rules which govern the legal devolution

LUX-75 The rules are set out as follows:

(a)The degree: the various levels of parenthood are divided by degrees, i.e. by reference to the series of generations[24];

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(b)The lineage [25] : there are two types of lineage:

(i)the direct lineage of the descendants and all ascendants;

(ii)the remoter maternal and paternal lineage;

(c)The rule of degree proximity: it is presumed that the deceased preferred his nearest relatives but there are several exceptions:

(i)the rule of fente by which the estate is divided in parts, each part being attributed to the nearest heir in degree of his line (patrimonial or matrimonial). The rule of the fente is applicable to succession to the ascendants, to succession to the ordinary collaterals, to succession to the ascendants and collaterals, and to succession to the preferential collaterals in the event of them coming from the same root;

(ii)the rule by which the legal heirs are placed in order of descent, ascent and preferential remote descendants, ordinary ascent and ordinary remote descendants, and the heirs of any order exclude the heirs of the following order even if they are nearer in degree;

(iii)the rule of representation which is a fiction of the law by which the heir(s) of a person who would have inherited from the deceased if still alive upon the death of the deceased, take(s) the place, the degree and the rights of such person.

The persons who succeed

LUX-76 The persons who succeed to the deceased's estate are:

(a)The legitimate descendants, heirs of the first order:

(i)the descendants come before all other successors except the surviving spouse and adopted children;

(ii)when they do not belong to the same degree, the nearest descendants take priority;

(iii)when they belong to the same degree, each of them receives a proportion of equal value.

(b)The preferential ascendants who are the father and the mother of the deceased, and the preferential more remote relatives who are the brothers and sisters and their descendants. [26]

(c)The succession is devolved to the mother and the father in the event of the deceased having neither surviving children, spouse, brother, sister or descendants or any of them. In the event of there being neither father nor mother the succession is divided in two between the ascendants of the maternal line and the ascendants of the paternal line. [27]

(d)When there are ordinary ascendants in both lines, the rule of the fente is applicable. [28]

(e)The surviving spouse.

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(f)The adopted heirs. [29]

(g)Relatives out of marriage. Under Luxembourg law the rights of succession law of a natural child and a legitimate child are the same as the law makes no distinction based on illegitimacy at birth. [30]

(h)If there are no legitimate heirs as described above, then the estate goes to the state. [31]

Procedure relating to the administration of estates

LUX-77 The legal heir or, when there is no legal heir, the administrator who is appointed by the district court is put in charge of the administration of the estate and must give an account of his administration to creditors and legatees. [32]

Footnotes

1 Arts 967 and 1002 of the Civil Code.
2 Art.968 of the Civil Code.
3 Arts 1003–1009; 1010–1013; 1014–1024 of the Civil Code.
4 Art.901 of the Civil Code.
5 Arts 903, 904, 907 and 1095 of the Civil Code.
6 Art.906 of the Civil Code.
7 Art.909 of the Civil Code.
8 Art.910 of the Civil Code.
9 Art.911 of the Civil Code.
10 Arts 902, 913 and 916 of the Civil Code govern the law between co-heirs.
11 Article 900 of the Civil Code.
12 Article 898 of the Civil Code.
13 Article 913 of the Civil Code.
14 But see art.913 of the Civil Code.
15 Article 924 and following of the Civil Code.
16 Article 922 of the Civil Code.
17 Article 923 of the Civil Code.
18 Articles 1035–1047 of the Civil Code.
19 Articles 954 and 1046 of the Civil Code.
20 Articles 955 and 1046 of the Civil Code.
21 Article 1047 of the Civil Code.
22 Articles 1039–1047 of the Civil Code.
23 Articles 731–738 of the Civil Code.

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24 Article 735 of the Civil Code.
25 Article 736 of the Civil Code.
26 Arts 746, 753, 742, 733 and 752 of the Civil Code.
27 Arts 746 and 749 of the Civil Code.
28 Art.733 of the Civil Code.
29 Law of 13 July 1959.
30 Art.1527 of the Civil Code and see decision of the Court of Appeal of 29 October 1990.
31 Art.768 of the Civil Code.
32 Arts 803–808, 813 and 914 of the Civil Code.

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LUX-78 Death duties

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Death duties

LUX-78 *See* para.115 *below*.

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LUX-79 Law applicable to the matrimonial property regime

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Property belonging to spouses

Law applicable to the matrimonial property regime

LUX-79 The law applicable to the matrimonial property regime is determined in accordance with the rules set out in the Hague Matrimonial Property Convention of 14 March 1978 (the "Hague Convention").

The Hague Convention came into force on 1 September 1992 after its ratification by the Netherlands. Only Luxembourg and France had ratified it earlier.

Luxembourg, which applied prior to 17 March 1984 the same rules as France in order to decide which law determines the matrimonial property regime, chose on 17 March 1984 to take the first 15 articles of the Hague Convention as internal law rules even though the Hague Convention had not yet come into force.

In the main, the Hague Convention does not deal with substantive law, and contains only rules of conflict of laws. However, with regard to the form of designation of the applicable law and also the form of the marriage contract, arts 12 and 13 provide for a subsidiary rule of substantive private international law by imposing the formality of a written contract, dated and signed by both spouses.

The conflict of law rules contained in the Hague Convention, govern all cases arising in the contracting states. In relation to matrimonial property regimes, the rules of the Convention

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replace the particular conflict rules of the contracting states. The only cases where the Convention rules will not apply will be those covered by another international instrument.

The Hague Convention limits the choice of the spouses, which must be made before marriage, to the following laws:

(a)the law of any state of which either spouse is a national at the time of the designation;

(b)the law of the state in which either spouse has his or her habitual residence at the time of designation;

(c)the law of the first state where one of the spouses establishes a new habitual residence after marriage.

Furthermore, with respect to present and future immovable property, it is possible to choose the lex rei sitae.

If the spouses did not designate the applicable law before marriage, their matrimonial property regime is governed by the internal law of the state in which both spouses establish their first habitual residence after marriage. Nonetheless, in specific cases, the matrimonial property regime is governed by the internal law of the state of the common nationality of the spouses.

If the spouses do not have their habitual residence in the same state, and do not have a common nationality, their matrimonial property regime is governed by the internal law of the state with which, taking all circumstances into account, they are most closely connected.

During their marriage, the spouses may subject their matrimonial property regime to an internal law other than that previously applicable. The spouses may designate only one of the following laws:

(a)the law of any state of which either spouse is a national at the time of designation;

(b)the law of the state in which either spouse has his habitual residence at the time of designation.

Nonetheless, the spouses may agree, with respect to all or some of the present and future immovable property, that they shall be governed by the lex rei sitae.

The law applicable under the Hague Convention continues to apply as long as the spouses have not designated a different applicable law and notwithstanding any change of their nationality or habitual residence.

However, the applicable law will change automatically if the spouses have neither designated the applicable law nor concluded a marriage contract. In such a case, the internal law of the state in which they both have their habitual residence shall be applicable in place of the law previously applicable in specific cases.

The automatic change of applicable law shall have effect only for the future, and property belonging to the spouses before the change is not subject to the new applicable law. Nonetheless, the spouses may at any time opt to subject the whole of their property to the new law.

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It is important to emphasise that not all questions concerning property relationships between spouses come within the scope of the law applicable to the matrimonial property regime. This is so, in particular, with what may be called the “basic regime” or “primary regime” (régime primaire). Laws relating to the contributions of the spouses to housekeeping, the matrimonial home, powers to act as agent on which the public relies, etc., have in Luxembourg a public policy character. It appears that these laws will apply regardless of which they may have chosen for their matrimonial property regime.

Luxembourg succession law

LUX-80 Should Luxembourg succession law apply, then a distinction would have to be made depending on whether the deceased has made a last will or not.

(a) Devolution ab intestat [1] :

(i)the deceased has no children or other descendants: the surviving spouse is entitled to the ownership of the whole of the succession estate;

(ii)the deceased has children or other descendants: the surviving spouse may exercise, before the final settlement of the succession and in any case within three months and 40 days of the day of the opening of the succession, the option provided by the Luxembourg Civil Code, [2] and choose either:

—the ownership of a liquidated portion received by a legitimate child, such a portion being not less than a quarter of the succession;

—or the usufruct right to the residence inhabited by both of the spouses and to the movables furniture subject to the requirement that the residence must have been in the ownership of the deceased in total or jointly with the surviving spouse.

(b) Testate succession:

under Luxembourg law the surviving spouse is not a protected heir entitled to a compulsory portion of the succession and may therefore be entirely disinherited by the deceased spouse. In addition, a spouse may bequeath by will, in favour of the surviving spouse, a portion not exceeding the available portion.

Footnotes

1 Arts 767 to 767–4 of the Civil Code.

2 Art.767–1 of the Civil Code.

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LUX-81 Forced heirship

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Forced heirship

LUX-81 In every case where Luxembourg law is applicable, i.e. where the last domicile of the de cujus or the immovable property involved is located in Luxembourg, any attempt to avoid complying with forced heirship rules (by way of will, fiduciary arrangement, trust, foundation, etc.) will be contrary to Luxembourg public order (ordre public) and will not have effect as far as Luxembourg law is concerned.

It is possible to put land into a company to avoid falling under the forced heirship rules where the immovable property is located in Luxembourg and the last domicile of the deceased was not in Luxembourg. However, there is a risk that a Luxembourg court might ignore such an arrangement where property owned privately during the lifetime of a person is put into a company just before the death of that person, following a diagnosed illness.

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LUX-82 Immovable property

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Immovable property

LUX-82 Luxembourg succession law will be applicable to the devolution of immovable property situated in Luxembourg, irrespective of any other criteria, including the existence of a will.

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LUX-83 Movable property

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LUX-83 The devolution of movable property located in Luxembourg and abroad will be subject to Luxembourg succession law if the deceased's domicile is located in Luxembourg at the time of his death.

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LUX-101 Introduction

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Part II Taxation

Taxes

Original text by: Jean Brucher [1]

Updated by: Andrew Knight and Evi Koutsioumpa [2]

Introduction

LUX-101 The system of taxation in Luxembourg bears similarities to the German system and references to precedents relating to that system may offer additional guidance in application and interpretation.

The general law of taxation is contained in the Fiscal Code of 22 May 1931 and the Law of 16 October 1934. There are also subsequent amending laws of specific application which usually coincides with the fixing of the annual national budget.

The income taxation of individuals is predominantly dealt with in the Law of 4 December 1967. Luxembourg law distinguishes between resident and nonresident taxpayers.

An individual is resident for tax purposes if he is domiciled in Luxembourg or has his usual place of residence in Luxembourg. An individual is deemed domiciled in Luxembourg in the event that he maintains a permanently established residence. An individual is deemed to be normally resident if he has lived in Luxembourg for a continuous period of at least six months, regardless of whether this period falls within any one tax year or not.

An important aspect to consider is that the tax system is unitary insofar as the normal principle applied is that all sources of income attributable to an individual are aggregated and assessment made on that total taxable income. In principle, this income is taxable at a progressive and global rate.

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Resident individuals are taxed on their worldwide income. This may be subject to the availability of a foreign tax credit on foreign income received which is not exempted by double tax treaties. [3] Non-resident individuals are taxed on certain income arising in Luxembourg including income from employment, pensions and annuities, and from capital assets. Dividends are generally subject to withholding tax and are therefore not included in the tax base for assessment purposes.

Income from all sources is taken into consideration in the calculation of total taxable income including income received from employment.

With regard to rental income, taxable income will include income received from both movable and immovable property and also from intangible assets including royalties and similar payments.

Directors' fees for non-managerial duties and income received for artistic, scientific and other activities of a professional nature are also taxable.

A withholding tax of 20 per cent on gross compensation in the form of director's fees is levied in circumstances where remuneration is paid to directors for activities other than day-to-day management. The tax will apply to supervisory activities and to members of any board of directors. As per Circular 781 published by the Luxembourg VAT authorities on 16 September 2016, the director's fees fall within the scope of VAT. It means that when the place of supply of services rendered by the directors is Luxembourg, director's fees are subject to the standard VAT rate of 17 per cent. The Circular is applicable as from 1 January 2017.

Following the issuance of Circular L.G. – A n°63 by the ACD on 15 September 2017 relating to accounting requirements in relation to tax purposes, as from 1 January 2018, Luxembourg self-employed persons, including professional directors, are required to use a double-entry bookkeeping system when the revenues from their activities exceed EUR 100,000 per annum.

Income received from the activities of any business or trade is subject to municipal business tax. All profits earned by an individual from participation in a business or trade, including participation as a partner are taxable on this basis.

It should be noted that, for purposes of computing total taxable income, capital gains arising in the year of assessment are included. [4]

Information on tax authorities can be found at http://www.impotsdirects.public.lu.

Taxable income exemptions

LUX-102 There are a number of taxable income exemptions which include:

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(a)investment income which is exempt up to a current limit of €3,000 for joint assessment; for individuals the exemption is limited to €1,500 per annum;

(b)foreign income where not taxable under the provisions of a double tax treaty.

An allowance of up to €1,500 (€3,000 in cases of joint assessment) for investment in shares in eligible resident companies is granted to resident taxpayers. A tax clawback may arise for taxpayers not fulfilling the legal requirements, i.e. the four years' holding period obligation.

Dividends granted by a Luxembourg resident company are subject to a withholding tax of 15 per cent of the gross amount at the moment of payment. Half of the dividends received are exempt from tax if the dividends are distributed by a fully taxable Luxembourg resident company or a company resident in a state with which Luxembourg has a tax treaty and that is subject to comparable corporate taxation or a company resident in an EU Member State and covered by the EU Parent-Subsidiary Directive.

When computing total taxable income, losses incurred in any category of income on which tax is chargeable may be set off against net income in any other category. However, this does not apply in respect of losses in the following instances:

(a)speculation and capital gains;

(b)foreign income where a tax credit may be obtained;

(c)certain farming and forestry losses.

The calculation of tax for individuals due is initially based on a graduated classification table which takes into account the different circumstances of taxpayers. Taxpayers are classified into three groups, as follows.

Class 1

LUX-103

All single persons with no children or separated for more than three years with no children. [5]

Class 1a

LUX-104

Single, divorced, separated or widowed persons (for more than three years with or without dependent children) aged 65 or over. Single persons up to and including age 64 with dependent children. [6] Persons divorced or separated for more than three years with dependent children. Persons widowed for more than three years up to and including the age 64 with or without dependent children.

Class 2

LUX-105

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Married persons with or without dependent children. Persons divorced, separated or widowed for less than three years with or without dependent children.

Tax is calculated in accordance with a progressive table, ranging from 8 per cent on taxable income in excess of €11,265 to 40 per cent on income in excess of €100,000 for 2016. A solidarity tax of 7 per cent of taxes (9 per cent for taxpayers earning more than €150,000 in tax class 1 and 1a or more than €300,000 in tax class 2) must also be paid.

The 2017 tax reform amended the existing tax rates *with* a tax liability being incurred after the first €11,265 and up to two marginal tax brackets of 41 per cent for taxable income exceeding €150,000 and of 42 per cent for taxable income exceeding €200,004.

As from 2018, married taxpayers can opt to be taxed separately.

Also as from 2018, non-resident tax payers can request to be assimilated to resident taxpayers under certain conditions.

Capital gains

LUX-106 As mentioned earlier, capital gains are subject to income tax, but any loss cannot be offset against income from another category.

With regard to individual taxation, capital gains made by resident individuals are taxed as follows:

(a)A gain of a speculative nature is deemed to arise when a sale takes place within two years of acquisition for real estate and six months for other goods. This is not applicable for the sale of the main residence of the taxpayer. Speculative gains are fully taxable and there is no allowance available.

(b)The following gains are taxed at half the global rate with an allowance of €50,000 (€100,000 in cases of joint assessment):

—gains made on the sale of real estate owned for more than two years and not being the main residence of the taxpayer—these gains may be rolled over into the purchase of a replacement building;

—gains made on the sale of a substantial interest in a Luxembourg or foreign company—substantial interest means where an individual, either alone or together with his immediate family, owns, or in the past five years has owned, 10 or 25 per cent (depending on the circumstances described hereafter) of the shares of that company;

—gains made at the sharing of the assets of a company in which the taxpayer owned a substantial interest.

For taxation purposes, the participation held will be a substantial interest if:

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—it exceeds 10 per cent of the capital of the company, subject to all shares or some of the shares held by the same shareholder having been acquired after 31 December 2001;

—it exceeds 25 per cent (reduced to 10 per cent for capital gains realised from 1 January 2008) of the capital of the company, subject to all shares held by the same shareholder having been acquired before 1 January 2002.

For the purpose of determination of the taxable gain, the purchase price is adjusted by application of coefficients to take account of inflation.

(c)Certain other capital gains, for example a capital gain on the sale of a main residence, are not taxable.

Capital gains made by non-resident individuals are taxed as follows:

(a)Gains on the sale of real estate are taxable in Luxembourg if the real estate is situated in Luxembourg on the same basis as the gains of Luxembourg residents are taxed.

(b)Gains on the sale of a substantial interest are only taxable if:

—the substantial interest is sold within six months of acquisition;

—the taxpayer has been resident in Luxembourg for at least 15 years and, at the time he realises the gain, has left Luxembourg less than five years previously.

These domestic rules are very often overridden by tax treaty provisions.

(c)Other capital gains made by non-resident individuals are not taxable in Luxembourg.

Gains arising on the disposal, transfer or liquidation of a business or a part thereof are deemed to be of a commercial nature and are taxed accordingly. An allowance of €10,000 is granted and is increased to €25,000 in the event that the liquidation or transfer includes a capital gain on a building. However, this supplementary allowance may not exceed the gain made on the transfer or liquidation.

With regard to corporate taxation the same principle applies. Capital gains arising from the disposal of assets are treated as income and taxed at the applicable corporate income tax rate. Capital gains made on the disposal of fixed assets (buildings or non-amortisable assets) may be rolled over into the purchase of other fixed assets. A participation exemption privilege may be available in special circumstances (*see* para.127 *below*).

Net worth tax

LUX-107 The net worth tax (impôt sur la fortune) is essentially a tax on wealth which is levied annually on the taxable wealth of resident companies. As from 1 January 2016, a) on taxable wealth up to €500 million, the net worth tax rate is 0.5 per cent and b) on taxable wealth above €500 million, the, the net worth tax is €2.5 million plus 0.05 per cent on the taxable wealth exceeding €500 million.

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The net worth tax charge may be reduced (in whole or in part) if the entity creates and maintains a specific reserve for five years.

Generally, the assets are valued at their fair market value ("estimated value of realisation"). However, real estate has been valued at the "unitary value" based on a general valuation index since 1941. For companies, the same principles apply and the amounts shown in a company's financial statements constitute the basis for the computation of net worth (except for real estate). Shares owned by a company are valued at the lower of acquisition cost and current market value. A wealth tax return form must be completed by companies each year, and submitted together with the income tax returns for the previous year.

Minimum net worth tax

LUX-107A A new minimum net worth tax regime is applicable in Luxembourg as from 1 January 2016. A minimum annual net worth tax is payable for resident companies as follows:

•€4,815 if the sum of fixed financial assets, transferable securities, cash, and receivables owed by affiliated companies exceeds 90 per cent of their balance-sheet total and €350,000; or

•if the aforementioned threshold is not met, the amount of minimum net wealth tax will depend on the balance-sheet total at the closing of the preceding financial year (the minimum amount due being 535 and the maximum €32,100).

The minimum net worth tax applies only where the amount of net worth tax results in an amount lower than the fixed minimum.

Footnotes

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3 *See* para.123.

4 *See* para.106.

5 For the purposes of application of the classifications above separation is deemed to mean legal separation.

6 Additional children's allowances are also available.

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LUX-108 Tax on land and buildings

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Tax on land and buildings

LUX-108 This is a tax (impôt foncier) levied on land and buildings situated in the Grand Duchy of Luxembourg. It is calculated on a predetermined value set under the Valuation Law. This value will not necessarily reflect current market value.

It is a local tax insofar as it is levied by the district in which the property is situated. The amount of tax due on any land or buildings is calculated by multiplying the taxable value by the appropriate rate set by the district authorities in which the property is situated.

The amount of tax is calculated annually and payment is due either quarterly, half-yearly or annually depending on the amount of tax in question.

All taxpayers, whether resident or non-resident, are liable for the tax due on any land or buildings which they own, however, the tax may be deducted from taxable income or profits.

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LUX-109 Registration taxes

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Registration taxes

LUX-109 Registration taxes (droit d'enregistrement) are levied by the Luxembourg State and are imposed on the occurrence of certain legal acts or procedures.

Generally, they can be divided into the following areas:

Tax on sale of real estate

LUX-110 A registration tax of 6 per cent of the purchase price [1] is charged upon the purchase or transfer of real estate.

A registration tax of 7.2 per cent of the purchase price [2] is charged upon the purchase or transfer of real estate with the objective to resell it. In this case, an amount equal to 6 per cent would be refunded if the registration of the resale of the property is made within two years. An amount equal to 4.8 per cent would be refunded if the registration of the resale of the property is made after two years but before four years after the first purchase.

Registration duties may be increased by municipal transfer taxes. An additional fee (communal surcharge) of 50 per cent of the registration tax is applied to business premises located in Luxembourg City. Thus, for a shopping centre located in the municipality of Luxembourg-City, a tax surplus of 50 per cent of the registration taxes is due because the property is not used for residential purposes.

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In all cases, an additional transcription tax of 1 per cent (but in a few cases, this might be 0.5 per cent or zero) is due on the purchase or transfer of real estate. Different possibilities arise in the case of purchase of a shopping centre:

	REGISTRATION TAX	TRANSCRIPTION TAX	TOTAL
Property located in the GDL (except Luxembourg-City)	6%	1%	7%
Commercial property located in Luxembourg-City	9%	1%	10%
Purchase of a property located in the GDL (except Luxembourg-City) with the objective to resell it	7.20%	1%	8.20%
Purchase of a commercial property located in Luxembourg-City with the objective to resell it	10.80%	1%	11.80%

As regard real-estate transactions, involving buildings located in Luxembourg), contributions made in exchanges for shares are now subject to a proportional registration duty of 0.6 per cent and to a transcription tax of 0.5 per cent (plus a surtax of 50 per cent if the building is located in Luxembourg City). The contribution of domestic buildings that are paid for other than by shares are subject to the registration duties mentioned under para.110 *above*.

Contributions made as part of restructuring transactions are not subject to the proportional registration duty provided certain requirements are met.

Capital duty

LUX-111 Capital duty (droit d'apport) was abolished on 1 January 2009.

A fixed registration duty of €75 is due for the incorporation of a company, the amendments of the articles of incorporation of a company or at the time of the transfer of the registered office or management place of a company to Luxembourg.

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Subscription duty on shares

LUX-112 Subscription duty on shares (taxe d'abonnement) is a registration duty on the transfer of shares. The object of the tax is the taxation of the deemed movement of shares. The tax return and the payment of the tax have to be done at the end of each trimester. Due to the changes made in the Law of 6 December 1990, commercial companies are no longer subject to the subscription tax.

The current applicable annual rate is 0.05 per cent of the net assets at the end of the trimester for collective investment undertakings. For investment funds, the tax is based on the market value (net asset value) of the relevant securities. The law dated 17 December 2010 regarding collective investment undertakings set out situations in which collective investment undertakings can benefit from a reduced rate of tax of 0.01 per cent, or be tax exempt.

For example, for collective investment undertakings whose exclusive objective is collective investment in money market instruments and the placing of deposits with credit institutions and for collective investment undertakings the exclusive object of which is the collective investment in deposits with credit institutions will be taxed at a rate of 0.01 per cent.

The Luxembourg law of 17 December 2010, relating to undertakings for collective investment requires compliance with all of the following conditions in order for funds or individual sub-funds of umbrella funds to benefit from an exemption:

(i)shares/units of the funds or sub-funds must be only available to institutional investors;

(ii)their exclusive investment objective must be the investment in money market instruments and the placing of deposits with credit institutions;

(iii)the weighted [average] residual maturity of their portfolio shall not exceed 90 days; and

(iv)they must have received the highest rating from a recognised rating agency.

If these funds or sub-funds have several share/unit classes, the exemption will solely be granted to classes the shares/units of which are only available to institutional investors.

Specialised investment funds (SIFs) that are not tax exempt are subject to a subscription tax at an annual rate of 0.01 per cent of the net assets at the end of the trimester.

The "société de gestion de patrimoine familial" is subject to an annual subscription tax of 0.25 per cent, computed on the amount of the paid-up share capital, share premium and excessive debts (i.e. in excess of eight times the paid up-capital + share premium), with a minimum of €100 and a maximum of €125,000 per year.

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A SICAR and a securitisation vehicle, incorporated in the form of a company with share capital, are exempt from wealth tax. The SICAR is also exempt from the payment of the annual subscription tax.

Footnotes

1 Unless the purchase price is considered to be lower than market value, in which case the text authorities may require an expertise with in a period of two years after the transaction.

2 Commission de Surveillance du Secteur Financier.

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LUX-113 Mortgage tax

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Mortgage tax

LUX-113 The registration, renewal of registration and transfer of a mortgage will normally be subject to mortgage tax (droit d'hypothèque).

On the registration or renewal of registration of the mortgage the rate of tax (droit d'inscription) normally applicable is 0.05 per cent of the principal amount of the debt. Renewal of registration is usually every 10 years.

As mentioned under para.110 above, in the event of a transfer of real estate the transfer price or market value will be subject to a mortgage tax (droit de transcription) of 1 per cent which rate may, however, be reduced in certain circumstances to 0.5 per cent.

The tax is due upon presentation of the relevant legal documents for registration.

There are a number of exemptions where mortgage tax (droit d'inscription) will not be payable which include legal mortgages in favour of minors or persons under disability and on mortgages registered by the State Savings Bank. Furthermore, partition of the ascendants' real estate in favour of the descendants is exempt from mortgage tax.

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LUX-114 Gift tax

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Gift tax

LUX-114 The liability to gift tax falls upon the donee and is usually charged on the market value of the gift received. The tax is essentially a registration tax as it is due when the gifts and donations are registered. Registration must be carried out for Luxembourg-situated property. In the case of foreign-situated immovable property, no tax is due, even if the notarial deed of gift is passed in Luxembourg. In the case of foreign situated movable property, Luxembourg tax liability would arise, unless the gift has been passed on an authenticated form (forme authentique) abroad.

As detailed under paras 51 *and* 52, the amount of tax payable will depend on the relationship between the donor and the donee and presently ranges from 1.8 per cent where direct ascendants and descendants constitute the donor and donee to 14.4 per cent where there is no relationship or the relationship is one other than that specified in specific legal provisions.

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LUX-115 Inheritance tax

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Inheritance tax

LUX-115 First, a distinction must be made between whether the deceased was resident or non-resident in Luxembourg immediately before his death as it will affect the nature and extent of the potential tax liability.

If the deceased was resident in Luxembourg at the time of his death, all assets constituting his estate will be subject to Luxembourg tax on inheritance tax (droit de succession), except real estate located outside Luxembourg, patent rights and scholarships.

Where the deceased was not resident in Luxembourg at the time of his death then only transfer tax (droit de mutation) is due on real estate located in Luxembourg.

The applicable test as to residency is whether the deceased, immediately before his death, was domiciled in Luxembourg.

Valuation of the deceased's estate is normally based on saleable value at the date of death with inheritance tax being charged on the net assets of the estate. Real estate owned by the deceased who is not situated in Luxembourg is included in the valuation of net assets at the sale value.

The deceased's estate itself is not taxed and does not have inheritance tax or transfer tax deducted from the net assets of the estate prior to distribution to beneficiaries. It is the beneficiaries who are liable to tax in these circumstances.

The rate of inheritance tax applicable will depend on the relationship between the deceased and the recipient. The tax is payable subject to any applicable exemptions by the beneficiary on the portion of the estate net assets which he is inheriting.

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Direct descendants who receive a due share of the deceased's estate are in principle exempt from inheritance tax. This, however, does not apply where a direct descendant receives a greater share than he is legally entitled to, by virtue of either a will or formal arrangement taking effect upon death. In such circumstances, the beneficiary in question will be liable to inheritance tax the share of the estate exceeding the legal portion and depending on the kind of bequest granted to him.

Further exemptions exist in respect of property transferred to spouses upon the death of one spouse where they have children or descendants in common and also certain charitable and educational bequests. Duty is only payable on net estates exceeding €1,250.

The rates of tax are:

(a)in direct line: between 2.5 per cent and 5 per cent on the disposable share exceeding the legal portion;

(b)between spouses without children or common descendants: 5 per cent (deduction of €38,000 on the net amount inherited);

(c)between more distant relatives, between 6 per cent and 15 per cent on the legal portion (depending on the degree of relationship) and 15 per cent on the balance;

If the net sum accruing to any one individual exceeds €10,000, the above rates are increased on a sliding scale from one-tenth up to twenty-two-tenths on the excess over €1,750,000.

(d)bequests to municipal authorities, public bodies, hospitals and charities: four per cent whatever the sum;

(e)bequests to non-profit making organisations, undertakings in the public interest, the diocese, church fabric, consistory or synagogue funds: six per cent whatever the sum.

Transfer tax is charged on the market value of the deceased's real estate situated in Luxembourg. No deductions on the value are allowed. Similarly, there are no exemptions with respect to transfer tax, except in limited circumstances involving requests to certain educational and other institutional establishments.

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LUX-116 Trusts and fiduciary arrangements

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Trusts and fiduciary arrangements

LUX-116 There are no specific tax rules relating to trusts or trustees. As Luxembourg has no specific domestic trust legislation, the tax regime of the assets held in a trust, and its income, in so far as a Luxembourg resident may be a trustee, settlor or beneficiary, is uncertain as there are no available precedents or precise guidelines.

In the event that a trust has a resident Luxembourg trustee there arises a difficult question as to tax liability. The law is unclear as to whether the trustee should declare due ownership of trust assets even although he does not own the beneficial interest. However, administrative practice appears to be that a trustee will not be treated as owner.

For payments made to Luxembourg resident beneficiaries the situation again is not clear and essentially there are no precedents or guidelines to apply. It is, however, highly likely as is often the case that a beneficiary with a fixed interest would be liable to tax on income and capital received from the trust. As regards beneficiaries under a discretionary trust there presently exists no indication of the likely income tax treatment of such payments.

The law dated 27 July 2003 ratifying the Hague Convention of 1 July 1985 relating to the trust and its recognition sets out a very general principle regarding awards by a trustee. As per the Law, donations tax may be due upon a gratuitous transfer of an asset by a trustee to a beneficiary. The tax due will depend upon the degree of relationship between the beneficiary and the settlor. The donations tax rules would thus apply.

It is also worth mentioning that, as provided by the law dated 27 July 2003, the entry into or the amendment of a deed creating or amending a trust are not generally subject to compulsory

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registration formalities and taxes. Trust deeds may however be voluntarily presented to the registration formalities and be subject to registration duties.

The fiduciary arrangements which may be entered into under the Grand-Ducal Regulation of 19 July 1983 are subject to the following tax treatment. First, although the financial institution in question obtains legal ownership, any tax liability which may arise will be that of the client.

If a Luxembourg resident, the client will be subject to tax on any interest or dividends received. Similarly, a non-resident client will be subject to tax on his interest and dividends which arise in Luxembourg from a Luxembourg institution in accordance with the usual principles of taxation. If he is nonresident and the income does not arise from an institution situated for tax purposes in Luxembourg the income so received by the non-resident client will be free of Luxembourg tax.

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LUX-117 Investment funds

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Investment funds

LUX-117 Apart from the registration duty of €75 at incorporation, the only tax incurred by an undertaking for collective investment is the subscription tax (*see* para.112 *above* for rates), which is calculated on the total net assets of the fund valued on the last day of each quarterly period.

Non-resident unitholders will not be subject to any tax in Luxembourg with respect to units owned by them in the fund. However, tax liability may arise in the unitholders' country of residence.

SICAR

LUX-118 The SICAR is fully subject to tax and as such can benefit from double taxation treaties.

The revenues earned by the SICAR from participations in securities and profits on the sale, redemption or liquidation of assets are however excluded from the taxable base and as such the SICAR is completely tax neutral.

Income arising from assets held pending the investment in risk capital (i.e. liquid assets) does not constitute taxable income provided such assets are invested in risk capital assets within six months.

There is no withholding tax on dividends distributed by the SICAR and there is no taxation in Luxembourg on capital gains realised by non-residents on the redemption of shares in the SICAR incorporated in the form of a company with share capital.

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The legislation exempts (as for the UCITS) the management of the SICAR from VAT.

Securitisation Vehicle

LUX-119 A securitisation vehicle can be defined as a financing structure that allows for the conversion of receivables or other assets into tradable securities via special purpose vehicles.

Securitisation Company

LUX-120 Securitisation companies are resident companies fully liable to Luxembourg corporate and municipal business tax at an aggregate tax rate of 29.22 per cent. They are subject to minimum net worth tax. The charge varies according to whether 90 per cent of the SV's assets comprise financial assets. If that were the case, the minimum annual charge would be €4,815 per year.

Payments made to investors (mainly shareholders) and to other creditors (mainly bondholders), i.e. dividends and interest, are, however, fully deductible. As a result, a significant reduction of taxable basis should be achieved and a securitisation vehicle can be structured in a way so that it is tax neutral.

Since securitisation companies are fully tax liable resident companies, they should benefit from the tax treaties concluded by Luxembourg with other countries and from the EU parent subsidiary Directive. This argumentation is supported by a comparison with a certain number of existing low-taxed vehicles in other EU countries. This issue would however need an in-depth country-by-country analysis based on the facts and circumstances of each specific case.

Securitisation Fund

LUX-121 The securitisation fund is treated the same as a collective investment fund, i.e. the fund is exempt from corporate income tax and municipal business tax. Unlike FCPs, securitisation funds also benefit from a subscription tax exemption. Common features: securitisation vehicles are exempt from net worth tax and registration taxes, management services provided to the securitisation vehicles are VAT exempt.

Investors

LUX-122

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The shareholders of the securitisation company or the unit holders of the securitisation fund are treated like bondholders. Dividend distributions, payments on fund units and interest payments made by securitisation vehicles are not subject to domestic withholding tax. Luxembourg resident investors holding shares of securitisation vehicles can neither benefit from the domestic participation exemption regime (dividends and capital gains) nor from the partial (50 per cent) exemption on dividends. The Law prohibits the securitisation vehicle from being a member of a fiscal consolidation group.

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LUX-123 1929 holding companies

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Holding companies

1929 holding companies

LUX-123 Further to a Decision of the European Commission announced on 20 July 2006, a law of 22 December 2006 abrogated the law of 31 July 1929, which governed a special type of company, namely the Luxembourg holding company (also referred to as "1929 Holding Company"). This company was subjected to normal company law but benefited from a special tax regime.

SPF

LUX-124 Further to the abrogation of the holding 1929 regime, the Luxembourg Parliament approved a law on 11 May 2007 which created a new investment vehicle, the private asset management company (société de gestion de patrimoine familial, also referred to as "SPF").

This law provides that an SPF may adopt one of the following forms:

(i)a company limited by shares (société anonyme);

(ii)a limited liability company (société à responsabilité limitée);

(iii)a partnership limited by shares (société en commandite par actions); or

(iv)a co-operative company organised as a company limited by shares (société coopérative organisée comme société anonyme).

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The shares issued by the SPF can be nominative or in bearer from but cannot be publicly quoted.

The activity of the SPF is strictly limited to the acquisition, detention, management and realisation of its financial assets (e.g. shares, bonds, publicly quoted shares, shares of SOPARFIs, shares of a SICAR, etc.). The shares in an SPF can only be subscribed by eligible investors who are:

•natural persons acting in the scope of the management of their private assets;

•“private asset entities” which act exclusively for the benefit of the private assets of one or more natural persons, (e.g. trusts, private foundations, stichting administratiekantoor, etc.); or

•an intermediary acting for the account of such investors: e.g. a bank acting under a fiduciary agreement, etc.

With regard to the tax regime of the SPF, the following aspects should be mentioned.

•No debt equity ratio: No debt equity ratio needs to be maintained for a SPF. However, a fixed tax of 0.25 per cent (taxe d’abonnement) is due in respect of such part of the debt that exceeds eight times the paid-up capital increased by the issue premium (see below).

•No corporate income tax.

•Taxe d’abonnement: a tax of 0.25 per cent on:

(i)the amount of the paid up capital increased with

(ii)the issue premium (if any).

•Withholding tax on interest: interest paid to Luxembourg resident persons is taxed at 10 per cent.

•No withholding tax on dividends paid: there is no withholding tax due on dividends paid either to Luxembourg or foreign residents.

•No wealth tax: SPFs are exempt from wealth tax. This is an important advantage as normal Luxembourg companies (SOPARFI) are subject to a wealth tax of 0.5 per cent of the net assets of the company.

•Exclusion from the Parent/Subsidiary Directive and Luxembourg’s double tax treaty network.

SOPARFI

LUX-125 A Soparfi (French acronym for “Société de participations financières”) is not a special type of company but an ordinary commercial entity governed by common law, specifically the 1915 Law on commercial companies. It does not enjoy any special tax regime and is fully taxable. There are no restraints on its field of activity but the purpose of a SOPARFI in Luxembourg is predominantly the acquisition, management and realisation of investments in companies in or outside Luxembourg.

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A Soparfi in Luxembourg is formed as a corporation and may take the form of public limited liability company ("société anonyme" or SA), private limited liability company ("soicété à responsabilité limitée" or Sarl) or of a partnership. Since the Soparfi is liable to tax like any other commercial company, it benefits from double tax treaties agreed by Luxembourg and European Directives. These characteristics make the Soparfi an interesting vehicle for managing holdings in a group of businesses. It is also the preferred vehicle for financing and holding venture capital and private equity investments.

Soparfis are in principle subject to taxation on their worldwide income. A Soparfi can, however, significantly reduce its tax burden on its holding investments structured so that it can benefit from the rules in the EU Directive on the tax regime applicable to Parent-Subsidiary companies. Luxembourg has since extended this regime. [1]

Participation exemption regime

LUX-126 The participation exemption applies so to exempt dividends received on a substantial participation.

In order for the exemption to apply, the following requirements must be satisfied.

The dividends need to derive from a participation that is in a company that is one of the following: a fully taxable company resident in Luxembourg; or resident in an EU member State and is covered by the EU Parent — Subsidiary Directive; or subject to taxation corresponding to the Luxembourg corporate tax (generally a rate of 10.5 per cent would be sufficient); and at the time of distribution has been held for a period of 12 months or where the Soparfi undertakes to hold it for that period; and the participation either consists of at least 10 per cent of the issued nominal share capital of the underlying entity; or had an acquisition price of at least €1.2 million.

Dividend distributions from a Soparfi will not attract withholding tax where the distribution is made, inter alia, to one of the following: another fully taxable company resident in Luxembourg; a company that is resident in an EU member State and covered by the EU Parent — Subsidiary Directive; a company that is resident in a State with which Luxembourg has a double tax treaty, and is subject to taxation corresponding to the Luxembourg corporate income tax (generally a rate of 10.5 per cent would be sufficient); and if the participation and holding period requirements described above are complied with.

Expenses linked to an exempt dividend (exfinancing cost) are tax deductible but are subject to "clawback" in certain circumstances such as to render the dividend taxable.

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The participation exemption regime is also available for dividends received to Luxembourg permanent establishments of foreign companies established within the European Union or in a country having entered into a double taxation treaty with Luxembourg.

LUX-127 Capital gains realised on the disposal of a participation are exempt from tax in Luxembourg where that participation has the same characteristics as described above in relation to dividend income except that:

(a)the acquisition price, if relevant, must be at least €6 million; and

(b)it must have been held for a period of 12 months at the time of the disposal or, if part of the participation is sold within the 12-month period, the balance must continue, for the balance of that period, to be in excess of 10 per cent or to have an acquisition price in excess of €6 million:

(a)Certain prior reductions of taxable basis must be recovered at the time of realisation of the tax-free capital gain.

A non-exempt capital gain realised on the sale of a participation registered as a fixed asset (as opposed to current asset) and held for at least five years may be exempt if reinvested in another fixed asset.

As from 1 January 2017, the minimum net wealth tax, introduced in 2016 in replacement of the minimum corporate tax is increased from €3,210 to €4,815 for SOPARFIs.

Footnotes

1 Articles 147 and 166 of the Corporate Income Tax Law, 4 December 1967, as amended.

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LUX-128 Corporate tax

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Corporate tax

LUX-128 The effective combined corporate income tax rate, including the municipal business tax and the unemployment fund contribution, for companies located in Luxembourg City is 26.01 per cent for 2018.

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LUX-129 Thin capitalisation rules

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Thin capitalisation rules

LUX-129 There is no formal law on “thin capitalisation” or an excess of debt over capital in Luxembourg. However, the tax authorities have developed a rule of practice in relation to the levels of gearing which a Soparfi should be allowed to support. That rule in Luxembourg is that interest-bearing debt due by the Soparfi to related parties should not exceed its equity by more than a multiple of six (85:15).

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LUX-129A CFC rules

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CFC rules

LUX-129A No controlled foreign company (CFC) or similar rules currently apply in Luxembourg. However, Luxembourg, as an EU member state, will be required to implement the anti-avoidance provisions in the EU Anti-Tax Avoidance Directive with effect from 1 January 2019. These provisions include CFC rules. No draft law or other information has been published so far on the content of the anticipated Luxembourg CFC rules (other than as per the Directive itself).

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LUX-130 Transfer pricing

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Transfer pricing

LUX-130 On 23 December 2016, a new art.56bis was introduced into the Income Tax Law providing more detail on the transfer pricing principles to be applied to transactions between related parties.

Two new Circulars (56/1 and 56bis/1) were also introduced, effective as from 1 January 2017, providing specific guidance on the tax treatment of intragroup financing transactions. The new Circulars replace Circulars n°164/2 of 28 January 2011 and n°164/2bis of 8 April 2011.

This new Circular transposes in Luxembourg law the arm's length principle of the OECD Transfer Pricing Guidelines and provides the functional and substance requirements for Luxembourg entities engaged in intra-group financing activities. As from 1 January 2017, all pre-existing transfer pricing rulings issued by the Luxembourg tax authorities are no longer valid.

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LUX-131 IP regime

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IP regime

LUX-131 Luxembourg has an attractive tax regime for income derived from intellectual property (IP) as well as capital gains realised on any disposal of IP.

However, pursuant to the OECD and the EU discussions aimed at preventing harmful tax practices, the Luxembourg IP regime would be repealed. The repeal of Luxembourg's IP regime would be applicable as from 1 July 2016 for corporate income tax and municipal business tax purposes (and as from 1 January 2017 for net wealth tax purposes).

The abolition of the Luxembourg IP box regime will however be progressive, i.e. some "grandfathering" rules would apply and the existing regime will be maintained until 30 June 2021. Taxpayers currently benefiting from the IP regime may continue to do so until 30 June 2021, but special rules exist for new entrants.

As currently applicable, and under certain conditions, this regime provides an exemption of 80 per cent of the net income and capital gains generated by software copyright, patents, trademarks (including "service marks" and "domain names") designs, patterns and models, acquired after 31 December 2007. The remaining 20 per cent is taxed at the ordinary combined (income tax and municipal business tax) rates. The use of self-developed IP by a company can also give rise to a notional deduction of 80 per cent of the income derived therefrom.

This tax regime does not apply to other IP rights such as author rights, secret formulas, know-how, image rights or copyrights.

The exemption brings the effective tax rate for such income to approximately 5.85 per cent.

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Qualifying IP rights are also not subject to Luxembourg net worth tax.

On 4 August 2017 a bill of law introducing a new Luxembourg IP regime was submitted by the Luxembourg Government and on 22 March 2018, the Luxembourg Government voted to approve the bill of law with effect from 1 January 2018 (subject to confirmation by the Luxembourg Conseil d'Etat that no second hearing is required). The content of the bill is consistent with "modified nexus approach" as developed by the OECD/G20 BEPS Project Action 5 Final Report published in October 2015. Under the new IP regime, the 80 percent tax exemption on eligible net income for qualifying IP rights is available.

The new IP regime will co-exist with the repealed IP regime, which is still applicable during the grandfathering period until 30 June 2021 where applicable.

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Anti-tax avoidance

LUX-132 Luxembourg tax law provides, on a general basis, for a tax treatment based on an economic approach rather than a treatment in accordance with the legal appearance given to the facts. This means that the tax authorities are not bound by the legal qualification given to a situation if this qualification is not in accordance with the factual circumstances of the case involved. The general tax law contains anti-avoidance provisions that allow the Luxembourg tax authorities to challenge sham transactions and tax avoidance schemes (i.e. abuse of law) in the field of direct taxes. An abuse of law is notably characterised by the fact that the structure is set-up solely for tax purposes and, as a result has no relevant economic justification.

One specific example of a tax treatment based on an economic approach is that of hidden profit distributions. A hidden profit distribution constitutes any advantage received by a shareholder of a company by virtue of his position as a shareholder of that company. Transactions which would be deemed to constitute a hidden profit distribution and are essentially not at arm's length would include loans made to the shareholder either interest free or subject to a nominal rate of interest, the granting of over-favourable discounts on commercial transactions, or the payment of an excessive salary or fee as a director or officer of the company. The result of making a hidden profit distribution will generally be that the value of the hidden profit distribution will be subject to tax as if it were a dividend. Further to that the recipient will have to include in his taxable income the difference between the actual consideration paid or received and the commercial arm's length consideration.

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LUX-133 Double taxation treaties

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Double taxation relief

Double taxation treaties

LUX-133 Luxembourg is party to a substantial number of double taxation treaties based on the OECD Model Tax Convention which provide for the avoidance of double taxation mostly in respect of both personal and corporate income and net worth tax. Double taxation treaties entered into by the Grand- Duchy of Luxembourg are as follows:

(a)Existing double taxation treaties: Andora, Armenia, Austria, Azerbaijan, Bahrain, Barbados, Belgium, Brazil, Brunei, Bulgaria, Canada, China, Croatia, Czech Republic, Cyprus, [1] Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Laos, Latvia, Liechtenstein, Lithuania, FYROM (Macedonia), Malaysia, Malta, Mauritius, Mexico, Moldova, Monaco, Morocco, the Netherlands, Norway, Panama, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Trinidad & Tobago, Tunisia, Turkey, the United Kingdom, the United States, the United Arab Emirates, Uruguay, Uzbekistan and Vietnam.

The main types of income covered under the majority of treaties include income from immovable property and any subsequent capital gains liability arising from the disposal of the property in question and of course withholding taxes on dividends, interest and royalty payments.

An exemption from taxable income relating to an item of tax which under a treaty is generally accounted for in the country in which it originated is generally granted in Luxembourg where Luxembourg is the country of residence.

However, as the country of residence, Luxembourg may reserve the right to take the exempt income or capital into consideration for the purposes of determining the appropriate rate of tax to be applied (exemption with progression method). Some tax treaties provide for the credit method

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for dividend, interest and royalty payments. This method is explained at para.134 *below*. Treaty relief is automatically granted on a country-by-country basis. Luxembourg taxes covered by the treaties are mainly as follows:

(a)personal income tax;

(b)corporate income tax;

(c)special directors tax;

(d)capital tax;

(e)municipal taxes; and

(f)land tax.

Immovable property together with any attachments or fixtures relating to that property from which income is derived will generally be subject to tax in the country in which the property is situated. Such income will include rental income and income derived from direct use of the property.

Similarly, any capital gain arising from the disposal of the property will be taxed in the country in which the property is situated.

Luxembourg withholding tax rate on dividends is 15 per cent, which may be reduced in accordance with the provisions of a double tax treaty or the application of the relevant EC Directive as implemented by Luxembourg law. There is no withholding tax on ordinary interest in Luxembourg.

Luxembourg has not concluded any double-tax treaties for inheritance or for gift tax purposes.

Footnotes

1 Signed on 8 May 2017 and is awaiting ratification.

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LUX-134 Unilateral relief

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Double taxation relief

Unilateral relief

LUX-134 A tax credit is available for income received from another country where there is no double tax treaty in operation. The credit relates to foreign taxes where such taxes are equivalent in nature to Luxembourg personal or corporate income tax.

The amount of credit is limited to an equivalent amount of Luxembourg income tax as charged on the foreign source income.

If the foreign tax is greater than the allowable credit then the excess foreign tax may be deductible. Such tax will be deductible where either the foreign tax in question does not qualify as being comparable or as already stated in the event of an excess of foreign tax paid.

There are two methods of calculation of the allowable tax credit. The first is on a country by country basis and is the method normally applied. Under this method the foreign source income received from each country is aggregated and the amount of Luxembourg income tax applicable to that income will determine the amount of credit allowed in respect of the foreign tax on the foreign source net income.

Upon election, an overall method may be applied in the computation of the tax credit. However, this method may only be applied with respect to foreign interest and dividends. It does not include royalty payments.

Under this second method, all foreign source income is aggregated to provide one single total following which the total tax credit allowed will be equal to the Luxembourg tax applicable to the totalled foreign source income. Further limitations are applied in the application of this method. Firstly, no credit is available in respect of foreign tax which is greater than 25 per cent. Also,

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the total amount of credit may not exceed 20 per cent of the Luxembourg income tax due on the taxpayer's total net taxable income.

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Tax return and assessment

LUX-135 The principal tax legislation is contained in the fiscal code of 22 May 1931, the Law of 16 October 1934 and other specific legislation.

The legislation imposes an obligation to file a tax return and generally to provide assistance to the tax authorities and to discharge any tax liability arising as a result of a notice of assessment.

For the purposes of personal taxation the tax year ends on 31 December. Individual tax returns are required to be filed by 31 March of the following year with the relevant section of the Department of Direct Taxes (Administration des Contributions Directes et des Accises).

Similarly, the period of assessment for corporate taxation is also the calendar year to 31 December although entities having a financial year different from the calendar year can be assessed on the basis of their financial year. Tax returns must be filed with the Department of Direct Taxes prior to 31 May each year relating to the preceding tax year. Electronic filing is mandatory as from 2018. Corporate tax returns should be accompanied by an accounting balance sheet for the year in question, although this does not need to be audited. The date of submission of a tax return may be extended upon request by the taxpayer. The provision of a fiscal balance sheet is only required where the tax treatment differs appreciably from the accounting treatment. This is not the case when the commercial balance sheet is simply adjusted for tax purposes at the time of completion of the tax return.

The penalty for late filing or non-filing of tax returns is of up to 10 percent of the tax due and a fine of up to €25,000, unless the taxpayer can prove that the late filing was not his fault.

In the event of failure to pay or late payment, interest may be charged at 0.6 per cent per month of the amount of tax charged.

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In the event of deferment of the tax (where authorized by the tax authorities), in relation to a period of more than four months, interest may be charged at 0.1 per cent per month from the 5th until the 12th month, and at 0.2 per cent per month from the 13th month up to the 36th month.

Prior to the issue of a notice of assessment, the tax authorities review the returns (and accompanying statements of corporate entities) and will notify the taxpayer of any amendments they propose to make or of further information which is required.

Adjustments will also be made for any tax already paid or held over from another period of assessment.

The amount of tax assessed is due within one month of the date of the notice of assessment. Where advances of tax are due on corporate income tax during the year these should be paid on 10 March, June, September and December. MBT and NWT: 10 February, 10 May, 10 August, and 10 November.

The tax authorities may issue a provisional notice of assessment where uncertainty arises as to any tax liability. Once the uncertainty is resolved the assessment is amended accordingly.

Taxpayers who dispute a tax assessment have to file a claim before the income tax director within a three-month period from the date of the assessment notice. That claim is a purely administrative procedure. A judicial procedure may also be followed against the decision of the income tax director or against his implied negative decision (if no decision has been taken within six months). The law of 7 November 1996 has created two new jurisdictions, the administrative tribunal and the administrative court, which are competent to deal with income taxes assessed by the Luxembourg state (except those assessed by the Registration Department) and municipal taxes, but are *not* competent to deal with indirect taxes (VAT, registration duties and customs duties).

Claims to the administrative tribunal have to be filed (by the taxpayer or an attorney, auditor or chartered accountant) within a three-month period from the date of the director's decision. An appeal to the administrative court has to be lodged within 40 days from the date of the decision of the administrative tribunal, by an attorney registered on list I of the Bar Association.

Tax audits may also be conducted at the discretion of the tax authorities, although assessments are usually based on unaudited tax returns.

Once a tax liability is assessed, the tax authorities have a lien over all property of the taxpayer including any property acquired after the liability arose. This lien may be enforced without notice and is subject to review upon request in certain circumstances. [1]

The statute of limitations for the assessment and collection of tax is five years. However, this period is, except for a conventional extension of time, extended to 10 years in case of incorrect

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filing giving rise to an additional assessment or, in case of lack of filing, whether fraudulent or not. It may also be extended in cases where payment of tax due is postponed.[2]

Footnotes

1 Law of 27 November 1933.

2 Law of 27 November 1933.

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Exchange of information

LUX-136 Regarding the exchange of information, Luxembourg examining magistrates may grant judicial aid in penal matters if specific conditions (reciprocity, proportionality and specialty) are met and upon receipt of foreign magistrates' rogatory letters duly authorised by the relevant authorities. The legal basis of this procedure can be found in international texts duly ratified by the Grand-Duchy of Luxembourg (the European convention of extradition dated 13 December 1957; the European convention of judicial mutual aid in penal matters dated 20 April 1959 and the Benelux treaty of extradition and judicial mutual aid dated 27 June 1962).

Moreover, since Luxembourg ratified the Additional Protocol to the European Convention of judicial mutual aid in criminal matters, signed in Strasbourg on 17 March 1978, a judicial mutual aid is allowed in case of tax fraud, as defined in the Luxembourg original code.

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LUX-137 Double tax treaties

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Double tax treaties

LUX-137 Luxembourg has renegotiated many of its existing tax treaties to comply with 'internationally agreed tax standards' in the field of exchange of information. In order to do so, it has signed many protocols amending its existing double tax treaties in order to include exchange of information provisions in conformity with the OECD's latest standards (i.e. art.26 of the model convention as updated in 2005) making the jurisdiction a fully cooperative one in the field of exchange of information in tax matters. In principle, the amended treaties do not seek an automatic exchange of bank information and do not allow for general inquiries, or so called 'fishing expeditions'.

In conformity with art.26 of the OECD 2005 Model Convention, the amended double tax treaties provide now that Luxembourg cannot refuse to supply information solely because this information is held by a bank or other financial institution.

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LUX-138 The Savings Directive

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The Savings Directive

LUX-138 The purpose of EU Council Directive 2003/48/EC of 3 June 2003 (the "Savings Directive") was to enable savings income in the form of interest payments ("Interest Payments") made in one EU Member State to beneficial owners who are individuals resident in another EU Member State to be made subject to effective taxation in accordance with the laws of the latter EU Member State.

The Luxembourg law implementing the Savings Directive (the "Law") was adopted on 12 April 2004 and was published in the Official Gazette on 22 June 2005 and came into force on 1 July 2005.

Ten years after the adoption of the EU Savings Directive and given international developments in tax transparency, Luxembourg has decided to end the transitional period foreseen in the EU Savings Directive and to introduce automatic exchange of information pursuant to the Directive as from 1 January 2015.

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LUX-139 The DAC

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The DAC

LUX-139 The Directive on Administrative Co-operation (DAC), 2014/107/EU adopted on 9 December 2014, significantly extends the scope of the automatic exchange of information for tax purposes among EU Member States. The proposal is based on the Common Reporting Standard (CRS) developed by the OECD, which draws in many aspects on FATCA. Both the DAC and CRS will apply to Luxembourg from 1 January 2016, with a view of performing the first exchange of information between tax authorities in 2017. The DAC will replace the automatic exchange of information regime under the European Savings Directive.

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LUX-140 FATCA

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FATCA

LUX-140 The objective of the Foreign Account Tax Compliance Act (FATCA) is to reduce tax evasion by US individuals with respect to income from financial assets (e.g. bank accounts, certain insurance contracts and units in investment funds) held directly (on an account) or indirectly (through a foreign entity) outside the United States by requiring "foreign financial institutions" (FFIs) to report US account holders (and US beneficial owners of certain non-financial foreign entity account holders) to the US Internal Revenue Service (IRS). FATCA imposes a 30-percent US withholding tax on US-sourced payments to FFIs (including banks, brokers, custodians and investment funds) that fail to comply with FATCA rules.

In order to implement FATCA Luxembourg signed an Intergovernmental Agreement (IGA), model 2, with the United States on 28 March 2014.

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LUX-141 Common Reporting Standard (CRS)

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Common Reporting Standard (CRS)

LUX-141 On 13 February 2014, the OECD, at the request of the G8 and the G20, released a model Competent Authority Agreement (CAA) and the CRS in order to develop the cooperation between tax administrations through a global standard for the automatic exchange of financial account information. The CRS is based on FATCA. However, the data required are different, and the volume of reporting required is likely to be significantly greater under the CRS.

As from 1 January 2016, Luxembourg financial institutions including banks, certain insurance companies, funds and certain non-supervised investment entities will need to apply the CRS and start collecting data for CRS reporting and fulfil their reporting obligations (unless excluded).

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LUX-142 Country by country reporting (CbC reporting)

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Country by country reporting (CbC reporting)

LUX-142 On 13 December 2016, Luxembourg transposed part of Action 13 of the OECD/G20 Base Erosion and Profit Shifting Project (BEPS) and implemented the CbC reporting requiremenr for Luxembourg entities forming part of a Multinational Enterprise group (MNE).

An ultimate parent company controlling a Multinational Enterprise group (MNE) with a consolidated group turnover that exceeded EUR 750 million during the previous fiscal year is subject to the requirement to file CbC reports with the Luxembourg tax authorities. A Luxembourg constituent entity (i.e. an entity forming part) of a Multinational Enterprise group (MNE) may also subject to reporting requirements.

Each Luxembourg ultimate parent company or constituent entity is obliged to file a notification to the Luxembourg tax authorities by the last day of the relevant fiscal year of the ultimate parent company.

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Beneficial ownership registers

LUX-143 On 6 December 2017, the Luxembourg Parliament published two Bills of Law with a view to transposing into Luxembourg law articles 30 and 31 of the EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("the 4th AML Directive"). The enactment of the Bills of Law is expected soon bearing in mind that Luxembourg has passed the 26 June 2017 deadline for the implementation of the 4th AML Directive prescribed by the EU.

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LUX-144 Bill of Law n°7217 — REBECO

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Beneficial ownership registers

Bill of Law n°7217 — REBECO

LUX-144 Bill of Law n°7217 provides for the setting-up of a register of beneficial owners for Luxembourg legal entities (Registre des bénéficiaires effectifs) and colloquially to be known as REBECO. The REBECO will be the central register containing information on the beneficial owners of Luxembourg legal entities and will be managed by the Luxembourg Trade and Companies Register (RCSL) through a register that will be separate from the current commercial registry (known as the RCS). All Luxembourg commercial companies and any other legal entities registered on the Luxembourg trade and companies' register are subject to the Bill of Law n°7217. Listed companies whose securities are admitted to trading on a regulated market and common funds (FCPs) are out of scope of the REBECO obligations.

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LUX-145 Bill of Law n°7216 — Fiduciary contracts

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Bill of Law n°7216 — Fiduciary contracts

LUX-145 Bill of Law n°7216 deals with the keeping of information and the maintaining of a register concerning fiduciary contracts as described in the 27 July 2003 Law relating to trusts and fiduciary contracts ("Fiduciary Contracts"). A register of Fiduciary Contracts will be set up and managed by the Administration de l'Enregistrement et des Domaines (AED). Any Fiduciary Contract that gives rise to Luxembourg tax consequences must be registered by the fiduciary on the register of Fiduciary Contracts. The register will contain details regarding the Fiduciary Contract and its beneficial owners.

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