

Establishing a business in Luxembourg

by Denis Van den Bulke and Laurence Jacques, VANDENBULKE

Country Q&A | [Law stated as at 01-Feb-2018](#) | Luxembourg

A Q&A guide to establishing a business in Luxembourg.

This Q&A gives an overview of the key issues in establishing a business in Luxembourg, including an introduction to the legal system; the available business vehicles and their applicable formalities; corporate governance structures and requirements; foreign investment incentives and restrictions; currency regulations; and tax and employment issues.

To compare answers across multiple jurisdictions, visit the Establishing a business in... [Country Q&A Tool](#).

This article is part of the Global guide to establishing a business worldwide. For a full list of contents, please visit [global.practicallaw/ebi-guide](#).

Legal system

1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)?

The legal system of the Grand-Duchy of Luxembourg (Luxembourg) is based on written civil law inspired by the French Napoleonic Civil Code (inherited from the Roman civil law tradition). Companies are governed by the Law of 10 August 1915, as amended (Company Law), which was heavily inspired from the liberal Belgian corporate legislation. Although amendments have been made over time to keep corporate law in line with Luxembourg's economic development, the legislature has been able to maintain a great amount of flexibility in respect of EU standards.

Business vehicles

2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?

Luxembourg law recognises the following seven types of company, each of which has a legal personality distinct

from that of its members:

- Public limited liability company (*Société anonyme*) (SA).
- Private limited liability company (*Société à responsabilité limitée*) (SARL).
- Public simplified company (*Société par actions simplifiée*) (SAS).
- Partnership limited by shares (*Société en commandite par actions*) (SCA).
- General partnership (*Société en nom collectif*) (SENC).
- Common limited partnership (*Société en commandite simple*) (SCS).
- Co-operative company (*Société coopérative*) (SC).

Luxembourg law also recognises the special limited partnership (*Société en commandite spéciale*) (SCSp), which does not have a legal personality.

Luxembourg has implemented EU legislation allowing for the incorporation of *societas europeae* (SE).

The choice of a company type over another depends on both economic considerations (for example, amount of share capital, capacity to raise funds from the public, and credibility) and legal considerations (for example, scope of members' liability, flexibility of corporate organisation and free transferability of shares).

Limited liability companies (SA, SAS, SARL, SC and SE)

The SA and the SARL are the most widely used forms of company. The difference between them lies mainly in the fact that the SARL cannot raise funds from the public through the issuance of shares (although they can issue public bonds).

Companies can have their share capital denominated in euros or in other freely traded currencies. The minimum subscribed share capital for an SA or an SAS is EUR30,000, of which at least a quarter must be fully paid up on the date of incorporation. The minimum subscribed share capital for an SARL is EUR12,000 and must be fully paid up. An SA, SAS or SARL can have a single shareholder.

An SA is managed by one director or a board of directors (with at least three members) and must appoint a statutory auditor. The shareholders in an SA must meet at least once a year. An SA may also have a two-tier management structure (with a board of directors and a supervisory board).

An SAS is managed by a single president and must appoint a statutory auditor.

An SARL is managed by a single manager or a board of managers. The shareholders must meet at least once a year if their number exceeds 60.

The SA is designed for large businesses, while the SARL is the most frequently used vehicle for mid-sized businesses and financial investments.

Partnerships (SCA, SCS and SCSp)

The share capital of a Luxembourg partnership is held by a general partner with unlimited liability and one or more limited partners, whose liability is limited to their contribution to the company.

The SCA is recommended when the management intends to retain full control of the company's investments. The SCS and SCSp are generally used for their tax transparency efficiency (the taxation of an SCS or SCSp is directly borne by the partners). The SCA, SCS and SCSp are the preferred vehicles for private equity houses and venture capital investors.

Establishing a presence from abroad

3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?

Overseas companies can establish a presence in Luxembourg by appointing a local agent, a distributor or a franchisee. Depending on the type and size of commercial activity they wish to establish on the territory, foreign companies may prefer to set up a subsidiary or a local branch.

For financial activities (such as investment, holding of participating interest or real estate acquisition in other countries), foreign investors will generally establish a Luxembourg special purpose vehicle (SPV) in the form of a limited liability company (SA, SCA or SARL) or a partnership (SCS or SCSp) (see [Question 2](#)).

The choice for a limited liability company over a partnership structure will generally depend on the expected tax treatment of the structure, the contemplated investment and its internal governance rules. Partnerships are generally tax transparent, while limited companies are opaque structures from a tax standpoint. While a partnership is mainly governed by the partners' contractual arrangements, limited liability companies must comply with certain mandatory governance rules set out in the Company Law.

4. How can an overseas company trade directly in your jurisdiction?

Carrying out commercial, craft and industrial activities, as well as certain liberal professions (for example, economic advisers, chartered accountants, architects, and so on) require a business licence (*autorisation d'établissement* or *autorisation de commerce*). The licensing rules are set out in the Law dated 2 September 2011 on access to commercial, craft and industrial activities. They apply to any company wishing to trade in Luxembourg, whether established in Luxembourg or abroad.

A business licence will be granted to a business (in fact to the individual professional operating under his/her own name or that of the trading company) within three months from receipt of a duly complete application file if both:

- The person responsible for the operation or management of the business satisfies the legal qualification and professional integrity requirements for the activity in question.
- The business has a fixed and substantial place of establishment in Luxembourg (that is, it is not a "letterbox" company).

The future manager/director of the company, agency or branch applying for the business licence must also provide evidence, by means of a notarised declaration, that he/she was not formerly involved in an insolvent business.

Applications must be submitted to the General Directorate for SMEs and Entrepreneurship (which is a division of

the Ministry of Economy) by standard mail or online. Tacit authorisation is granted if no decision is rendered within three months from receipt of a duly complete application file.

5. What are the formalities for setting up a partnership?

As described in *Question 2*, the Company Law recognises and governs three types of partnerships: the partnership limited by shares (SCA), the common limited partnership (SCS) and the special limited partnership (SCSp).

In each type of partnership, there must be at least both:

- One unlimited partner (*associé commandité*), with joint and unlimited liability for all the obligations and liabilities of the partnership.
- One limited partner (*associé commanditaire*), whose liability is limited to his/her contribution to the partnership.

Since July 2013, the management of a partnership can be entrusted to one or more persons who are not partners of the partnership.

While an SCA must be incorporated before a notary (who will enact its articles of incorporation), SCSs and SCSpS are not required to execute their partnership agreement before a notary. An SCA's articles of incorporation must be published entirely, while SCSs and SCSpS are only required to publish limited information.

An SCSp does not have a legal personality, but must be registered with the Luxembourg Trade and Companies Registry.

The partners in an SCS and SCSp can freely determine the rules that apply to the partnership in the partnership agreement (for example, governance, partners' rights, investments and return, and so on). An SCA's partnership agreement will generally be implemented through its articles of incorporation, and will need to comply with certain restrictions and rules applicable to public limited liability companies with regard to governance, shareholders' mandatory rights and distributions.

The main reasons for using an SCS or an SCSp are the relative flexibility of their legal structure, the flexibility in drafting the partnership agreement, as well as their tax transparency features.

6. What are the formalities for setting up a joint venture?

Luxembourg is the preferred European jurisdiction for setting up international joint ventures (JVs). JVs are generally implemented through a Luxembourg special purpose vehicle in the form of a limited liability company or partnership, depending on the tax implications of the structure, the contemplated investments and the corporate flexibility sought by investors. The JV partners generally enter into a JV or shareholders' agreement, which is not

published. Some clauses of the JV agreement are typically reproduced in the JV company's articles of incorporation, which become public through their publication and are, to a certain extent, enforceable against third parties.

7. Are trusts available in your jurisdiction?

The Anglo-saxon trust concept, distinguishing between legal and beneficial ownership of assets, does not exist *per se* under Luxembourg law. However, Luxembourg recognises trusts validly created in foreign jurisdictions, in accordance with the Law dated 27 July 2003 on trust and fiduciary agreements (2003 Law), which ratifies the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985.

Under the 2003 Law, fiduciary agreements transferring ownership of assets to a fiduciary agent (equivalent to a trustee), who must be a credit institution or a professional of the financial sector, can be created. In such a case, the assets of the transferor are segregated from other assets of the fiduciary agent and protected from collective proceedings.

A draft bill was introduced in March 2013 for the creation of foundations in Luxembourg (with equivalent or similar features to those of Anglo-Saxon trusts), but has not been passed yet.

The answers to the following questions relate to private limited liability companies (or their equivalent).

Forming a private company

8. How is a private limited liability company or equivalent corporate vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?

Regulatory framework

The Company law governs private limited liability companies.

Depending on the type of business to be run by the company, a company may be subject to other legislation, specific requirements and to the supervision of certain regulatory authorities. For example:

- There are business licensing requirements for conducting trading activities (see [Question 4](#)).
- Credit institutions and professionals of the financial sector must comply with the Law dated 5 April 1993 on the financial sector and are subject to the supervision of the Commission for the Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier*) (CSSF).
- Investment funds must comply with specific legislation depending on their form, purpose and investment policies and are subject to the supervision of the CSSF.

- Alternative investment fund managers must comply with the Law dated 12 July 2013 on alternative investment fund managers and are subject to the supervision of the CSSF.
- Insurance companies are subject to the Law dated 6 December 1991 on the insurance sector and supervised by the Insurance Commission (*Commissariat aux Assurances*).

The Luxembourg Stock Exchange has established corporate governance guidelines that are generally recognised by practitioners as reference governance rules in non-listed companies.

For more information on the CSSF and the Insurance Commission see box: [The regulatory authorities](#).

Tailor-made or shelf companies

The Luxembourg Company Law and corporate practice are based on freedom of contract. They provide great flexibility in the way articles of incorporation of private limited liability companies can be drafted. Some local services providers offer shelf companies (that is, companies with standard articles of incorporation). However, their use is limited as they can be costly due to the need to comply with “know your customer” and tax substance requirements, as well as the need to amend the company’s articles of incorporation. Investors usually prefer to incorporate a company tailored to their own needs as, once the company’s bank account is opened, a company can be incorporated within 24 hours.

Formation process

The incorporation of a private limited liability company requires the following steps:

- Checking the company’s name availability with the Luxembourg Trade and Companies Registry.
- Opening a blocked bank account for the company under incorporation, on which the minimum amount of share capital must be deposited.
- Obtaining certification by the bank, addressed to the notary, that the share capital is available for incorporating the company.
- Anti-money laundering declarations by the ultimate beneficial owners of the company.
- Drafting the company’s articles of incorporation (with a mandatory translation into German or French).
- Incorporation of the company before a Luxembourg notary.
- Release of the company’s share capital through the notary’s certification addressed to the bank that the company has been incorporated.
- Electronic filing of the company’s articles of incorporation by the notary with the Luxembourg Trade and Companies Registry.
- Publication of the articles on the Electronic Journal of Companies and Associations (*Recueil Electronique des Sociétés et Associations*).

The company comes into existence immediately on incorporation, but its articles of incorporation are only enforceable against third parties from the date of their publication, which is now carried out electronically, reducing any adverse delay in this respect.

From the date of incorporation, the company’s share capital is freely available to the company and the directors can use it to run the company’s business.

Company constitution

The articles of incorporation are the sole legal documents required to incorporate a private limited liability

company. There are no legal model articles, but local practitioners have standardised the structure and drafting of articles of incorporation.

The articles of incorporation of limited liability companies and partnerships limited by shares are fully published. Only certain extracts of partnership agreements are published.

Shareholders' agreements are frequently used in Luxembourg and are not published. Certain provisions of shareholders' agreements may be inserted in the articles of incorporation.

Financial reporting

9. What financial reports must the company submit each year?

Luxembourg companies must draft and publish financial statements and profit and loss accounts in accordance with the Law dated 19 December 2002 on the Trade and Companies Registry and the accounting and annual accounts of companies (Accounting Law).

The format of the balance sheet and profit and loss accounts must follow that of the Luxembourg Standard Chart of Accounts (*Grand Ducal Regulation dated 10 June 2009*).

The branch of a foreign company must publish certain accounting documents of the foreign company with the Luxembourg Trade and Companies Registry. These documents must be prepared in accordance with Luxembourg generally accepted accounting principles, as referred to in the Accounting Law.

Trading disclosure

10. What are the statutory trading disclosure and publication requirements for private companies?

Limited liability companies and partnership limited by shares must include the following information on their letterhead, invoices and any document issued by them:

- Company's name.
- Form of the company (see [Question 2](#)).
- Company's registered address.
- Luxembourg Trade and Companies Registry's registration number.

Companies that are registered for value added tax (VAT) purposes must add their VAT number on their documents.

11. How do companies execute contracts or deeds?

A contract will be validly binding on a company if it is signed by its directors or authorised representatives in accordance with the company's articles of incorporation and/or the Company Law. There are no other formalities required under Luxembourg law.

Membership

12. Are there any restrictions on the minimum and maximum number of members?

Limited liability companies can be incorporated by a single shareholder. Partnerships must be incorporated by at least one unlimited partner and one limited partner (see [Question 5](#)).

Private limited liability companies (SARLs) cannot have more than 100 shareholders.

Minimum capital requirements

13. Is there a minimum investment amount or minimum share capital requirement for company formation?

The minimum share capital requirements are as follows:

- Public limited liability company (SA), public simplified company (SAS) and partnership limited by shares (SCA): EUR30,000, of which a quarter must be fully paid up on incorporation.
- Private limited liability company (SARL): EUR12,000, which must be fully paid up.

There is no minimum share capital requirement for a common limited partnership (SCS) or a special limited partnership (SCSp). The partners can freely determine their contribution to the partnership.

14. Are there restrictions on the transfer of shares in private companies?

Shares in a public limited liability company (SA), public simplified company (SAS) and partnership limited by shares (SCA) are freely transferable, unless the articles of incorporation include specific restrictions.

Transfers of shares in a private limited liability company (SARL) to a non-shareholder are subject to the prior approval of shareholders representing 75% of the company's share capital (or 50% if the articles of incorporation provide for such a threshold).

Unless otherwise provided for in the partnership agreement, limited partners' interests in a common limited partnership (SCS) or special limited partnership (SCSp) can only be transferred with the prior approval of the general partner. Interests held by the general partner can only be transferred with the consent of all the partners.

Shareholders and voting rights

15. What protections are there for minority shareholders under local law? Can additional protections be given?

The Company Law provides for the following minimum minority shareholders' rights:

- In a public limited liability company (SA), public simplified company (SAS) and partnership limited by shares (SCA), shareholders representing 10% of the company's voting rights can:
 - initiate a liability claim against the company's management;
 - request the adjournment of a shareholders' general meeting or request that certain items be added to the meeting agenda.
- Right to be provided with the company's annual accounts, the annual management report, the annual auditor's report, the name and details of the company's directors, the list of shareholders who have not fully paid up their contribution, and, in the event of a change to a company's articles of incorporation, the full text of the suggested changes.
- Shareholders representing 10% of a company's share capital and/or voting rights can ask questions to the management body on certain operations of the company or its affiliates.
- Rights and protection against dilution in the event of a cash share capital increase (preferred subscription rights).

Minority shareholders may have additional rights under the company's articles of incorporation.

16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Must quorum or voting rights be proportionate to shareholdings?

Although the principle of “one share equals one vote” generally applies in Luxembourg, the Company Law was amended in August 2016 to introduce a form of plural voting in public limited liability companies (SAs), public simplified companies (SASs) and partnerships limited by shares (SCAs). The Company Law now allows these companies to implement votes commensurate to shareholders’ interests in the company’s share capital.

Depending on the nature of the decisions to be taken at the shareholders’ general meeting, the following requirements apply, unless otherwise restricted in the company’s articles of incorporation (*Company Law*):

- Ordinary shareholders’ general meetings of SAs, SASs and SCAs: there are no quorum requirements and decisions are adopted by a majority of the votes of shareholders present or represented at the meeting.
- Ordinary shareholders’ general meetings of private limited liability companies (SARLs): there are no quorum requirements, but decisions must be adopted by shareholders representing more than half of the company’s share capital on a first call (50% plus one vote). On a second call, decisions will be validly adopted by a majority of the votes, regardless of the portion of share capital represented.

The management can suspend voting rights under certain conditions, for example, if a shareholder has not complied with its funding commitments towards a company and such suspension is provided for in the company’s articles of incorporation. A shareholder can also renounce its voting rights, temporarily or permanently.

17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company’s constitution, appointing and removing directors, and so on)?

Decisions related to the company’s shares, share capital, shareholders’ rights and changing the company’s name require amending the company’s articles of incorporation.

An amendment to the company’s articles of incorporation must be passed at an extraordinary general meeting of the shareholders before a Luxembourg notary. Decisions are adopted as follows:

- In a public limited liability company (SA), public simplified company (SAS) and partnership limited by shares (SCA): amending the company’s articles of incorporation requires, on a first call, the approval of two-thirds of the shareholders representing half of the company’s share capital. On a second call, an amendment must be adopted by the majority of the shareholders present or represented, without the need to comply with quorum requirements.
- In a private limited liability company (SARL): amending the company’s articles of incorporation requires the approval of shareholders representing three-quarters of the company’s share capital.

Decisions to appoint and remove directors or managers are subject to the voting requirements applicable to ordinary shareholders' general meetings (see [Question 16](#)).

18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?

Quorum requirements and voting majorities provided by law can only be increased and must be implemented through the company's articles of incorporation.

Certain type of companies can issue non-voting shares. Beneficiary interests (*parts bénéficiaires*), with or without voting rights, can be created by the company's articles of incorporation.

Sectoral restrictions

19. What are the conditions or restrictions on establishing a business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?

Commercial, craft and industrial activities require a business licence (see [Question 4](#)).

Any business that is related to the financial sector (such as banks and professionals of the financial sector) requires the prior approval of the Finance Ministry.

Insurance companies must obtain prior authorisation from the Insurance Commission (*Commissariat aux Assurances*).

Foreign investment restrictions

20. Are there any restrictions on foreign shareholders?

There are no restrictions on foreign shareholders.

21. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations.

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

There are no such restrictions in Luxembourg.

Directors

23. Are there any general restrictions or requirements on the appointment of directors?

The Company Law does not contain any requirements regarding the age, gender, nationality, residence or domicile of directors.

For certain business activities (for example, trading, credit institutions, professionals of the financial sector and in the insurance sector), directors must be authorised by the relevant authority to act as director. In these cases, directors must provide the authority with information such as résumés, total number of directorships held, absence of former insolvency, and extract of criminal record. In addition, the authority may request that the director resides in Luxembourg or in the greater Luxembourg area, including neighbouring regions.

The company must have its place of central administration at its registered office in Luxembourg (*Company Law*), which means that meetings of the board of directors and 'shareholders must be held at the company's registered office.

A corporate entity can act as director of a company, but will need to appoint an individual as its representative at the board. Corporate entities acting as directors in a corporate partnership limited by shares (SCA) or private limited liability company (SARL) do not need to appoint an individual representative.

Board composition

24. What are the legal requirements for the composition of a company's board of directors?

Structure

In Luxembourg, companies are generally managed by a single director or a board of directors.

The Company Law also allows a public limited liability company (SA) to adopt a two-tiered management structure, in which case the a management board acts under the supervision of a supervisory board.

Number of directors or members

Depending on their form, companies can be managed by a:

- Single manager (private limited liability company (SARL)).
- Sole director (SA with one shareholder).
- Chairman (public simplified company (SAS)).
- Single manager (partnership limited by shares (SCA), common limited partnership (SCS) or special limited partnership (SCSp)).
- Board of managers (SARL).
- Board of directors (SA).

The board of directors of an SA must have a minimum of three members. In an SA with a two-tiered management structure, the same rule applies to the management board (that is, it must have at least three members). There is no minimum requirement for the supervisory board.

Employees' representation

Employees only have statutory rights to board representation in companies that have, or have had, more than 1,000 employees working on the Luxembourg territory during three consecutive years.

Employees sitting on the board of directors are appointed by the company's staff delegation. They must represent one-third of the board members and benefit from the same rights as other directors.

Reregistering as a public company

25. What are the requirements for a business to reregister as a public company?

Membership

A public limited liability company (SA) can be formed with one shareholder. Therefore, there is no minimum number of shareholders required to reregister as a public company.

Share capital

An SA must have a minimum share capital of EUR30,000. No minimum number of shares is required. For example, transforming a private limited liability company (SARL) into an SA only requires that the 'SARL's net assets before the conversion equal at least the minimum share capital amount (that is, EUR30,000).

Only SAs and partnerships limited by shares (SCAs) can issue shares to the public to be listed on a stock exchange. The requirements for listing shares in Luxembourg are set out in specific legislation and subject to the supervision of the Luxembourg Stock Exchange and the Commission for the Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier*).

Tax

26. What main taxes are businesses subject to in your jurisdiction?

Companies established in Luxembourg are subject to corporate income tax and municipal business tax (CIT).

CIT is broadly calculated on the basis of the company's profit as set out in the commercial balance sheet. Profits are adjusted by adding non-deductible items, such as tax-exempt income under a double tax treaty and by subtracting losses carried forward. Losses can be carried forward either indefinitely (if generated before 1 January 2017) or for a limited period of 17 years (if generated after 1 January 2017).

For CIT purposes, taxable income includes a resident company's worldwide income. Luxembourg taxes its corporate residents on their worldwide income and non-residents companies on their Luxembourg source income only.

From 1 January 2017, the effective CIT rate on profits exceeding EUR30,000 has been reduced from 29.22% to 27.08% for companies established in Luxembourg City.

Luxembourg companies are also subject to net worth tax (NWT), which is levied annually on their taxable wealth (that is, the difference between their assets and liabilities) on 1 January.

From 1 January 2016, the following NWT rates apply:

- 0.5% on taxable wealth up to EUR500 million.
- On taxable wealth above EUR500 million: the tax will amount to EUR2.5 million, plus 0.05% on the taxable wealth exceeding EUR2.5 million.

In principle, a company's tax year corresponds to the calendar year. Alternatively, the tax year may be an accounting year that is different from the calendar year. Companies must file their tax returns by 31 May of each year following the calendar year during which income was earned. From 2017, the tax returns of companies liable to CIT must be filed electronically.

The tax authorities can assess the tax due on the basis of the tax returns filed by taxpayers. The tax position becomes final after the five-year statute of limitation expires.

Companies must make four quarterly advance payments of tax based on the latest assessment.

Supplies of goods and services that are deemed to take place in Luxembourg are subject to value added tax (VAT) at the standard rate of 17%, which is one of the lowest standard VAT rates in the EU. Reduced rates of 14%, 8% or 3% apply to certain transactions.

Corporations whose activities are subject to VAT are entitled to offset the amount of VAT charged to them by their suppliers or self-accounted by them on imports or acquisitions of goods or services from abroad against payable VAT.

Banking, financial, insurance and reinsurance transactions are generally VAT-exempt activities.

There is no stamp duty in Luxembourg.

27. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

Tax resident

A company is considered to be resident in Luxembourg if either its registered office or place of central administration is located in Luxembourg. The location of a company's registered office is set out in the company's articles of incorporation.

"Place of central administration" is generally understood to mean the place where the company is managed or controlled. While this term is not legally defined, the location of the company's main place of management and control is determined by the facts and circumstances of the case, including the following:

- The place where meetings of the board of directors are held.
- The place where shareholders' meetings are held.
- The place where the company's officers make their decisions.
- The place where the company's books and records are kept.
- The place where other similar events evidencing management/control occur.

Non-tax resident

A non-resident company is liable to Luxembourg tax if it has a fixed place of business, a permanent establishment or a permanent representative in Luxembourg.

Non-resident companies are only taxable on their Luxembourg source income. However, taxation is generally alleviated or mitigated through the application of tax treaties for the avoidance of double taxation.

The provisions on permanent establishments included in the tax treaties concluded by Luxembourg (currently 81 treaties in force) generally follow the principles of the OECD Model Tax Convention on Income and on Capital.

Under Luxembourg domestic tax law, the concept of permanent establishment is defined in a broader way as any fixed piece of equipment or place that serves for the operation of an established business.

28. What is the tax position when profits are remitted abroad?

In principle, profits remitted abroad to Luxembourg non-residents are taxable in Luxembourg (which is the territory where the income is sourced). However, taxation is generally alleviated or mitigated through the application of tax treaties for the avoidance of double taxation (currently 81 treaties in force).

Dividends

Dividends include any distributions of corporate profit to holders of shares, participating certificates or similar claims, whether paid in cash or in any other form. Dividends are taxed as investment income. Distributions of profits by fully taxable Luxembourg tax resident companies are subject to a 15% withholding tax.

However, the distributing entity will not be subject to Luxembourg withholding tax if the following conditions are met (*Article 147, Income Tax Act of 4 December 1967, as amended*):

- The distributing entity is a fully taxable Luxembourg limited liability company
- The recipient of the dividends is an entity that is subject to corporate tax at a rate similar to the Luxembourg corporate income tax rate or to a minimum 10.5% rate.
- At the date on which dividend income is made available, the recipient entity has been holding, or undertakes to hold, a direct participation of at least 10% or for an acquisition price of at least EUR1.2 million in the share capital of the Luxembourg entity for an uninterrupted period of at least 12 months.

However, the withholding tax exemption is not available in the case of artificial arrangements between companies which do not reflect the economic reality, even if the above conditions are met.

Interest

Interest income means any revenue from fixed income investments. In principle, interest paid by a Luxembourg company is not subject to any Luxembourg withholding tax. However, Luxembourg law provides for a final 20% withholding tax on interest income paid by a paying agent established in Luxembourg to beneficial owners residing in Luxembourg.

Royalties

Royalty payments to both residents and non-residents are not subject to any Luxembourg withholding tax.

Capital gains

Capital gains realised on speculative transactions are taxable in Luxembourg. A transaction is deemed speculative when any of the following applies:

- Immovable property is sold within two years from the date of purchase.
- Movable property is sold within six months from the date of purchase.

- The sale precedes the purchase.

A speculative gain is calculated as the sales proceeds minus the purchase price and incidental costs (such as notary's fees, transfer tax, agents' commission, advertising, improvement costs, and so on).

29. What thin-capitalisation rules and transfer pricing rules apply?

Luxembourg does not have specific thin capitalisation rules, but applies the arm's length principle. If a Luxembourg resident obtains a loan from a related party on terms that differ from those which an independent party would have provided, the tax authorities can recharacterise all or part of the debt as capital. Consequently, interest payments may be regarded as hidden profit distributions.

In practice, where an entity's debt-to-equity ratio exceeds 85:15, the tax authorities may consider any surplus as a contribution to capital. Interest paid on this surplus may be deemed non-deductible and treated as a dividend distribution potentially subject to a 15% withholding tax (which may be deductible or exempt under a tax treaty).

Luxembourg largely follows the transfer pricing guidelines issued by the Organisation for Economic Co-operation and Development (OECD).

Taxpayers must disclose their transactions with related parties and evidence through adequate documentation that they comply with the arm's length principle.

There are no specific guidelines on the nature and extent of the documentation required, which will depend on the circumstances of the case under consideration. However, as Luxembourg is a member of the OECD, the documentation requirements are aligned with the OECD guidelines on transfer pricing documentation requirements.

The transfer pricing methods used to determine the arm's length nature of an intercompany transaction must follow the general guidelines set out in Luxembourg tax law, which are based on the OECD transfer pricing methods.

The remuneration of a Luxembourg company must be determined based on the functions performed, assets employed, and risks assumed. It is possible to obtain written clearance from the Luxembourg tax authorities on the criteria to be used for the determination of the transfer pricing of financial lending transactions, provided that the Luxembourg company meets certain substance and equity at risk requirements.

If the remuneration earned by a Luxembourg company acting as an intermediary is not supported by a transfer pricing report, the tax authorities will consider that the relevant financing transactions comply with the arm's length principle if they generate a minimum return on the financed assets. Currently, the Luxembourg tax authorities consider that a minimum return of 2% after taxes is acceptable.

An intermediary company will only benefit from this simplification measure if the majority of its board members with capacity to bind the company either:

- Reside in Luxembourg.
- Are taxable in Luxembourg on more than 50% of their income, and key company decisions are being taken in Luxembourg.

Additionally, where the simplification rule applies, the transaction will be subject to the provisions on automatic exchange of information.

Grants and tax incentives

30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?

Luxembourg tax law provides for various incentives in the following areas:

- Risk capital.
- Audiovisual activities.
- Environmental protection.
- Research and development (R&D).
- Professional training.
- Recruitment of unemployed persons.

Among the most popular tax incentives is the tax credit for investments. Eligible assets primarily consist of depreciable tangible goods other than buildings, livestock and deposits and vessels operating in international traffic. A global investment tax credit is available on the acquisition price of investments made during the relevant tax year. The tax credit amounts to:

- 8% of the first EUR150,000 of the acquisition price.
- 2% of the price tranche exceeding EUR150,000.

Luxembourg is also a domicile of choice for cross-border distribution of investment products. In particular, Luxembourg investment funds may benefit from a wide range of deductions and exemptions (for example, no taxation on income and capital gains, no withholding tax, no net wealth tax). An investment fund may only be subject to a subscription tax and the minimum net worth tax (that is, EUR4,815 per year).

In addition, a company that carries out innovative and R&D activities in Luxembourg can benefit from financial support, such as innovation loans that carry a fixed interest lower than the market rate.

The Luxembourg Parliament has deposited a new draft bill that proposes the introduction of a new intellectual property (IP) tax regime. This would replace the prior IP regime, which was repealed from 1 July 2016 and granted a tax exemption on 80% of the net income and capital gains derived, or deemed to be derived, from a wide variety of IP. This new IP regime, which would be limited to patent and software rights, should reinforce R&D activities and stimulate R&D foreign investments in Luxembourg.

Employment

31. What are the main laws regulating employment relationships?

The Labour Code governs employment relationships. Specific laws also apply in certain sectors.

The Labour Code contains mandatory rules that apply to all employment contracts governed by Luxembourg law and to foreign employees working on the Luxembourg territory. The mandatory rules relate to:

- Minimum salary.
- Working hours.
- Paid holidays.
- Non-discrimination.
- Health and safety.

32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?

Nationals of EU member states, Switzerland, Norway, Liechtenstein and Iceland benefit from the right to free movement of workers and are allowed to work in Luxembourg without a working permit or visa.

Luxembourg immigration rules apply to nationals from other countries. A foreign national wishing to work in Luxembourg for more than three months must obtain a working permit and a residence authorisation (*autorisation de séjour*). The working permit requirements depend on the type of work to be performed, the foreign national's qualifications, and so on.

Proposals for reform

33. Are there any impending developments or proposals for reform?

There are no impending developments or proposals for reform.

The regulatory authorities

Commission for the Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier*) (CSSF)

Main activities. The CSSF is the supervisory authority for the financial sector.

W www.cssf.lu

Ministry of Economy (Ministère de l'Économie)

Main activities. The Ministry of Economy is the authority responsible for providing business licences.

W

www.guichet.public.lu/entreprises/en/creation-developpement/autorisation-etablissement/autorisation-honorabilite/autorisation-etablissement/index.html

Luxembourg Trade and Companies Registry

Main activities. The Luxembourg Trade and Companies Registry is the official directory of all natural and legal persons engaged in trade.

W www.rcsi.lu

Insurance Commission (*Commissariat aux Assurances*)

Main activities. The Insurance Commission is the supervisory authority for the insurance sector.

W www.commassu.lu

Luxembourg Stock Exchange

Main activities. The Luxembourg Stock Exchange is responsible for the listing of securities.

W www.bourse.lu

Online resources

Memorial

W www.legilux.public.lu

Description. This website is the official online platform that provides access to Luxembourg legislation.

Contributor profiles

Denis Van den Bulke, Managing Partner

VANDENBULKE



T +352 26383350

F +352 26383349

E dv@vdbl.com

W www.vdbl.com

Professional qualifications

- Admitted to the Brussels Bar, 1995.
- Admitted to the Luxembourg Bar, 2003.
- Master's degree in Law, University of Liège, Belgium.

- Master's degree in Economics, CORE (Center of Operational Research and Econometrics), Louvain, Belgium.
- Master's degree in Sociology and Anthropology, Catholic University of Louvain and University of Liège, Belgium.
- Graduated from Marysville, US.

Areas of practice. Corporate finance; venture capital and private equity; group restructuring (along with cross-borders mergers and acquisitions and international tax); international and European banking and financial law, including investment funds and international equity compensation plans.

Recent transactions

- Advised a world steel manufacturer, supplier for major international infrastructure projects, in the creation of a Luxembourg-based joint venture with PE investment partners.
- Acting on a regular basis for a world-leader French manufacturer of luxury goods on their local and cross-border sales, in all corporate matters regarding their operations, new products and Internet sales platform.
- Advised the founders of a French fashion group in their joint venture with PE house and Chinese conglomerate, including in respect of their IPO on Euronext Paris (global offer of EUR541 million).

Languages. French, English, Italian, Dutch, German

Professional associations/memberships. ALFI (Luxembourg Association of Investment Funds); LPEA (Luxembourg Association of Private equity); ABA (American Bar Association); IBA (International Bar Association); Full member of the Financial Services section of the EU Committee of the American Chamber of Commerce; Fellow of the Center for International Legal Studies, Salzburg, Austria; European Banking and Financial Association.

Publications

- Luxembourg Section of *Getting The Deal Through* publications such as: "Securities Finance" (2012, 2014, 2015, 2016, 2017) "Banking Regulations" (2014, 2015, 2016), "Project Finance" (2015, 2016), "Acquisition Finance" (2014, 2015, 2016, 2017).
- "Insolvency and Corporate Reorganisation Report 2016", Luxembourg.
- "The Liability of the Bankers in the enforcement of securities", Luxembourg section, 2014.
- "International Banking Law and Regulation".
- "The opening of the Capital of companies to Venture Capital investors", 2003.
- "International Stock-Option Plans", section on Luxembourg.
- "Banking techniques in inheritance planning", 1994.
- "Investments Funds in Luxembourg and Ireland: a comparative approach", 1994.
- "To Euro-Hold or Not To Euro-Hold your subsidiaries (or the comparative advantages to

structure operations in the European Union through a European Holding Company)", 1996.

Laurence Jacques, Partner Corporate

VANDENBULKE



T +352 26383350
F +352 26383349
E lj@vdblaw.com
W www.vdblaw.com

Professional qualifications

- Admitted to the Luxembourg Bar, 2002.
- Master's degree in Law, Catholic University of Louvain, Belgium.
- Master's degree in Law, Georg-August Universität Goettingen, Germany.

Areas of practice. Corporate and acquisition finance; domestic and cross-border mergers and acquisitions; venture capital and private equity; structured finance transactions, with specific experience of advising financial institutions, lenders, investors, alternative capital providers, asset-based lenders and private equity funds on borrowings, new lending, restructurings, workouts and enforcement of debt and equity positions; strategic advice in the enforcement process of claims to loan servicers and sellers of loans and mortgage-backed securities and investors owning or acquiring stressed or distressed assets.

Recent transactions

- Acted for a German bank, as lender, in connection with the protection and enforcement of its rights over a portfolio of Czech real estate assets held through Luxembourg SPVs and the restructuring of the portfolio's indebtedness by sale to a specialised real estate asset manager with focus on Central European economies.
- Acted for the shareholders of an information security provider in relation to its sale to a

technology investment firm specialised in cyber security, data and cloud computing.

- Assisting a leading real estate developer in Europe, US and Asia and its joint venture set up to acquire a portfolio of logistic centres in Germany. The portfolio value is around EUR500 million.

Languages. French, English, German

Professional associations/memberships. INSOL Europe (European organisation of professionals specialised in insolvency, bankruptcy and business reconstruction and recovery); AIJA (International Association of Young Lawyers); LPEA (Luxembourg Private Equity Association); ALJB (Luxembourg Association of Banking Law Lawyers).

Publications

- *The Acquisition and Leveraged Finance Review Luxembourg section (2016, 2017).*
- *Insolvency and Corporate Reorganisation Report 2016 Luxembourg section.*
- *Luxembourg section of Getting the Deal Through publications such as: "Project Finance" (2013, 2015, 2016) and "Acquisition Finance" (2014, 2015, 2016).*
- *"Quand le banquier s'aventure au-delà du Rubicon... Aspects de la responsabilité du banquier dispensateur de crédit lors de la réalisation d'un gage sur instruments financiers" in Droit bancaire et financier au Luxembourg, 2014.*

END OF DOCUMENT