VANDENBULKE,

Establishing a Business in Luxembourg

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Legal system

Question Body:

a324204

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

Answer Body:

The legal system of the Grand-Duchy of Luxembourg (Luxembourg) is based on written civil law inspired by the French Napoleonian 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.

Question Set:

a791427

Business vehicles

Question Body:

a203584

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

Answer Body:

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.

Question Set:

Establishing a presence from abroad

Question Body:

a661529

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

Answer Body:

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 contemplated investment, its internal governance rules and the expected tax treatment of the structure. 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.

Question Body:

a957436

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

Answer Body:

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.

EU companies that supply occasional and temporary services in Luxembourg do not need to obtain a business licence but must submit a prior notification to the General Directorate for SMEs and Entrepreneurship.

The administrative process is slightly different for EU and non-EU applicants. As a result, this should be considered in particular by applicants from the UK after the UK leaves the EU (Brexit). The rights and procedures may depend on the entry into force of the withdrawal agreement negotiated between the EU and the UK.

Question Body:

a514230

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

Answer Body:

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.

Question Body:

a515187

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

Answer Body:

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 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.

Question Body:

a150514

1. Are trusts available in your jurisdiction?

Answer Body:

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 collectiveproceedings.

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).

Question Set:

a295985

Forming a private company

Question Body:

a471426

1. 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?

Answer Body:

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.

Question Set:

Financial reporting

Question Body:

a961599

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

Answer Body:

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.

Question Set:

Trading disclosure

Question Body:

a409533

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

Answer Body:

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'sregistration number.

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

Question Body:

a145476

1. How do companies execute contracts or deeds?

Answer Body:

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.

Question Set:

a286000

Membership

Question Body:

a214511

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

Answer Body:

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.

Question Set:

a314189

Minimum capital requirements

Question Body:

a129967

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

Answer Body:

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.

Question Body:

a225778

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

Answer Body:

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.

Question Set:

a509822

Shareholders and voting rights

Question Body:

a494985

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

Answer Body:

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.

Question Body:

a265848

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

Answer Body:

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.

Question Body:

a858579

1. 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)?

Answer Body:

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*).

Question Body:

a762375

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

Answer Body:

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.

Question Set:

a260408

Sectoral restrictions

Question Body:

a811480

1. 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?

Answer Body:

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*).

To ensure the good functioning and stability of the financial markets and guarantee the protection of investors in the case of the UK's withdrawal from the EU, Luxembourg voted in several laws on 8 April 2019 (Brexit Laws). The Brexit Laws apply to firms established in the UK that before Brexit were authorised entities under several EU Directives such as the CRD, MiFID II, PSD 2, EMD, AIFMD, UCITS, and, notably, investment fund managers established in the UK managing UCIs established in Luxembourg.

In the event of a hard Brexit, UK firms will be considered as “third-country firms” and will lose the benefit of passporting rights under the relevant EU Directives. The purpose of the Brexit Laws is to anticipate the consequences of a loss of the passporting right, to ensure the continuity of existing contracts, the orderly functioning and the stability of the financial markets, and investors’ protection in the event of a hard Brexit.

As such, the Brexit Laws provide that UK firms may, subject to certain conditions, be permitted to continue their activities in Luxembourg during a transitional period. These safe harbour provisions under the Brexit Laws apply only to contracts that entered into force before the date of Brexit and to contracts concluded post-Brexit with close links to contracts that entered into force before the date of Brexit. In all other cases, especially in order to be allowed to conclude new contracts or start new activities, UK firms will be required, as applicable, to set up an establishment in Luxembourg or to submit an application to provide investment services in Luxembourg on a cross-border basis under the law on the financial sector.

Question Set:

a863256

Foreign investment restrictions

Question Body:

a981139

1. Are there any restrictions on foreign shareholders?

Answer Body:

There are no restrictions on foreign shareholders.

Question Body:

a399211

1. Are there any exchange control or currency regulations?

Answer Body:

There are no exchange control or currency regulations.

Question Body:

a896402

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

Answer Body:

There are no such restrictions in Luxembourg.

a522410

Directors

Question Body:

a679174

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

Answer Body:

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.

Question Set:

a350081

Board composition

Question Body:

a820968

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

Answer Body:

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 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.

Question Set:

a918232

Reregistering as a public company

Question Body:

a845240

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

Answer Body:

a978389

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.

a905381

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 CSSF.

Question Set:

a146700

Tax

Question Body:

a995162

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

Answer Body:

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.

The Luxembourg combined corporate tax rate is 24.94% for 2019, for companies located in Luxembourg City and having a taxable basis exceeding EUR175,000 (that is, 18.19% CIT including the contribution to the employment fund, and 6.75% municipal business tax (MBT)).

Companies whose taxable basis does not exceed EUR175,000 are taxed at a combined tax rate of 22.80% for 2019, for companies located in Luxembourg City. Companies with a tax basis between EUR175,000 and EUR200,001 are taxed at a minimum amount of EUR26,250 plus 31% of the taxable income above EUR175,000, the 7% contribution to the employment fund (applied to the amount of the CIT), and 6.75% MBT.

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.

There is also a minimum NWT ranging between EUR535 and EUR4,815 (from 1 January 2017), for companies carrying out holding and financing activities, and ranging between EUR535 and EUR32,100 for other companies.

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.

The VAT group regime is implemented in Luxembourg since 2018.

There is no stamp duty in Luxembourg.

Question Body:

a800669

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

Answer Body:

a668142

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.

a100065

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. A non-resident company may also be liable to tax in Luxembourg in some relatively restricted cases (for example, on disposal of an important shareholding (more than 10%) in a Luxembourg company within a period of six months from the acquisition).

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 82 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.

Question Body:

a975696

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

Answer Body:

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 82 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 EU qualifying participation or a company that is subject to corporate tax at a rate similar to the Luxembourg corporate income tax rate or to a minimum 8.5% 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 atleast 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**

In principle, arm’s length 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**

Arm’s length 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).

Question Body:

a987447

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

Answer Body:

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, in the case of holding activity, 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 or the Luxembourg participation exemption).

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 in practice 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. The Luxembourg company may need to meet certain substance and equity at risk requirements. 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.

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.

Question Set:

a927196

Grants and tax incentives

Question Body:

a449349

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

Answer Body:

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 13% global investment tax credit is available on the acquisition price of investments made during the relevant tax year. In addition, the company may benefit from tax credit amounting to:

* 8% of the first EUR150,000 of the acquisition price of qualifying new investments.
* 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.

In 2018, Luxembourg introduced a new intellectual property (IP) tax regime. This would replace the prior IP regime, which was repealed from 1 July 2016 (and remain applicable until 2021) 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.

Question Set:

Employment

Question Body:

a411029

1. What are the main laws regulating employment relationships?

Answer Body:

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.

Question Body:

a360239

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

Answer Body:

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.

In the event of the entry into force of the withdrawal agreement, UK nationals and their family members who fall within the scope of the withdrawal agreement will have the same rights as EU citizens with respect to access to the EU labour market.

UK nationals and their family members who reside in Luxembourg and are under employment contracts in Luxembourg at the time of Brexit may therefore continue to work after Brexit. They will not need a specific authorisation and no additional requirements are needed from them to be able to continue working.

In the event of a hard Brexit, UK nationals will no longer benefit from EU citizens' rights and will be considered third country nationals subject to the rules on the entry and residence of third country nationals and working licence requirements.

UK nationals and their family members resident in Luxembourg on the effective date of Brexit will continue to benefit from their rights as EU citizens for a year after Brexit.

Question Set:

Proposals for reform

Question Body:

a893063

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

Answer Body:

It is expected that the ATAD II (*Directive (EU)* *2017/952*), amending ATAD I (*Directive (EU) 2016/1164*), will be implemented into Luxembourg legislation before the end of 2019. Certain provisions of ATAD II should come into force in Luxembourg as of 1 January 2020.

ATAD I addressed the mismatches resulting from hybrid financial instruments and hybrid entities within EU countries. ATAD II also includes hybrid mismatches with third countries (non-EU) and adds cases not covered by ATAD I. ATAD II extends the definition of hybrid mismatches to situations involving permanent establishments, reverse hybrids, imported mismatches, hybrid transfers, and dual residence.

A hybrid mismatch may result from differences in the characterisation of financial instruments or entities between two distinct jurisdictions. These differences may result in a double deduction (that is, tax deduction in both jurisdictions) or a tax deduction in one jurisdiction without corresponding inclusion in the tax base of the other.

In practice, Luxembourg would deny the deduction of an expense related to a hybrid arrangement to the extent the expense is deductible in another country where the expense has its source (double deduction), or the income is not taxable in another country (deduction without inclusion).

It is expected that the draft law transposing ATAD II into Luxembourg law will be published shortly.