

TAXATION LUXEMBOURG

1. Corporate income tax
2. Withholding taxes
3. VAT
4. Personal income tax
5. Other taxes
6. Filing deadlines for tax returns
7. Extra
8. Contact

1. CORPORATE INCOME TAX

Taxable persons

Corporations with share capital (S.A., S.à r.l, S.C.A.), industrial, mining and commercial undertakings, state enterprises and other legal entities incorporated under public law.

Residence

Companies, whose registered office or principal place of management is located in Luxembourg, are considered as resident companies. Resident companies are subject to tax on their worldwide income.

Non-resident companies are corporations whose registered office and place of management are located outside Luxembourg. They are subject to taxation on the Luxembourg source income only.

Taxable base

Taxable income is calculated on the basis of the profit as per the commercial balance sheet and adjusted by adding all non tax deductible expenses (e.g. excessive depreciation, directors fees, non deductible taxes) and by deducting exempt income (e.g. as per a double tax treaty or the participation exemption). Taxable losses may be carried forward indefinitely. A carry back of losses is not allowed.

Rates

Corporate income tax (CIT):	21,00%
Contribution to the national employment fund:	1,05%
Municipal business tax (MBT) for Luxembourg city:	6,75%
Total	28,80%

A minimum corporate income tax of EUR 1.500 has been introduced for any unregulated corporations, where more than 90% of the assets consist of financial fixed assets, transferable securities and cash at bank. The contribution to the employment fund has to be added to the amount of EUR 1.500. This minimum corporate income tax typically applies to so-called Soparfi companies.

For companies benefiting from a fiscal unity, only the parent company will be subject to the minimum taxation.

Dividends

In order to be able to benefit from the participation exemption for dividends, the following conditions need to be satisfied:

- The parent company is:
 - a fully tax liable Luxembourg-resident capital company, or
 - a Luxembourg branch of an EU Company, as mentioned in the appendix in relation to article 2 of the parent-subsidiary directive enacted on 23 July 1990 (90/435/CEE), (hereafter "an EU Company"), or
 - a Luxembourg branch of a capital company resident in a country with which Luxembourg has concluded a tax treaty;
- The subsidiary is:
 - a fully taxable Luxembourg-resident capital company, or
 - a non-resident capital company subject to a tax that corresponds to the Luxembourg corporate income tax, or
 - an EU Company;
- The participation in the subsidiary achieves either:
 - 10% of the share capital of the subsidiary, or
 - an acquisition price of at least € 1,2 million;
- The parent holds or commits itself to hold the participation in the subsidiary for an uninterrupted period of 12 months and, for the duration of this period, the level of the participation does not fall below the level of 10% or the acquisition price below € 1,2 million.

Expenses in direct relation with exempt dividends are only tax deductible if they exceed the exempt income of a given year (e.g. interest on the loan that has financed the acquisition of the subsidiary).

Capital gains

In order to be able to benefit from the participation exemption for capital gains, the following conditions need to be satisfied:

- The parent company is:
 - a fully tax liable Luxembourg-resident capital company, or
 - a Luxembourg branch of an EU Company, or
 - a Luxembourg branch of a capital company resident in a country with which Luxembourg has concluded a tax treaty;
- The subsidiary is:
 - a fully taxable Luxembourg-resident capital company, or
 - a non-resident capital company subject to a tax that corresponds to the Luxembourg corporate income tax, or
 - an EU Company;
- The participation in the subsidiary achieves either:
 - 10% of the share capital of the subsidiary, or
 - an acquisition price of at least € 6 million;
- The parent holds or commits itself to hold the participation in the subsidiary for an uninterrupted period of 12 months and, for the duration of this period, the level of the participation does not fall below the level of 10% or the acquisition price below € 6 million.

Recapture rule: capital gains that will be realized upon disposal of the subsidiary benefiting from the participation exemption will remain taxable up to the amount of the expenses (e.g. interest due on the financing of the subsidiary) in relation with the subsidiary, which have been tax deductible during the year of disposal and during previous years. This should however not give rise to a tax liability as those expenses (e.g. interest deductions) should have resulted in tax losses that can be carried forward for an unlimited time period (except if those expenses have been used to offset any other taxable income).

Provisions

Provisions for losses and uncertain liabilities may be deductible for tax purposes if they are based on objective facts and if economically related to the relevant tax year.

Tax depreciation

The straight-line depreciation method and the declining-balance method (except for buildings) are allowed.

Commercial buildings are depreciated at straight-line rates ranging from 1,5% to 4%. The straight-line rate for industrial buildings is 4%. The depreciation rates under both the declining-balance method and the straight-line method are 10% for plant and machinery, 20% for office equipment and 25% for motor vehicles.

Investment tax credit

A tax credit of 13% is granted for additional investments in depreciable tangible fixed assets other than buildings and motor vehicles, if they have a useful life of at least three years. In addition, a 6% credit is granted for qualifying new investments up to € 150.000 and a 2% credit is granted for investments over that amount.

2. WITHHOLDING TAXES

Dividends

Dividends paid by a fully taxable Luxembourg company limited by shares are subject to a withholding tax of 15%. The withholding tax may be reduced by double tax treaties.

Dividends paid to:

- an EU Company;
- a non-resident capital company subject to a tax that corresponds to the Luxembourg corporate income tax and resident in a country with which Luxembourg has concluded a double tax treaty ;

are exempt from withholding tax provided that the parent company holds or undertakes to hold, during a period of at least 12 months, a participation in the Luxembourg company of at least 10% of the share capital or of an acquisition cost amounting to at least € 1,2 million.

Interest

Interest paid by a company is in principle not subject to withholding tax (except interest paid to private persons, who are within the scope of the European Savings Directive and if the latter is applicable to the interest payments).

Luxembourg has implemented the EU Savings Directive. Under this directive, effective from 1 July 2005, interest payments made by Luxembourg paying agents to beneficial owners

who are individuals resident in other EU member states or to certain residual entities (as defined in the directive) are subject to withholding tax, unless the recipient elects that information regarding the interest payment be exchanged with the tax authorities of his or her state of residence. The withholding tax rate is 20% until 30 June 2011 and 35% thereafter.

For payments made by Luxembourg paying agents to individual residents in Luxembourg, a withholding tax at a rate of 10% is levied on interest. The withholding tax is final if the interest income is derived from assets held as part of the private wealth of the individual.

Royalties

Luxembourg abolished the withholding tax on royalty payments in 2004.

Liquidation proceeds

Liquidation proceeds are not subject to withholding tax.

Directors' fees

Directors' fees are subject to a withholding tax at a rate of 20%. If a non-resident director's only income in Luxembourg amounts to a gross fee of less than € 100.000 per year, the 20% withholding tax is a final tax and an individual income tax return does not need to be filed. If the company bears the tax on directors' fees, then the tax rate applicable to the net fees is 25%.

For directors' fees exceeding € 100.000 per year, a non-resident director will have to file an annual income tax return, which will be subject to progressive tax rates with a maximum rate of 41,36%.

Directors' fees are not deductible at company level.

3. VAT

VAT is levied on the consumption of goods and services in Luxembourg. Cross-border sales between EU economic operators will be taxable in the hands of the purchaser, in the member state of destination. In computing the final tax liability, the input tax on purchases of goods and services may be deducted or refunded.

Rates

Standard rate: 15%

Reduced rate: 12%

Super reduced rate: 6%

Special rate: 3% (a.o. broadcasting and television)

Nil rate: 0% (exported goods, certain services rendered in Luxembourg)

4. PERSONAL INCOME TAX

General system

Luxembourg residents are subject to tax on their worldwide income. Non-residents are subject to tax on their Luxembourg-source income only.

Individuals are considered resident if their accommodation indicates that they do not intend to reside only temporarily in Luxembourg or if they spend more than six months in Luxembourg.

Married individuals are jointly taxable. Upon request, non-married taxpayers (resident or non-resident) living under a civil partnership and tax payers who have signed a partnership under foreign law may also apply for joint taxation.

Income subject to tax

Luxembourg income tax distinguishes between several categories of income, including income from employment, self-employment, business and agriculture.

Rates

Tax rates are progressive with a maximum rate of 41,36% (including a 4% surcharge for the employment fund). This marginal rate applies from revenues exceeding € 150.000 per year (tax class 1).

A fixed cash bonus of € 922,50 is granted for each child falling within the scope of the Luxembourg family allowance regime irrespective of the taxable income of the parents.

5. OTHER TAXES

Capital contribution duty

As from 1 January 2009, capital contribution duty has been abolished. A fixed registration fee of € 75 is levied at the incorporation of companies. This fee is also levied each time the articles of association are amended.

Net wealth tax

Luxembourg resident companies are subject to net wealth tax at a rate of 0,5% on the unitary value as at 1 January each year. However, shareholdings benefiting from the participation exemption (except the holding period) are exempt from wealth tax.

Another possibility for reducing the net wealth tax is to create a book reserve. The maximum reduction of the net wealth tax amounts to one fifth of the book reserve under the condition that this reserve remains in the annual accounts during at least five years. The reduction of the net wealth tax may not exceed the amount of the corporate income tax due for the year.

The wealth tax for resident and non-resident individuals has been abolished in January 2006.

Subscription tax

An annual subscription tax is levied on investment funds and SPFs ranging from 0,01% to 0,25%. These vehicles are exempt from corporate income tax and municipal business tax.

Inheritance tax

No inheritance tax is applicable for the legal portion going to the direct descendants.

6. FILING DEADLINES FOR TAX RETURNS

Corporate income tax

In general the tax year coincides with the calendar year unless otherwise provided in the articles of incorporation. Tax returns must be filed before 31 May in the year following the previous fiscal year end. Extensions to these deadlines may be granted.

VAT

Monthly and quarterly returns have to be filed within half a month of the period under consideration. An annual VAT return has to be filed before 31 May if periodical VAT returns are due. Otherwise the annual VAT return has to be filed by 31 March. Extensions to these deadlines may be granted.

Personal income tax

Tax payers must file annual income tax returns by 31 March for income earned during the previous calendar year. Extensions to these deadlines may be granted.

Withholding taxes

A withholding tax return must be filed and paid by the debtor within 8 days from the distribution of the income.

7. EXTRA

The law introduces an 80% exemption on royalties and capital gains derived from certain types of intellectual property, so that an effective corporate income tax rate of 5,76% on qualifying net intellectual property income is due.

The exemption applies to the net income paid to Luxembourg taxpayers (individuals or companies) for the use of any software copyright, any patent, trademark, design or model.

Capital gains realised on the disposal of intellectual property will also benefit from an 80% exemption.

The gain will remain taxable up to the extent of the expenses in direct connection with the income as well as depreciations and write-downs that have reduced the tax base of the taxpayer in the tax year of the disposal or in any previous tax year.

The exemption regime will apply to registered patents only and to the extent the intellectual property has been acquired (or created as the case may be) after 31 December 2007.

8. CONTACT

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February 2012