

# DOING BUSINESS

IN LUXEMBOURG



The network  
for doing  
business

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# 1 – INTRODUCTION

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UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 90 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Luxembourg has been provided by the office of UHY representatives:

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A detailed firm profile for UHY's representation in Luxembourg can be found in section 8.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at September 2015.

We look forward to helping you do business in Luxembourg.

## 2 – BUSINESS ENVIRONMENT

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Over recent years Luxembourg has become one of the leading European financial centres, attracting numerous banks and asset management companies from all over the world.

The country's success is based on:

- A privileged geographical location
- Political and social stability
- A liberal legal environment
- Discretion and confidentiality in business
- Complete freedom for cross-border financial and capital flows
- Law-enforced professional secrecy.

### FACTS

Population <sup>1</sup>	562,958
Employment rate <sup>2</sup>	72.1%
Unemployment rate <sup>3</sup>	6.9%
Area	2,586 square kilometres
Banks <sup>4</sup>	143 with +25,657 employees
Annual balance sheet of banks <sup>5</sup>	EUR 756,518 million
Currency	euro (EUR)

<sup>1</sup> Statec Luxembourg, January 2015 estimate

<sup>2</sup> Eurostat Newsrelease, May 2015

<sup>3</sup> Statec Luxembourg, July 2015

<sup>4</sup> ABBL (The Luxembourg Bankers' Association) updated on July 2015, source CCSF

<sup>5</sup> ABBL, Statistics, banking sector, August 2015, source CCSF

### DISTANCES BY CAR

Brussels	220km
Paris	350km
Frankfurt	300km
Amsterdam	420km
London	550km

## 3 – FOREIGN INVESTMENT

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### INCENTIVES TO BUSINESS AND INVESTMENT

A large amount of public aid for business and investment projects is available in various forms.

Facilities are provided by the government and by the European Union, including:

- Capital grants for buildings, equipment and plants
- Financing of major investments in whole or in part through a medium- or long-term loan from the *Société nationale de Crédit et d'Investissement* (SNCI)
- Equipment loans from the SNCI
- Minority shareholding by the SNCI for a Luxembourg corporation (SA) or private limited company (SARL). Industrial land may be made available under a superficial rights contract
- Financing of up to 50% of the cost of research and development projects
- Various forms of tax relief are available as incentives to new investments in Luxembourg.

Luxembourg introduced an improvement in special depreciation for environmental protection investments (green technology). Companies making energy-saving investments or investments protecting the environment can enjoy a special depreciation rate of 80% (instead of the former 60%).

### INVESTMENT TAX CREDITS

Investment tax credits have been improved. To foster investments which enhance entrepreneurial competition the law has increased the global and complementary investment credit to 7% and 12% respectively (2% on the part exceeding the first portion over EUR 150,000).

Luxembourg also offers an attractive environment for Islamic finance investments. The regulatory environment for investment funds is very flexible and offers the chance to structure regulated vehicles in such a way that they can efficiently accommodate all Sharia compliant investments.

Various tax incentives are available for shipping companies (e.g. tax credits, municipal business tax exemption).

For further information please contact us.

## 4 – SETTING UP A BUSINESS

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Under the terms of the Luxembourg constitution of 1868 and of the principles underlying it, every citizen of Luxembourg is guaranteed freedom of trade and of industry, as well as freedom to establish a business with commercial activity.

The right to set up a business in Luxembourg was regulated by the amended law of 28 December 1988 regulating the access to the professions of craftsman, salesman and industrial worker, as well as to some liberal professions. The law of 2 September 2011 adopted by the Chamber of Deputies on 13 July 2011 abrogated and replaced the law of 28 December 1988, as amended.

A permit has to be obtained before starting business. It is a strictly personal procedure and the applicant must supply evidence of professional qualifications and good standing. Whatever their legal form, Luxembourg-based businesses must be registered with the Luxembourg Trade and Companies Register.

The holder of the business permit must register with the Joint Social Security Centre either as a self-employed worker or as a salaried employee.

Luxembourg-based businesses must register for VAT with the Luxembourg Land Registration & Estates Department (*Administration de l'Enregistrement et des Domaines*).

### LEGAL ENTITIES

Luxembourg law recognises six different types of companies, each of which has a legal personality.

#### PUBLIC LIMITED COMPANY (*SOCIÉTÉ ANONYME – SA*)

This type of company, a joint stock or public company, is usually used by medium to large corporations.

Due to the special status of private wealth management companies (*société de gestion de patrimoine familial – SPF*) and SOPARFI companies (see pages 10–12), a large number of SAs have recently been incorporated.

The liability of the shareholders (minimum: one) is in principle limited to the extent of the capital they have put up. The company must be established by articles of incorporation drafted by a notary and published in full.

The subscribed capital must be at least EUR 31,000 [EUR 30,986.69], of which a minimum of 25% must be paid up at the date of incorporation. For certain activities such as banking, insurance and so on, special regulation and higher capital requirements may apply. The shares are normally freely transferable.

The company is managed by a board of at least three directors. However if it is a single shareholder company then it can have one director. A general meeting of shareholders must be held at least once a year. The supervision of the company is entrusted to one or more statutory auditors (*commissaires aux comptes*).

The accounts must be audited independently by one or more authorised auditors if any two of the following criteria are met:

- Balance sheet exceeding EUR 3.125 million
- Net turnover exceeding EUR 6.25 million
- Average full-time payroll for the year of more than 50.

The profit of the company is subject to corporate income tax (*impôt sur le revenu des collectivités*) and municipal business tax (*impôt commercial communal* or ICC). Losses can be carried forward unlimited.

#### PRIVATE LIMITED COMPANY (*SOCIÉTÉ À RESPONSABILITÉ LIMITÉE – SARL*)

In this type of limited liability company, the liability of the shareholders is limited to the amount of capital they have put up, and their shares may be transferred only as provided for by the law.

The company's articles of incorporation must be drawn up by a notary and published in full. The number of shareholders may not be fewer than one or greater than 40. The company's capital must not be less than EUR 12,500 [EUR 12,394.67], fully subscribed and paid up.

The company is managed by one or more managers, who may, but do not have to be the shareholders.

An annual general meeting has to be held if the company has more than 25 shareholders. In this case, the supervision of the company must also be entrusted to one or more auditors. The company's accounts must be audited independently by one or more independent and authorised auditors if two of the following criteria are met during two successive years:

- Balance sheet total exceeding EUR 3.125 million
- Net turnover exceeding EUR 6.25 million
- Average full-time payroll for the year of more than 50.

The company may not raise capital by a public issue of loan stock, nor may its shares be offered to the public.

Certain branches may not adopt the form of the SARL. The company is liable to corporate income tax (see SA).

#### GENERAL CORPORATE PARTNERSHIP (*SOCIÉTÉ EN NOM COLLECTIF*)

The partnership is formed under a business name by two or more persons, all of whom are personally, jointly, severally and indefinitely liable for the partnership's debts.

It is formed by deed under private seal or by notary's deed, published in short form. Shares are generally not transferable.

The partnership is not subject to tax in its own name. Instead, personal income tax is levied on partners to the ratio of their shares in the partnership's income.

The partnership is managed by a manager.

The law does not prescribe any controlling body.

Usually, partnerships are used by family-run, small to medium-sized commercial and craft businesses.

#### LIMITED CORPORATE PARTNERSHIP (*SOCIÉTÉ EN COMMANDITE SIMPLE*)

A limited partnership is formed under a business name by two or more partners (the 'general partners') who are jointly, severally and indefinitely liable, plus one or more 'limited partner' who merely contributes capital and whose liability is limited to their contribution.

It is formed by deed under private seal or by notary's deed, published in short form. Shares are generally not transferable.

The daily management is carried out by a manager.

A limited partner may take no part in the firm's management, and may incur unlimited liability by doing so.

No controlling body is prescribed.

The company is not subject to tax in its own name, but personal income tax is charged to the extent of their share in the partnership's income.

#### CORPORATE PARTNERSHIP LIMITED BY SHARES (*SOCIÉTÉ EN COMMANDITE PAR ACTIONS*)

The partnership limited by shares is comparable to the limited partnership, the only difference being that the limited partners' shares are freely transferable.

It is supervised in the same way as the public company, and subject to corporate income tax.

#### COOPERATIVE COMPANY (*SOCIÉTÉ COOPÉRATIVE*)

For the formation of a cooperative company, only a deed under private seal is required, but it must be published in full. The number of members must be at least seven. Shares are not transferable to third parties. A *société coopérative* is subject to corporate income tax.

This is the only form of company which is subject to official supervision by the Ministry of Justice.

#### OTHER CORPORATE FORMS

Since July 2013, a new corporate form has existed. The special limited partnership (*société en commandite spéciale*):

- Has no legal personality
- Offers a more flexible regime to the existing limited corporate partnership (*société en commandite simple*)
- Can be compared to the common law limited partnerships.



## BRANCH

Any non-resident company wishing to establish a branch in Luxembourg must first publish its articles of incorporation in the Grand Duchy.

The term 'branch' implies the sense of any subsidiary unit or dependent agency and base of operations, which is firmly established in a permanent location and where a resident employee represents the company and deals with the public on its behalf.

A 'branch' has the same obligations regarding publication as a company. The parent company's articles of incorporation, a resolution of the board of directors authorising the establishment of the Luxembourg branch, the name of the company's representative and a statement of the extent of his/her powers must be deposited.

Prior to this deposit, all these documents must be authenticated in the country of origin and in Luxembourg. Special rules may, however, apply to branches of the business registered elsewhere in the EU.

A fixed duty of EUR 75 will be payable upon incorporation of a new company, increase of capital or when a branch is established. Branches of companies whose registered office is elsewhere in the EU are not subject to the tax.

## SPECIAL STATUS

### PRIVATE WEALTH MANAGEMENT COMPANY (*SOCIÉTÉ DE GESTION DE PATRIMOINE FAMILIAL – SPF*)

The SPF created by the Law of 11 May 2007 offers a specific tax regime for companies whose sole purpose is the management of the private wealth of individuals. The SPF can be considered the successor of the holding 29. The SPF is a pure holding company under the form of a Luxembourg capital company aimed at financial investments; thus it is not allowed to perform any commercial activities. The corporate purpose exclusively covers the acquisition, holding and management of financial instruments i.e. passive investments. The SPF can hold a participating interest in another company, provided that it does not interfere in its management. However, an SPF is not allowed to render any kind of services, including granting interest-bearing loans, even to companies in which the SPF holds a participation.

An SPF has to adopt the form of a public or private limited company (SA or SARL.), a corporate partnership limited by shares (*société en commandite par actions*) or a cooperative company organised in the form of a public limited company (*société cooperative*).

From a formal perspective the articles of incorporation of the SPF must clearly state that the company intends to fall under the provisions of the special regime set forth by the SPF law of 11 May 2007 and the name of the company should also include either SPF or *société de gestion de patrimoine familial*.

Since the purpose of the SPF is to manage the private wealth of investors, it is not allowed to make public offerings nor to be listed on a stock exchange.

The eligible investors are restricted, so that the shares of the SPF are solely kept for:

- Individuals acting within the frame of management of their private property
- A wealth management entity acting exclusively in the interest of the private property of one or several individuals. Entities holding shares in the SPF for individuals or private wealth intermediary entities of individuals like trusts, foundations and Dutch trust office foundation (Stichting Administratiekantoor Koninklijke) are also eligible for the regime
- An intermediary acting on behalf of the abovementioned investors.

The SPF is not considered as a fully taxable company. Therefore, neither international double tax treaties nor the EU mother/daughter directive can be applied.

In order to ensure complete tax neutrality, an SPF is exempt from corporate income tax, municipal business tax and net wealth tax.

An SPF is, however, subject to a registration fee of EUR 75 for certain operations and to an annual subscription tax of 0.25% on the paid-up capital, increased by share premiums and debt in excess of the 8:1 debt-to-equity ratio applicable to SPFs. The minimum amount of the subscription tax per year is EUR 100, and the maximum amount is EUR 125,000.

Distributions, whether in the form of dividends or interest payments or of another kind, paid by an SPF are not subject to withholding tax, unless such distributions fall within the scope of savings withholding taxes. Non-residents will not be subject to capital gains taxation in Luxembourg upon the sale of all or part of their interest in an SPF. Savings withholding taxes may be due if the SPF makes payments deriving from 'savings' to individuals or certain so-called residual entities resident in an EU member state or certain associated territories. In cases where the savings withholding tax results from the Luxembourg implementation of the EU Savings Directive, the withholding tax rate as from 1 July 2011 is 35%. In cases where the savings withholding results from the Luxembourg counterpart of the EU Savings Directive, the withholding is made at a rate of 10% and results in an income tax exemption of the net distribution in the hands of the recipient. The entity remains subject to withholding tax on wages and directors' fees.

An SPF is not considered to be a VAT entrepreneur. As such, it cannot obtain a Luxembourg VAT registration and a VAT number.

#### FINANCIAL PARTICIPATION COMPANIES (*SOCIETE DE PARTICIPATION FINANCIERE – SOPARFI*)

The SOPARFI is not a legal form of a company but a tax regime. A financial participation company is a regular commercial company (SA or SARL) which has as a principal activity the acquisition of shareholding participations in other Luxembourg or foreign companies, as well as the administration of such participations or any other commercial activity. The SOPARFI is a corporation subject to the general legal and tax-related regulations set forth by corporate law, which benefits from the Luxembourg parent company and subsidiary exemption system.

The tax treatment of financial participations is governed by general law principles which are applicable to all companies subject to the common tax system, and therefore theoretically subject to income tax, communal business tax and wealth tax.

The Luxembourg tax authorities require that a SOPARFI respects a debt-to-equity ratio of 85:15.

#### THE TAX SYSTEM OF DIVIDENDS RECEIVED

On the basis of the parent/subsidiary regime principle outlined in article 166 of the Income Tax Law (*Loi de l'Impôt sur le Revenu*), hereinafter 'LIR', income from dividends resulting from financial participations are fully free from income tax and municipal business tax on profit, under the following conditions:

- The shareholding participation must amount to at least 10% of the capital of the subsidiary or, if lower, the purchase price must be at least EUR 1,200,000
- The shareholding participation must have been held during an interrupted period of at least 12 months
- The subsidiary must be a fully taxable resident company, or EU company, or non-EU company subject to corporate income tax of at least 10.5% (half of the Luxembourg corporate income tax rate)
- Usufruct cannot qualify, because full ownership is required.

#### CAPITAL GAINS ON TRANSFER OF SHARES

Capital gains on the transfer of shares of subsidiaries are completely free from tax subject to the following conditions:

- At the date of sale, the parent realising the capital gain must have held, or have the intention to hold the participation for a continuous period of 12 months
- During this period, this participation has constantly remained above the minimum threshold of 10% of the capital of the subsidiary, or the participation has been acquired for at least EUR 6 million
- The subsidiary is:
  - A company resident in an EU member state and listed under Art. 2 of the EU Parent-Subsidiary directive of 23 July 1990, or
  - A fully taxable Luxembourg limited company (SA, SARL, *Société en commandite par actions*) not mentioned in paragraph 10 of Art. 166 LIR, or
  - A non-resident limited company fully liable to a tax equivalent to the Luxembourg corporate income tax of at least 10.5%.

#### CAPITAL LOSSES ON THE PARTICIPATION

It is possible to set off capital losses of the portfolio (realised or non-realised), but subsequent capital gains will be taxable up to the amounts fiscally deducted.

Tax losses may be carried forward indefinitely.

#### TAX TREATMENT OF DIVIDENDS DISTRIBUTED BY A SOPARFI

In the event of the distribution of dividends by the financial participation company, the tax rate is different depending on whether or not the parent company is a resident or non-resident company of the EU:

- If the parent company is established in the EU, no withholding tax is applicable to such distribution as long as the parent company has held a participation of at least 10% for at least 12 months or with an acquisition price of at least EUR 1,200,000 in the capital of the SOPARFI

- If the parent company is not a resident of the EU, the rate will be either that provided by the agreement of non-double taxation concluded between Luxembourg and the country of the parent company or, in the absence of such a treaty, the rate of 15% resulting from Luxembourg law.

Financial participation companies benefit as a rule from the extensive network of Luxembourg double tax treaties and may therefore claim the reduced withholding taxes provided for under such treaties with respect to foreign investments. To date, Luxembourg has concluded 70 tax treaties (in force). 32 new tax treaties are currently under negotiation.

## 5 – LABOUR

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The working population in Luxembourg (residents and non-residents) is approximately 393,580 (ABBL 'Facts and figures', source Statec, May 2014) and is growing.

### OBLIGATION

Written contracts of employment are obligatory and the employment of persons without a contract can result in heavy fines.

Special care should be taken in the employment of foreigners, particularly those from outside the EU, to ensure that all documentation is in order.

In the event that a group of workers is seconded temporarily to Luxembourg to work for either a foreign or Luxembourg business, a group permit will be issued under the responsibility of the employing firm. A group permit is valid for a maximum of eight months, including renewals.

### EMPLOYMENT

#### PROBATION PERIOD

A probation period cannot last for less than two weeks:

- Two weeks but not more than three months for an employee whose training qualifications are below the level of the DAP (*diplôme d'aptitude professionnelle*)
- Two weeks but not more than six months for an employee with a DAP, equivalent or higher
- Two weeks but not more than 12 months for an employee whose gross monthly starting salary is EUR 4,154.91 (index 775.17 since 1 October 2013) or above.

A probation clause cannot be renewed.

#### DURATION OF CONTRACT

The duration of a contract is ruled by the law of 24 May 1989. In principle, contracts should be open-ended.

The fixed-term contract of employment is therefore the exception, and may only be used when all the conditions laid down by the law are met. The duration of a fixed contract cannot exceed 24 months, extensions included. The contract can be renewed twice at most, within the 24-month period, provided it contains a renewal clause or a separate supplementary agreement.

#### REMUNERATION

The law guarantees a minimum social wage to all employees. Since 1 October 2013 (index 775.17) the minimum wage for skilled workers is EUR 2,307.56 per month and for unskilled workers EUR 1,922.96 per month. As a rule, wages and salaries increase with the cost of living.

#### WORKING HOURS

Working hours are restricted to eight hours per day. The usual total of hours per week is 40 hours, except in certain sectors where special provisions exist.

The employee and employer may agree on voluntary part-time working, where the working week is shorter than 40 hours.

#### SOCIAL SECURITY

All employees and self-employed persons must be covered by social security. Contributions are obligatory and are divided between the employer and the employee.

The employer is responsible for paying the total over to the social security authority each month:

Employee's total contribution:	12.45%
Employer's total contribution:	12.77–15.30%

This example represents an employee working in banking, insurance or similar businesses. The rates may differ according to the sector in which the employee works, with a maximum contribution calculated at five times the minimum salary of an unskilled worker.

## 6 – TAXATION

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The Income Tax Act Law (*Loi sur l'impôt sur le revenu – LIR*) of 4 December 1967 is the basis for taxation.

For historical reasons, the structure of the Luxembourg tax system is comparable to the German system. The country therefore also has a municipal business tax (*Gewerbesteuer/impôt commercial communal – ICC*), which has not applied to physical individuals since 1 January 2006 and a wealth tax (*Vermögenssteuer*) together with a general tax code analogous to the *Abgabenordnung* (AO). At the same time, and unlike Germany, Luxembourg also has a system of registrations and registration duties, as in France and Belgium.

In indirect taxation, Luxembourg has a system of value added tax. The legislation complies with the relevant EU directives.

### TAXING AUTHORITIES

Three separate government departments are involved in collecting taxes.

The *Administration des Contributions Directes* is responsible for corporate and individual income tax, municipal business tax and wealth tax.

The *Administration de l'Enregistrement et des Domaines* is responsible for:

- Income arising from state properties
- Stamp duty
- Registration duty
- Mortgage duty
- Estate duty
- Transfer tax
- Subscription tax
- Value added tax
- Certain taxes arising from the protection of intellectual property
- Collection of court costs and fines.

The *Administration des Douanes et Accises* is responsible for collecting:

- Customs duties
- Vehicle licence duty
- Load fees for heavy goods vehicles
- Excise duty on ethanol and alcoholic beverages, manufactured tobacco and petroleum products.

## CORPORATE INCOME TAX

Corporations whose principle place of management or registered office is in Luxembourg are liable to corporate income tax on worldwide income.

Non-resident corporations whose registered office and management are located outside Luxembourg are subject to corporate income tax only on income derived from Luxembourg sources.

Resident companies will be taxable at a top rate of 29.22% [21% corporate income tax + 7% solidarity tax (a contribution to the unemployment fund which is calculated as 7% of the 21% income tax rate) + 6.75% of municipal business tax – the rate for companies operating in Luxembourg City – a variable trade tax levied by the local municipalities].

Investors should note the existence of corporate income tax relief on investments in establishments located in Luxembourg. (Due to the complexity of this matter, potential investors should contact us for further information.)

Profit	150,000
Municipal business tax (ICC) 6.75%	(10,125)
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Corporate income tax 21%	(31,500)
Add 7% unemployment fund	(2,205)
	-----
	106,170
	=====
Total income taxes	43,830
As a percentage of profit	29.22%

## MINIMUM FLAT TAX

Companies having their registered seat or their management head office in Luxembourg will be subject to a minimum advance payment on corporate income tax. If no corporate income tax is due during a given year, the minimum corporate income tax can be offset against the corporate income tax due in future years. The minimum amounts to EUR 3,210 for entities whose financial assets (including transferable securities, receivables, bank deposits, etc.) exceed 90% of their total assets.

Entities performing activities that are subject to a business licence or requiring the approval of a supervisory authority are, however, explicitly excluded from the scope of this flat tax (for example, investment funds). Following the latter rule, inter alia SOPARFIs are subject to the minimum tax. For fiscally integrated companies, this tax is only due to be paid by the Luxembourg top holding company (or permanent establishment) which is subject to corporate income tax on behalf of the fiscal unity.

For corporate taxpayers whose portfolios do not meet the above-mentioned criteria and have their statutory seat or central administration in Luxembourg, the minimum flat tax is progressive and depends on the total balance sheet of the company.



### SPECIAL EXEMPTIONS: PARENT COMPANY EXEMPTION – ARTICLE 166 LIR

The income received by a Luxembourg entity from a shareholding will be fully exempt from Luxembourg corporate income tax if, at the date of distribution, the effective beneficiary company (parent company) holds or undertakes to hold directly or indirectly this shareholding for an uninterrupted period of at least 12 months, throughout which period the holding has not fallen (or will not fall) below 10% of issued capital of the subsidiary, or its acquisition value below EUR 1,200,000 for:

- A fully liable company whose registered office is in Luxembourg
- The permanently established Luxembourg branch of a company resident in another member state of the EU and covered by Article 2 of the Council Directive on the common fiscal rules applying to parent and subsidiary companies of different member states
- The permanently established Luxembourg branch of company residing in a third country with which Luxembourg has concluded a double taxation agreement or not. In this last case, the non-resident company (i.e. excluded from the benefit of the Directive) must be taxable by a tax corresponding to the corporate income tax. The corresponding tax is defined by reference to three criteria:
  - To be an obligation at the expense of the company and to the benefit of a national corporate
  - A similarity in the rules of determination of the tax base
  - The actual tax rate must be superior or equal to 10.5% computed on a taxable basis determined according to similar rules and criteria to those in Luxembourg.

The exemption applies only to the income arising from a directly held holding in the issued capital of:

- A fully liable company whose registered office is in Luxembourg
- A company which is now resident but fully liable to a tax equivalent to Luxembourg
- A company resident in another member state of the EU and covered by Article 2 of Council Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states.

Capital gains on the disposal realised by a fully liable resident company meeting the aforementioned criteria are exempt if the direct holding exceeds 10% of the company's issued capital, or EUR 6,000,000, and provided that the shares have been held for 12 months. In addition, the subsidiary must be resident and fully liable, or a non-resident corporation fully liable to a tax equivalent to Luxembourg corporate income tax (at least 10.5%).

### MUNICIPAL BUSINESS TAX (*IMPÔT COMMERCIAL COMMUNAL*)

This is a tax levied only on the profits of commercial companies. It is not levied on an entrepreneur personally.

An allowance of EUR 40,000 is granted on the profits of physical persons and partnerships, and EUR 17,500 on the income of companies subject to corporate income tax.

The rate varies depending on the municipality from 6–12%. It is fixed at 6.75% for Luxembourg City.

## INDIVIDUAL INCOME TAX

Any natural person domiciled or ordinarily resident in Luxembourg is liable to pay tax on income arising in Luxembourg and elsewhere in the world. Non-residents are liable on their income arising in the Grand-Duchy.

Income is divided into eight separate income categories, which are taxed according to different rules. Losses in one category may generally be set off against income. Benefits-in-kind are normally included in the taxable income.

Exempt items include:

- Investment income up to EUR 1,500 pa; for married tax payers, EUR 3,000 pa
- Interest subsidies within certain limits
- Lump-sum life insurance proceeds and accident insurance payments
- Overtime is remunerated at a rate of 140% of the hourly salary and will be tax free and free of social security contributions.

Some benefits-in-kind have a special tax treatment e.g. the private use of a company car gives rise to a taxable benefit of 1.5% of the purchase price of the car per month (including VAT).

The benefit in respect of employer-provided housing amounts to the higher rate of 25% (35% if furnished) of the tax value of the house per month and 75% of the rent paid by the employer.

Interest-free or low-interest loans from an employer represent a benefit-in-kind. The taxable benefit is the difference between the market interest and the interest-paid exemptions that may be available.

Deductions and exemptions are available in numerous cases, such as for salary-related expenses, travel expenses or loans for a private residence or plot of land.

Compulsory social security contributions are deductible without limitation.

In addition, various kinds of insurance premiums and interest on loans are deductible up to certain limits.

## RATES

Tax payers are divided into three classes according to their family situation:

- Tax class 2 – married taxpayers, widowed persons (for three years following the year they became widowed), divorced or separated persons (for three years following), civil partners who elect to file jointly
- Tax class 1a – widowed persons (not included in tax class 2), individuals aged 65 or over on 1 January, single parents
- Tax class 1 – taxpayers not included in tax class 2 or 1a.

New tax measures for individuals have been introduced as from January 2013. The unemployment surcharge increased from 4–7% for the income not exceeding EUR 150,000 in tax class 1 and 1a, and EUR 300,000 in tax class 2. For the income exceeding EUR 150,000 in tax class 1 and 1a and EUR 300,000 in tax class 2, the unemployment surcharge rises from 6–9%. A new bracket of 40% on the income exceeding EUR 100,000 has been introduced. The marginal tax rate is now equal to 43.60%.

Depending on their nature, extraordinary items of income are charged to tax either by apportionment or at half the global rate.

## WEALTH TAX

All legal entities are liable for wealth tax, except partnerships, members of which are assessed personally on the value of their participation.

The basis of assessment is the total gross property (agricultural land, real estate, business property, cash assets) less liabilities.

For non-residents, the liability arises only on assets located in Luxembourg.

The general assessment takes place once every three years, from which an annual liability is determined. Tax is payable in quarterly instalments.

Net wealth tax is determined using the following three different bases:

- The general tax base every three years
- The new tax base before the end of a three-year period, if the increase or decrease in the taxpayer's wealth exceeds certain limits
- The special tax base if the tax liability starts or finishes i.e. when:
  - A personal exemption ends
  - A non-resident taxpayer becomes a resident or vice versa.

## RATES

The rate is 0.5%. The minimum assessable net wealth for companies is EUR 12,500 and for limited liability partnerships EUR 5,000.

Companies who are subject to corporate income tax can, on demand, deduct wealth tax from corporate income tax on the condition that an amount corresponding to five times the amount of the wealth tax deducted is put in a reserve account, and that this reserve must figure in the balance sheet for the following five years.

Exemption from the tax applies to saving banks in a stricter sense, pension funds, independent employer's pension and provident funds with legal personality, non-profit-making bodies of cultural or charitable nature, or similar such institutions serving the public interest.

## VALUE ADDED TAX

Value added tax is applied as set out in the Council Directive 91/680/EEC amending the sixth VAT Directive.

The returns and payments are due monthly, quarterly or annually.

The rates are 3%, 8%, 14% and the standard 17%.

### **TAX ON CAPITAL**

The law of 16 December 2008 has permanently abolished capital duty, which was fixed at 0.5%.

A fixed lump sum registration duty of EUR 75 will be payable on all company incorporations, amendments to articles of association and transfers of registered office or place of effective management to Luxembourg.

### **SPECIAL TAX ON DIRECTORS' FEES**

This tax is calculated from the gross fees received, diminished by the special tax on director's fees.

For non-residents the same rules apply as for residents.

The tax has to be withheld by the paying company.

The rate on gross directors' fees is 20% and on net directors' fees is 25%.

This tax cannot be set against income tax liability, but the amount paid is deductible as a business expense.

### **ESTATE DUTY (APPLICABLE TO RESIDENTS), TRANSFER DUTY (APPLICABLE TO NON-RESIDENTS)**

The worldwide property of an individual domiciled in Luxembourg at the time of death is subject to estate duty due by the heirs and legatees of the Luxembourg resident, except for property located outside Luxembourg.

If the deceased was not domiciled in Luxembourg, the transfer duty (*Droit de mutation par décès*) is levied in place of estate duty only to the gross value of real estate located in Luxembourg.

The average rates vary from 0–48%, depending on the proximity of the relationship and the amount of the assets bequeathed to each beneficiary.

The basis of assessment is the market value of the real estate located in Luxembourg, calculated at the date of death.

### **INHERITANCE LAW**

In Luxembourg there was some discrimination for non-residents heirs in terms of exemptions, allowances and deduction of debts; for example, non-resident direct heirs were taxed at a rate of 2% and non-resident spouses having common children were taxed at a rate of 5%, while there were no inheritance tax for residents at all. In December 2009, Luxembourg changed its legislation on inheritance taxes in a way that brought an end to sundry practices that the European Court of Justice had judged as discrimination in breach of the Treaty on the Functioning of the European Union.

In compliance with EU principles, the law of 18 December 2009 ends this discrimination, by granting the same deductions and exemptions in both situations.

### **GIFT TAX**

The tax rates for gifts vary from 1.8–14.4% depending on the relationship between the donor and the recipient.

Gift tax is payable by the recipient on the gross market value of the assets received.

### **PROPERTY TAX (*IMPÔT FONCIER*)**

Owners of farms and woodland holdings located in the municipality are liable for property tax A.

Owners of real estate in the municipality are liable for property tax B.

The same rules apply to non-residents as to residents.

The tax is on the property, not its owner.

The rates vary from 0.7–1% of the standard values, and on top of that a multiplier from one to eight is applied.

The standard values are significantly below current values and correspond to the market prices at the time standard values of real property were set, on 1 January 1941.

The land tax is in principle deductible as minimum flat rate or as a business expense from income or assessable profits purposes.

## 7 – ACCOUNTING & REPORTING

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Accounting law is based on the Commercial Code and the Law on Commercial Companies.

Business owners must:

- Keep accounts covering their business activities
- Prepare a complete annual inventory of assets, rights, debts, obligations and commitments
- Adopt an abbreviated outline of accounts (certain businesses)
- Write a management report presenting the accounts
- Submit annual accounts to the Trade and Companies Register
- Retain accounting documents for ten years.

### ACCOUNTS

#### STATUTORY ACCOUNTS

The directors/managers of a company are required to prepare annual accounts in accordance with a regulatory accounting framework.

The currency in which the annual accounts are prepared is generally the currency of the share capital. Companies whose sole purpose is to invest in and develop other companies may disclose a balance sheet and a profit and loss account in a format that deviates from the general provisions of the law. Given that these companies generally have a reduced number of staff and no turnover, they qualify as small companies. Hence, they can disclose abridged notes to the accounts and are not obliged to disclose their investments and a management report.

The Grand-Ducal regulation dated 10 June 2009 has specified the content and the presentation of a standardised chart of accounts (SCA) – the *plan comptable normalise* (PCN). The effective date of the SCA applies for the first accounting year beginning after 31 December 2010. For companies having a calendar year end, the first set of accounts will relate to the year ending 2013 and the filings will be due by 31 July 2014. The SCA ensures that all businesses apply the same accounting structure with the following consequences:

- Reducing businesses' reporting requirements vis-à-vis the authorities
- Simplification of the analysis of their financial situation by partners (auditors, banks, suppliers etc.).

#### CONSOLIDATED ACCOUNTS

Companies in Luxembourg are required to prepare consolidated financial statements where they:

- Have a majority of the shareholders or members voting rights in another undertaking, or
- Have the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and is at the same time a shareholder in or member of that undertaking, or
- Are a shareholder in or member of a subsidiary, and alone controls, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders or members voting rights in that undertaking.

The consolidated accounts shall include the Luxembourg parent company and all of its subsidiary undertakings regardless of where the registered offices of such subsidiaries are situated. The consolidated accounts comprise the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts and are prepared in accordance with a regulatory accounting framework. The directors/managers of the Luxembourg parent company are also required to prepare a consolidated annual report which includes fair review of the business development, principal risks, key performance indicators, financial risk management and exposures to financial risks.

Consolidated accounts must be audited by a Luxembourg licensed independent auditor who also verifies that the consolidated annual report is conforming to these accounts.

Luxembourg companies are permitted to derogate from this consolidation principle and are exempt from consolidation in the following cases:

- Small group exemption
- Upper level exemption
- Temporary holding exemption.

## AUDIT & SUBMISSION

### ANNUAL AUDIT OF ACCOUNTS

Medium and large companies in the form of a *société anonyme*, *société à responsabilité limitée* or *société en commandite par actions* must have their annual accounts audited by a licensed independent auditor.

In these cases, the appointment of a statutory auditor (*commissaire aux comptes*) is not required. A medium or large company is determined to be one which exceeds two of the following three conditions during two consecutive years:

- Total balance sheet – EUR 4,400,000
- Total turnover – EUR 8,800,000
- Total employees – 50.

Smaller companies must be supervised by statutory auditors or a licensed independent auditor, except for a *société à responsabilité limitée* with fewer than 25 shareholders. In this case, the control may be performed by the shareholders themselves.

### SUBMISSION AND PUBLICATION – DEPOSIT OF ANNUAL FINANCIAL STATEMENTS WITH THE TRADE AND COMPANIES REGISTER

Companies are required to deposit their annual accounts with the Trade and Companies Register (*Registre de Commerce et des Sociétés* - RCS) for reasons of transparency and for the protection of third parties. A mention of the deposit of the accounts (statement of submission) will appear afterwards in the Official Journal (*Mémorial*). The general public can consult the submitted accounts upon request to the RCS.

The annual accounts of the following companies must be lodged with the RCS:

- Capital companies (*sociétés de capitaux*), SAs, SARLs, SECAs, cooperative companies, SEs
- Partnerships (SENC and SECS) and traders who are natural persons with an annual turnover excluding VAT in excess of EUR 100,000
- Luxembourg branch offices of foreign companies (except credit institutions and insurance and reinsurance companies)

- Groups (EIG, EEIG) or branch offices of groups.

The annual financial statements and the appropriation of income must be approved within the six months following the end of the calendar year (natural persons established as traders) or financial year (legal persons). The annual accounts must be submitted within one month of their approval i.e. at the latest seven months after the end of the calendar/financial year.

#### FINANCIAL REPORTING FRAMEWORK IN LUXEMBOURG

In July 2002, the European Union adopted a Regulation (Regulation EC No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards) on the application of international accounting standards ('IAS Regulation').

The IAS Regulation requires European companies listed in an EU securities market, including banks and insurance companies, to prepare their consolidated financial statements in accordance with international financial reporting standards (IFRSs) starting with financial statements for the financial year 2005 onwards. EU countries have the option to:

- Require or permit IFRSs for unlisted companies
- Require or permit IFRSs in parent company (unconsolidated) financial statements
- Permit companies whose only listed securities are debt securities to delay IFRS adoption until 2007
- Permit companies that are listed on exchanges outside of the EU and that currently prepare their primary financial statements using a non-EU GAAP (in most cases this would be US GAAP) to delay IFRS adoption until 2007.

Luxembourg companies listed in an EU/EEA securities market have followed IFRSs since 2005.

Luxembourg is included in the IFAD GAAP Convergence Studies.

National professional organisation websites can be found at the:

- *Institut des Reviseurs d'Entreprises*
- *Ordre des Experts-Comptables du Luxembourg*.

Luxembourg has to report to the International Federation of Accountants (IFAC) on Standard Setting and Regulation.



## SUMMARY OF FINANCIAL REPORTING REQUIREMENTS IN LUXEMBOURG

Consistent with the IAS regulation, Luxembourg has adopted the requirements set out in the table below with regard to each type of entity.

**TABLE 1**

*Financial reporting requirements*

ENTITY TYPE	REPORTING REQUIREMENTS
Listed companies	<p>IFRSs as adopted by the EU are required for consolidated financial statements</p> <p>IFRSs as adopted by the EU are permitted for separate financial statements, subject to approval by competent authorities</p> <p>Requirements are similar for subsidiaries of foreign companies and foreign companies listed on the Luxembourg Stock Exchange</p>
Unlisted companies	<p>Luxembourg accounting principles are required for separate and consolidated financial statements</p> <p>Credit institutions, insurance and re-insurance companies can choose between IFRSs as adopted by the EU and Luxembourg accounting principles, both in separate and consolidated financial statements</p> <p>All other entities need to obtain the endorsement of the Luxembourg Ministry of Justice to prepare separate or consolidated financial statements in accordance with IFRSs as adopted by the EU. The Ministry of Justice confers the derogation on the reasoned opinion of the Luxembourg Accounting Standards Board (<i>Commission des Normes Comptables</i>).</p>

## 8 – UHY REPRESENTATION IN LUXEMBOURG

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#### CONTACT DETAILS

UHY Fibetrust S.à.r.l.  
38, Boulevard Napoléon 1er  
B.P. 777  
Luxembourg  
Luxembourg  
Tel: +352 263 7711  
Fax: +352 26 37 71 50  
www.fibetrust.lu

Year established: 1996  
Number of partners: 4  
Total staff: 15

#### CONTACTS

Liaison contact: Jürgen Fischer  
Position: Managing Partner  
Email: j.fischer@fibetrust.lu

#### BRIEF DESCRIPTION OF FIRM

UHY Fibetrust S.à.r.l is a company set up in Luxembourg as an independent member of UHY, providing business services and international tax planning. UHY Fibetrust provides a made-to-measure service responding to the specific needs with individual and personalised solutions to national and international clientele.

#### SERVICE AREAS

Audit and accountancy  
Corporate finance  
Corporate trust services  
Business consulting

#### SPECIALIST SERVICE AREAS

Tax consultancy  
Management consultancy  
Set-up and assistance with new companies  
Forensic accounting/expert witnesses  
Business support services  
Set-up of support services  
Set-up of onshore and offshore companies  
Wealth management services  
Domiciliation  
Liquidation  
Transfer of jurisdiction  
Asset and wealth protection  
Payroll  
Bank relations

#### PRINCIPAL OPERATING SECTORS

Financial Services  
Management companies & services

#### LANGUAGES

Luxembourgish, English, French, German, Spanish, Italian.



The network  
for doing  
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#### **CURRENT PRINCIPAL CLIENTS**

Confidentiality precludes disclosure in this document.

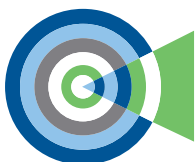
#### **OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST**

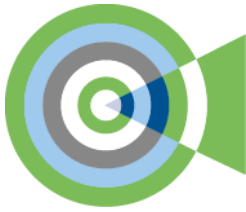
Argentina, Austria, Belgium, Canada, Channel Islands, China, Czech Republic, France, Germany, Ireland, Israel, Italy, Mexico, Netherlands, Portugal, Poland, Russia, Spain, Sweden, Switzerland, United Arab Emirates, UK, US.

#### **BRIEF HISTORY OF FIRM**

Established in 1996 by two expert accountants, both partners are registered on the “Tableau de l’Ordre des Experts Comptables Luxembourgeois”. UHY Fibetrust works with international clientele and has contacts with Eastern European countries, Latin America and India. Our multi-lingual staff can conduct business with our clients in English, French, German, Luxembourgish, Spanish and Italian.

The firm joined UHY in 2000.





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