Luxembourg

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in Luxembourg?

Luxembourg has agreed to 77 income tax treaties. Currently, 64 of these income tax treaties are in force. In total, 37 treaties apply to Luxembourg corporate undertakings of collective investment (SICAV/SICAF) (see also question 1.4 for South Korea).

1.2 Do they generally follow the OECD or another model?

Almost all income tax treaties entered into by Luxembourg follow the OECD Model Convention on Income and Capital, except the income tax treaties with Germany and France that had come into force before the first OECD Model Convention (and despite further renegotiations with both treaty partners). Deviations from the OECD model treaty often relate to a few particulars, but seldom to the entire treaty, e.g. the taxation of capital gains under the income tax treaty with South Korea or more typically the limitation-on-benefits provisions in certain treaties such as the Luxembourg-US income tax treaty and the forthcoming protocol to the Luxembourg – Poland tax treaty (see question 1.4). 24 income tax treaties agreed by Luxembourg contain a provision compliant with article 26, paragraph 5 of the OECD model, relating to the exchange of information upon request in matters that previously had been covered by banking secrecy. Luxembourg is not grey or black-listed by the OECD in this respect. Similarly, some tax treaties include some of the provisions proposed by the UN Model Convention.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

Tax treaties are to be incorporated into domestic law. The following procedure applies: the legislator gives its consent by adopting a consenting law (*loi d'adaptation*) that authorises the Grand Duke to ratify the tax treaty. The tax treaty enters into force once the ratification instruments have been exchanged and after publication of such ratification in the official gazette, following which the tax treaty is incorporated into domestic law. Typically, a tax treaty contains specific language as to its entry into force, which thus, given the above ratification and publication process, may be retroactive. Such retroactivity is valid when provided for by the consenting law and provided that it improves the position of the tax payer ("*in meius*").

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

The income tax treaties concluded by Luxembourg do not systematically contain anti-treaty shopping rules, except for the limitation-on-benefits provisions contained in the tax treaties concluded with the USA, Hong Kong, Singapore, Trinidad and Tobago and Poland.

Also, more recently negotiated treaties make broader reference to the concept of "beneficial ownership" and in the context of dividend distributions that the distributing company must not only be "a Company of the other Contracting State", but "a Company who is a tax resident of the other Contracting State", which depending on the context, may be considered as a more restrictive language.

A large number of treaties concluded by Luxembourg include specific limitation on benefits provisions that deny treaty protection to companies subject to the Law of July 31, 1929 or any similar law enacted by Luxembourg, such as e.g. the Private Wealth Investments Companies (*Société de Gestion de Patrimoine Familial* "SPF"). Now that companies subject to the Law of July 31, 1929 no longer exist, the question of how such limitation on benefits clause must be interpreted, as well as what should be considered as a "similar law". In this context, a recent dispute has arisen as to the interpretation of this provision under the double tax treaty between Luxembourg and South Korea and whether, contrary to past practice, South Korea would be entitled to exclude Luxembourg SICAV from the benefits of this treaty under the limitation on benefits clause by arguing that the Luxembourg legislation on investment funds should be considered as such "similar law(s)".

The forthcoming protocol to the Luxembourg – Poland tax treaty refuses treaty protection in case of income connected to artificial arrangements and to persons taking advantage of measures qualified as a harmful tax measure by the EU Code of Conduct for business taxation.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

Under the general principle of Luxembourg public law, (tax) treaties are to be considered a "*lex specialis*", prevailing over domestic law. Thus, once a tax treaty is applicable and a conflict between domestic law and treaty law arises, the tax treaty provisions will apply.

1.6 What is the test in domestic law for determining corporate residence?

Undertakings with a collective character whose registered office or central administration is located in Luxembourg are considered Luxembourg tax resident companies and are therefore liable to Luxembourg corporation taxes on their worldwide profits, unless a tax treaty provides otherwise.

2 Transaction Taxes

2.1 Are there any documentary taxes in Luxembourg?

Ad valorem registration duties are levied on a number of transactions in Luxembourg, which either must be registered (e.g. notary deeds and documents used in the framework of judicial proceedings in front of a court must be registered by law) or are voluntarily registered.

An *ad valorem* 6% registration duty, assessed on the highest of the purchase price or the fair market value, is levied on the transfer of land and buildings, even if such a transfer is not embodied in a written document. The registration duties may be increased by municipal transfer taxes. In addition, a transcription tax of 1% applies. As an example, transfers of land and buildings, other than residential property, located in the city of Luxembourg, are subject to 10% tax. Transfers of shares in Luxembourg tax-transparent entities holding Luxembourg *situs* real estate trigger tax in the same proportion as if the Luxembourg real estate was owned and sold directly by the investors in the transparent entity.

A 0.24% registration duty, assessed on the amount of the claim, is due on the registration of an obligation to pay, evidenced by a document in writing, provided that the obligation to pay is not embodied in a security and provided that the obligation to pay does not represent the price of a transfer of movable or immovable goods which would not have been registered. The registration of such a document is therefore relatively exceptional, except if the claim is secured by a mortgage on Luxembourg real estate.

A 0.6% registration duty, assessed on the total amount of the lease payments, is due on the registration of lease agreements embodied in a written document. However, if the lease agreement is subject to VAT, no *ad valorem* registration duties will be due on the registration of the lease agreement.

All transactions relating to a securitisation operation involving a Luxembourg securitisation vehicle incorporated under the Law of March 22, 2004 are exempt from registration, except if the transaction involves a transfer of rights on land and buildings located in Luxembourg or on planes and boats registered in Luxembourg.

Mortgages are subject to a special mortgage tax at 0.05% of the value of the property.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Luxembourg implemented the EU value-added tax system in its legislation by a law of February 12, 1979.

The standard VAT rate applying to supplies of goods or services is 15%. However, specific transactions may be subject to reduced rates of 12%, 6% or 3%.

Three annexes to the Luxembourg VAT Code define the goods and services which are subject to the standard rate or the reduced rates. The annexes cover a defined area and must be interpreted in a strict sense.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

VAT is, in principle, charged on all supplies of goods and services carried out (or deemed carried out) in Luxembourg, for consideration and by a person carrying out an economic activity.

The rules governing the place of supply and the VAT exemptions generally follow the provisions of the Council Directive 2006/112/EC of November 28, 2006 and are refined by ECJ case law. Typical VAT exemptions relate to transactions relating to medical, social or educational care and cultural services, financial transactions, insurance and reinsurance and connected services, as well as management services rendered to regulated undertakings for collective investment and pension funds subject to the supervision of the CSSF or of the Commissariat aux assurances, SICARs and to Luxembourg securitisation vehicles subject to the law of March 22, 2004.

The supply and the renting of immovable assets are, in principle, exempt from VAT. However, VAT payers may opt for the application of the VAT to such transactions, provided the immovable asset is entirely or mainly used for activities which allow the deduction of input VAT. Rental agreements which are subject to the VAT pursuant to an option for VAT are not subject to proportional registration duties and are registered at the fix rate of EUR 12. Supplies of buildings to which the VAT is applied pursuant to an option for VAT are, however, cumulatively subject to VAT and to proportional registration duties.

The transfer of a totality of assets or part thereof (provided it can be considered as a going concern), for example, in the framework of a merger, falls outside the scope of the Luxembourg VAT.

Intra-community supplies to taxable persons and exports are zero-rated.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Generally, all the VAT paid on goods and services by a Luxembourg taxable person in relation to his business is recoverable.

If a taxable person carries out transactions which are subject to VAT (i.e. subject to VAT or zero-rated) and transactions that are exempt from VAT, it will have a limited right to deduct upstream VAT. This right will, in principle, be calculated on the basis of a *pro rata* rule, unless a segregation of the business activities in a VAT-able and a VAT-exempt business sector is possible, in which case, only the input VAT related to the VAT-able business sector will be recovered in full.

No recovery is available for VAT paid for goods or services used to deliver VAT-exempt transactions, except for VAT on goods and services used to deliver banking, financial and insurance transactions, provided that the recipients of such transactions are established outside the EU or that these transactions are directly linked to goods which are to be exported outside the EU.

Certain persons that are not considered to be carrying out an economic activity, since they do not undertake transactions which fall within the scope of VAT (typically, passive holding companies), may also carry out certain transactions which are subject to VAT (e.g. re-invoicing of expenses or renting (part of) a building). These VAT payers, called partial VAT payers, might have a partial right to deduct input VAT.

2.5 Are there any other transaction taxes?

A fixed registration fee of EUR 75 applies. The fee is due exclusively in the cases mentioned by law, i.e. upon incorporation or subsequent capital increase (or allocation to share premium) and migration of foreign entities to Luxembourg.

The abolition of the capital duty implies that the same registration duties apply in the case of a contribution of real estate to a company. In the case where real estate is contributed exclusively in consideration for shares of the company, a reduced rate of 0.6% transcription tax and 0.5% transfer tax applies. The transfer of real estate in the frame of business combinations is, however, tax exempt.

Mortgage Register: Changes in ownership of real property are subject to an additional 1% tax levied on the higher of the sales price or the market value.

2.6 Are there any other indirect taxes of which we should be aware?

There are Custom and Excise duties for certain goods, depending on the international commitments taken by Luxembourg.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

A 15% (for hidden dividends, the tax rate is 17.65%) withholding tax applies to dividends paid by a Luxembourg resident undertaking with a collective character, unless such rate can be reduced by applicable tax treaties or under the domestic dividend withholding tax exemption regime, based on EU Directive 2011/96/EC of November 30, 2011.

Under the domestic dividend withholding tax exemption regime, dividends paid by a Luxembourg resident undertaking with a collective character to a shareholder who holds (or commits to hold) a shareholding for at least 12 months that represents at least 10% of the share capital of the dividend distributing entity (or shares with an acquisition price of at least EUR 1.2 million), are exempt from Luxembourg withholding tax if the dividend recipient is: any foreign undertaking with a collective character that is a tax resident in a country that has concluded a tax treaty with Luxembourg and that is subject to taxation comparable to Luxembourg corporate income tax (at a rate of least 10.5%); or an undertaking with a collective character enumerated in the exhibit to article 2 of EU Directive2011/96/EC of November 30, 2011:

- a foreign (non-EU) corporation that has migrated to Luxembourg and that has become a fully taxable Luxembourg resident corporation;
- a corporation or a cooperative society, which is a resident in a Member State of the European Economic Area (i.e. Norway, Iceland, Liechtenstein) and that is subject to taxation comparable to Luxembourg corporate income tax;
- a corporation resident in Switzerland subject to corporate income tax without benefiting from an exemption; and
- a Luxembourg permanent establishment of one of the above-mentioned categories.

Distribution of liquidation proceeds (or advance payments thereon) is not subject to dividend withholding tax. When properly structured, the same may hold true for distributions upon a partial liquidation of the Luxembourg company.

Distribution made by entities subject to a special tax regime such as SPFs, SICAV, SICAR and securitisation vehicles set up under the Law of March 22, 2004 are, in principle, not subject to withholding tax on payment of proceeds to an investor (but see EU Savings Directive 3.3).

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Regardless of the tax status of the recipient, Luxembourg has not levied any withholding tax on royalties since January 1, 2004. Luxembourg has introduced a special tax regime for intellectual or industrial property rights acquired after December 31, 2007, or created by oneself, which provides for tax exemption of 80% of the income from IP rights, including the realised capital gain upon sale of the IP.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Arm's length, fixed or floating rate interest payments are not subject to Luxembourg withholding tax. Profit-sharing interest paid on certain debt instruments may be subject, under certain conditions, to a 15% withholding tax, unless a lower tax treaty rate applies, or an exemption would be available.

With the introduction of the EU Savings Directive on taxation of savings income in the form of interest as of July 1, 2005, a withholding tax may be levied on interest paid by a Luxembourg paying agent, or secured for the benefit of, EU residents or residents of certain EU-dependent or associated territories individuals or "residual entities", unless such beneficial owner opts for an exchange of information procedure. The rate is 35% as of July 1, 2011.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Luxembourg tax law does not contain debt-to-equity ratio provisions. However, administrative practice requires compliance with an 85:15 debt-to-equity ratio when the debt financing is granted or guaranteed (see also question 3.6) by a shareholder. This, however, does not apply to back-to-back financing.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

The Luxembourg authorities would generally consider 12 months' EURIBOR plus 200 basis points, as being an at arm's length interest rate for loans and within the limits of the 85:15 debt-to-equity ratio, as referred to under question 3.4 above. In case the debt financing would exceed the above 85:15 debt-to-equity ratio, the interest on such debt would nevertheless not be regarded as excessive if, through modification of the applicable interest rate, total interest expense stays in line with the above ratio.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

Debt advanced by a third party, but guaranteed by a parent company (other than pledging the shares of the Luxembourg debtor to the creditor) is treated as a shareholder loan and consequently the 85:15 debt-to-equity ratio will be applied.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

No, there are not. However, regardless of whether the recipient is a resident or a non-resident, Luxembourg tax law re-characterises profit-participating interest payments on certain debt instruments into non-deductible distributions that may trigger withholding tax in the same way as dividend payments (see question 3.1).

3.8 Does Luxembourg have transfer pricing rules?

Inter-company pricing between affiliated companies must be on an arm's-length basis to be accepted for Luxembourg tax purposes.

The Luxembourg tax authorities have, however, issued a Tax Circular on 28 January 2011 that provides guidance on the tax treatment of companies conducting intra-group financing activities (and sets out certain substance and documentation requirements for those companies). This Tax Circular refers to the OECD transfer pricing guidelines.

It is therefore recommended to support transactions with affiliated companies by written transfer pricing agreements, which include comprehensive reference to current market conditions, and to hold adequate justifications for the transfer prices applied on each transaction with affiliated companies. In practice, the Luxembourg tax authorities accept justification and documentation suggested by the OECD transfer pricing guidelines, as referred to in the above Tax Circular.

Documentation is to be prepared at the moment the transactions are passed. Transfer pricing documentation does not need to be filed with the tax returns. It only needs to be remitted to the tax authorities upon their request.

There are no specific limitations on transfer pricing adjustments either. General statutes of limitation apply.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

The Luxembourg profit tax system consists of the national corporate income tax ("*impôt sur le revenu des collectivités*" or "IRC"), at a rate of 21%, and the municipal business tax ("*impôt commercial communal*" or "ICC"), at a rate of 6.75% (for companies established in Luxembourg-city). In addition, there is a 5% surcharge for the employment fund calculated on the IRC. The total combined tax rate since January 1, 2011 is therefore 28.80%.

Since January 1, 2011, the IRC is set at a minimum of EUR 1,575 for collective entities whose activity is not subject to the approval of a minister or a supervisor and where the sum of the financial assets (including real estate), the securities, the bank deposits, the cash in postal cheque accounts, the cheques and the cash exceed 90% of the total assets.

4.2 When is that tax generally payable?

Corporate tax returns must be filed annually no later than May 31 of the year following the close of an accounting period. An extension for filing may be obtained. Taxes become due upon the issuance of the assessment. However, upon receipt of a preliminary assessment, companies are required to make quarterly prepayments for both corporate income tax and municipal business tax (as well as net wealth tax; see question 4.7 below). The level of the preliminary assessment is based on the taxable income of the previous financial year.

The tax due according to the final assessment must be paid within one month after the date of assessment. On request, an extension for payment may be obtained. For late payment of the assessment, an interest rate of 0.6% per month on the assessed amount may become due.

4.3 Is the tax base accounting profit subject to adjustments, or something else?

Domestic companies and foreign companies resident in Luxembourg (including Luxembourg branches of foreign companies) are liable to corporation taxes on their worldwide profits, unless a tax treaty applies. Tax is payable on profits realised minus tax-deductible expenses and losses, which may be carried forward indefinitely.

For the determination of the taxable profit, in principle, the commercial accounts are followed, subject to adjustments imposed by tax law (see question 4.4 below).

4.4 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

Differences between profits shown in commercial accounts and taxable profits are mainly due to:

- exempt commercially realised profits (e.g., dividend/capital gains exemption);
- add-back expenses (e.g., interest expenses on assets generating tax-exempt income or directors' fees which are not for the day-to-day running of the company);
- corrections to the tax result from transactions not executed at-arm's-length; and/or
- the applications of different valuation rules in accounting and in tax (e.g., tax roll-over regimes) to different depreciation rules under tax and accounting rules.

Adjustments are generally made in the tax returns. In specific cases, a separate tax balance sheet may be drawn.

4.5 Are there any tax grouping rules? Do these allow for relief in Luxembourg for losses of overseas subsidiaries?

Luxembourg tax law knows the concept of fiscal unity, i.e. consolidation, which applies if the following conditions are met:

- the parent company has held, directly or indirectly, a participation of 95% or more in the share capital of a subsidiary, as from the beginning of the accounting period during which the application for the consolidation regime has been made;
- the subsidiary is a capital company resident in Luxembourg and is fully subject to corporate income tax;
- the consolidating parent company is a capital company resident in Luxembourg and is fully subject to corporate income tax, or a branch of a non-resident company which is subject in its jurisdiction of establishment to an income tax which is comparable to Luxembourg income tax; and
- the consolidation is requested for a least five accounting years.

Subject to prior authorisation by the Minister of Finance, the tax consolidation regime may be granted to subsidiaries held for less than 95%, but at least 75% provided that the relevant participation is of particular interest to the national economy of Luxembourg.

The consolidation for municipal business tax is granted upon election if the conditions of the income tax consolidation regime are met.

Each member of the fiscal group reports its own taxable result and files tax returns as if it were an independent tax payer. Thereafter, the parent company establishes the group tax return by adding up all individual results of the different group companies.

Under Luxembourg tax grouping rules, no relief is granted for losses of overseas subsidiaries. The parent company may, however, book in its accounts depreciation on the participation.

To some extent, a tax consolidation also exists for net wealth tax (see question 4.7 below).

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No, it is not.

4.7 Are companies subject to any other national taxes (excluding those dealt with in "Transaction Taxes") - e.g. tax on the occupation of property?

Luxembourg companies are subject to annual net wealth tax, which is levied at a rate of 0.5% on the company's worldwide net worth on January 1. Non-residents unprotected under a tax treaty are subject to net wealth tax on their Luxembourg assets. Shareholdings eligible for the dividend exemption regime are excluded from the taxable base (see question 7.2). Liabilities financing tax exempt assets are not deductible. For companies that solely invest in equity stakes for which they benefit from the parent-subsidiary exemption, the annual net wealth tax liability may be limited to the legal minimum of EUR 63 (S.A. or SCA), or EUR 25 (S.à r. l.). The net wealth tax may be reduced within the limit of the Luxembourg corporate income tax due, provided certain conditions are met (among others, an allocation to a non-distributable reserve established for 5 years).

SPFs, undertakings of collective investment, SICAR and securitisation vehicles set up under the Law of March 22, 2004 are exempt from net wealth tax.

4.8 Are there any local taxes not dealt with in answers to other questions?

Real property tax levied by the municipalities on real estate located in their areas, ranging from 0.7%-1% multiplied by municipal factors, among others.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Capital gains and losses are included in the taxable basis for corporate income tax. (See question 5.3.)

5.2 If so, is the rate of tax imposed upon capital gains different from the rate imposed upon business profits?

No, it is not.

5.3 Is there a participation exemption for capital gains?

Capital gains exemption is available if a fully taxable Luxembourg resident undertaking with a collective character (or a Luxembourg branch of certain qualifying foreign entities), upon disposal of an interest in an undertaking with a collective character mentioned in the Exhibit to Art. 2 to the Parent/Subsidiary Directive (including Luxembourg) or of a capital company that is subject to an effective rate of taxation of at least 10.50% in its home country, has held (or commits to hold) for an uninterrupted period of at least 12 months at least 10% of the paid up share capital (or shares with an acquisition price of at least EUR 6 million). Capital gains exemption, in principle, also applies to participations held through tax-transparent entities.

In case of a capital gain, an expense recapture rule exists. This mechanism is globally tax neutral.

Capital losses are tax deductible, even if a capital gain on the participation would have been tax exempt.

5.4 Is there any special relief for reinvestment?

When a capital asset in the form of a building or an asset that cannot be depreciated, is disposed of, the taxpayer may elect to defer the tax liability generated by such disposal by means of roll over relief. To qualify for the relief, the alienated capital asset must have been entered into the balance sheet of the company for at least 5 years and the company must envisage the reinvestment of the sales price in certain qualifying assets. Further, the deferred gain must be booked into a non-distributable reserve in the company's balance sheet for the year in which the alienation took place.

Tax roll-over relief under conditions may also exist for:

- conversion of debt into shares;
- conversion into another undertaking with a collective character;
- merger/de-merger of an undertaking with a collective character mentioned in the Exhibit to Art. 2 to the Parent/Subsidiary Directive (including Luxembourg) or of certain other foreign entities; and
- qualifying share for share exchange of an undertaking with a collective character mentioned in the Exhibit to Art. 2 to the Parent/Subsidiary Directive (including Luxembourg) or of certain other foreign entities.

5.5 Does Luxembourg impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

No, it does not.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

See question 2.5.

6.2 Are there any other significant taxes or fees that would be incurred by a locally formed subsidiary but not by a branch of a non-resident company?

No, there are not.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

In principle, Luxembourg applies the direct method. This means that Luxembourg branches of foreign corporations are taxed in the same way as resident companies. Taxable profits are generally calculated by reference to the income and deductions attributable to the local branch's business activities, determined under the assumption that the branch acts like an enterprise independent of its head office. However, transactions between the head office and branch are generally disregarded (except for banking activities). All Luxembourg income so allocated to, and derived by, a branch in Luxembourg (including dividends, patents, royalties, and interest attributable to the branch), is taxable in Luxembourg.

6.4 Would such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

No, it would not.

6.5 Would a branch benefit from double tax relief in its jurisdiction?

As a general rule, branches are not considered to be a Luxembourg resident in the sense of domestic law or treaty law and can therefore not benefit from the provisions of the tax treaties entered into by Luxembourg.

However, under ECJ case law and, in certain cases, following non-discrimination provisions referred to in tax treaties concluded between Luxembourg and the residence country of the head office, Luxembourg branches may be required to extend benefits under a tax treaty with third countries when the Luxembourg branch derives income from such third countries.

In addition, Luxembourg branches of non-resident companies may, by virtue of domestic law, qualify for tax credits for foreign taxes, and for the exemption of capital gains or dividends (see questions 5.3 and 7.2).

6.6 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch? :

No, it would not.

7 Overseas Profits

7.1 Does Luxembourg tax profits earned in overseas branches?

The Luxembourg tax system taxes resident collective undertakings and permanent establishments of foreign collective undertakings on a worldwide basis. Therefore, subject to the potential impact of applicable double tax treaties, the profits of overseas branches are included in the taxable basis for Luxembourg tax purposes.

Since, however, under applicable double tax treaties, Luxembourg applies, in principle, the exemption method for overseas branch profits; such profits are, in principle, tax-exempt in Luxembourg.

In the absence of an applicable double tax treaty, overseas branch profits are subject to IRC. Foreign profit taxes paid may be credited against the IRC.

Since the ICC is a territorial tax limited to profits derived from a business carried on in Luxembourg, profits of overseas branches are not subject to ICC.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Dividends are included in the taxable basis for corporate income tax.

However, dividend exemption is available if a fully taxable Luxembourg resident undertaking with a collective character, (or a Luxembourg branch of certain qualifying foreign entities), has held (or commits to hold) for an uninterrupted period of at least 12 months, at least 10% of the paid up share capital (or shares with an acquisition price of at least EUR 1.2 million) of an undertaking with a collective character mentioned in the Exhibit to Art. 2 to the Parent/Subsidiary Directive (including Luxembourg) or of a capital company that is subject to an effective rate of taxation of at least 10.50% in its home country. Dividend exemption, in principle, also applies to participations held through tax transparent entities.

If the above conditions are not met, dividends from a Luxembourg taxable capital company, from an EU resident company falling within the scope of the EU Parent/Subsidiary Directive or from a capital company resident in a tax treaty country and that is subject to an effective rate of taxation of at least 10.50% in its home country are exempt for 50%.

As a principle, expenses in relation with tax exempt dividend income are not tax deductible, up to the amount of such tax exempt income.

7.3 Does Luxembourg have "controlled foreign company" rules and, if so, when do these apply?

Luxembourg does not have controlled foreign company legislation, except for the very specific form of foreign family foundations.

8 Anti-avoidance

8.1 Does Luxembourg have a general anti-avoidance or anti-abuse rule?

The general tax law contains anti-avoidance provisions that permit the Luxembourg tax authorities to challenge sham transactions and tax-avoidance schemes (so-called "abuse of law"-doctrine) in the field of direct taxes. The "abuse of law"-doctrine does not apply in the field of capital duty and transfer taxes. It is unclear whether these anti-avoidance provisions also cover the field of VAT.

8.2 Is there a requirement to make special disclosure of avoidance schemes?

No, there is no requirement to make special disclosure of avoidance schemes.

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