

Luxembourg



 **Capital city:**
Luxembourg

 **Superficy:**
2 584 km²

 **Population:**
562 958 M.

 **Language:**
Luxemburgish/
French/German

 **Political system:**
Unitary
parliamentary
constitutional
monarchy

 **GDP/capita**
2015:
USD 101 450

 **Currency:**
Euro

 **ISO Code:**
LUX

 **Telephone code:**
+352

 **National day:**
June 23rd

1. Corporate taxation

1.1 Taxes on entities

Companies are subjected to three taxes in Luxembourg: Corporate Income Tax (IR), Net Worth Tax (IF) and Municipality Tax (ICC).

1.2 Residence and non-residence

A company is subjected to Luxembourg tax where either the registered office or the principal establishment is on the territory of the Grand Duchy. The companies resident in Luxembourg are charged on all their worldwide income. Resident companies are entitled to a credit for foreign taxes or can elect to deduct a fraction of the foreign taxes from the taxable profit.

Non-resident companies are taxable in Luxembourg if they carry out activities based in Luxembourg or if these activities are carried out via a permanent establishment maintained within the territory of the Grand Duchy of Luxembourg. Non-resident companies are only charged on income arising in Luxembourg.

1.3 Tax year and filing

The tax year in Luxembourg is the calendar year. However, a company may file a return based on its own financial year.

Generally a corporate income tax return must be filed by the July 31 of the following year. After that the return has been filed, a tax assessment is received which has to be paid by the company. Provisional assessments are used and are payable as tax advances during the year.

1.4 Types of income

The taxable profit is determined by the difference between the value of net assets at the beginning of the year and the value of net assets at the end of the year, decreased by the private (shareholder) assets brought in and increased by personal withdrawals (in favour of owner or shareholder).

Only expenses are deductible which are exclusively expended by the company.

This includes salaries, employers' contributions and certain Luxembourg taxes such as Land Tax. Certain foreign taxes that cannot be offset against Luxembourg taxes are, for the purpose of this calculation, deductible. All these expenses are deductible in so far as they are not directly linked to exempt income.

1.5 Group income and grouping arrangements

A Luxembourg resident company can form a consolidation for tax purposes with 95% owned subsidiaries. The grouping can commence at any time during the year. There are conditions attached.

1.6 Capital gains

Apart from the participation exemption (see exemptions) capital gains are treated as ordinary income.

1.7 Losses

Losses can be carried forward, with a limitation in time of 17 years (from 2017 on). This measure is equally valid for an individual, if it concerns operational losses realised in the framework of individual or collective operation subject to fiscal transparency. The carry back is strictly forbidden.

Under certain restrictive conditions, it is also possible to relieve losses of a resident subsidiary company.

1.8 Exemptions

A commercial company can claim a tax rebate for investment.

Rebates are:

- a tax rebate for complementary investments made in Luxembourg. The relief is 12% of investment in depreciable tangible assets other than buildings, mineral or fossil deposits and livestock;
- as from tax year 2016, the global investment tax credit amounts to 8% (instead of 7%) of the acquisition value of the first EUR 150,000 of investments made during the year, and 2% of the excess over EUR 150,000. The supplementary investment tax credit amounts to 13% (instead of 12%) of the acquisition value of qualifying investments made during the tax year.

The two rebates can be aggregated. Used assets, acquired in the Grand Duchy, do not attract relief, except in the case of a new business. An excess of available rebate over tax liability can be carried forward over a period of up to ten years.

Some specific companies are exempt from tax in Luxembourg:

- “Family patrimony” (SPF) and Holding Company (Law of 31 July 1929) repealed system at the latest 31 December 2010). Its activity is strictly limited to finance (acquisition of shareholding, of patents, financing a subsidiary). In return, it is exempt from corporate tax and capital gain tax. Because of this exemption, a holding company cannot benefit from international double taxation agreement.
- SOPARFI. These companies are trading companies under common law which may benefit from Article 166 LIR (last amendment in December 2001). This article relates to tax exemption applied to significant and stable shareholding which includes dividends and capital gains. It is to be noted that the part of expenses incurred in connection with a tax-exempted shareholding and in excess of the amount of exempted dividends for a given year can be deducted from the tax declaration of a Luxembourg company. Because of the common tax law applicable to these companies, they can benefit from international double taxation agreement. This is the main difference and advantage of this type of company if compared to the SPF.
- Others. International operations (finance companies, coordination of office of a large group, reinsurance companies) are treated under an attractive tax system. Certain types of companies as the SICAR (Société d'investissement en capital à risque) and the securitization company are reserved for specialized investors. They are subject to specific controls of the Luxembourg authorities. These companies are completely taxable but are exempt from tax on most of their income. Also, they are not subject to the deduction at source on the dividends. Furthermore, these companies benefit from agreements against double taxation.
- Intellectual Property. Given that intellectual property is essential to any innovative company, Luxembourg has strengthened its appeal on intellectual property and research, development and innovation (RDI). Net income from the exploitation of patents, trademarks, designs, copyrights on software or domain names acquired or created after December 31, 2007 receive a tax exemption of 80% under certain conditions. This may apply also for deemed IP-income if the IP is created for a company's own use. Capital gains realised on the sale of intellectual property also benefit from this tax system. Furthermore, on 1st January 2009, net wealth tax was abolished on qualifying IP. From an RDI point of view, the law of 5 June 2009 relating to the promotion of research, development and innovation provides the framework for a financial aid scheme that contributes to the costs linked to the protection of technical industrial property. The law on exemption was repealed in July 2016. Transitional arrangements for intellectual property

rights created or acquired before that time are in effect. Note that the benefits from this transitional provision no longer apply after 31 December 2016.

- Investment funds are totally exempt from corporate tax which avoids a double taxation of the fund itself and of its investor if the latter declares his income in the country of his residence. Moreover, distributions made by a Luxembourg investment funds are not subjected to withholding tax.

1.9 Rates

- IRC: Income tax of local authorities at the rate of 19% in 2017 and 18% in 2018; only 15% when the taxable income does not exceed/exceeds EUR 25,000;
- ICC: municipal commercial tax at the rate of 6.75% of profit (Luxembourg city);
- minimum inclusive tax of EUR 4,815.

1.10 Double tax relief

Taxes withheld on dividends or interest by a country with which Luxembourg has not signed any double taxation agreement is charged to the beneficiary in Luxembourg. The charge is limited to the tax which would be payable in Luxembourg on the whole income arising from the withholding country (method of the charge “country per country”). The total gross income (before foreign tax) will be subject to tax in Luxembourg and a relief will be granted up to the amount of the foreign tax already paid at source. If the foreign tax is above the Luxembourg tax, the surplus will be deductible from the taxable income itself.

The same treatment is generally applied when there is a double taxation agreement between Luxembourg and the country from where the income arises, if the charge (unless exemption) is provided in the agreement.

1.11 Tax reform 2017

Beside the reduction of the corporate income tax rate, the change for the carried-forward losses and tax credits, the following changes have been foreseen in the tax reform 2017 :

A new deferred amortization regime is introduced. As from tax year 2016, the taxpayer can, under option in the tax returns, differ the deduction allowed by the amortization. This optional mechanism will increase corporate income tax and municipal business tax and allow to limit, under certain conditions, the net wealth tax due.

The new article 56bis LITL intends to add further guidance and clarification on

transfer pricing regulations in Luxembourg. This new measure introduces a granular functional and risk analysis based the OECD Transfer Pricing Guidelines for Luxembourg entities engaged in intra-group financing activities.

Currently certain undertakings (e.g. regulated credit institutions, regulated insurances and re-insurances and other undertakings trading monetary and financial assets) benefit from a temporary tax relief on foreign exchange gains derived from assets invested in the foreign currency of the share capital and representing the equity capital of the undertaking (article 54bis of the Luxembourg income tax law). As from tax year 2016, the measure has been extended to all companies which have their contributed capital in a foreign currency (other than euros). The specific deadline for the request linked to tax year 2016 is 1 July 2017.

The electronic filing of the corporate tax returns, municipal business tax returns and net wealth tax returns for corporations will be mandatory. Based on the parliamentary works, this will be mandatory as from 2018 for the 2017 CIT and MBT tax returns (01/01/2018 NWT returns).

To reinforce the coercive power of the tax authorities, various modifications are entered into force including an increase of the amounts of penalties. For example, the penalty for the late submission of the tax returns, currently amounting to 1,239.47 €, will be increased up to 25,000 €.

2. Personal income taxation

2.1 Taxes on income

Income tax is levied on individuals, unlimited partnerships, limited partnerships and on the limited partner in a partnership limited by shares.

This tax applies to the income of natural persons. That also includes, when it relates to a personal business where the partner is to be considered as the party operating the business, commercial profit, agricultural and forest profits, income from a profession; the same applies to the share of income attributable to the other partner in a resident company offering tax transparency (SENC – Société en nom collectif-, SECS – Société en commandite simple-, general partner of a SECA – Société en commandite par actions-).

2.2 Residence and non-residence

Any individual staying in the Grand Duchy of Luxembourg for a continuous period exceeding six months (or only interrupted by short periods) will be regarded

as a resident for tax purposes. The period of six months can fall across the year end. The tax residence is nevertheless principally determined in relation to vital interests of contributors.

Residents are taxable in Luxembourg on their worldwide income, unless a local law or a double taxation treaty provides otherwise for any specific income.

Non-residents are only liable to taxation in Luxembourg to the extent of income arising from Luxembourg (limited tax liability). Income subject to tax in Luxembourg consists mainly of business profits and rental income from land and buildings in Luxembourg. Non-resident individuals are normally not taxed on investment income (shares, bonds, term deposit accounts, etc.). There are two main exceptions to this rule. Interest received on a mortgage loan registered in Luxembourg is subject to Luxembourg tax and dividends paid to non-residents by a resident trading company are subject to withholding tax.

2.3 Tax year and filing

The tax year in Luxembourg is the calendar year.

Officially a tax return should be filed by the 31 March after the end of the tax year but an extension by the end of the year is allowed on demand.

Residents in Luxembourg only have to file a tax return under the following conditions:

- single persons with an annual income over EUR 100,000;
- people with more than one tax card and where the annual income exceeds EUR 30,000;
- people with an annual income of EUR 600 not taxed at source;
- people with a dividend income exceeding EUR 1,500 per year.

After filing, a tax assessment is received by the tax office. Based on the annual amount of tax to pay, tax advances can be fixed quarterly by the tax office for the following year.

2.4 Types of income

In Luxembourg the distinction between the following income categories is made:

- profit of commercial businesses;
- profits from agricultural and forestry;
- profit arising from independent activities;
- employment income;
- pensions;

- investment income;
- lease income;
- other incomes.
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The above categories of income are distinguished by their method of calculation. For tax purposes, the income in the first three categories is calculated as the excess of income over operating expenses; once the annual turnover exceeds EUR 100,000, a regular accounting has to be prepared and financial statements to be filed. For the other five categories the taxable income is the excess of revenue over income-related expenses. For income-related expenses in respect of the fourth to eighth categories, there are strict limits as to the kind of disbursement applicable for deduction.

2.5 Capital Gains and investment income

Capital gains

Special provisions apply to the tax liability on the sale of a substantial shareholding, where the sale is made by:

- a resident taxpayer;
- a non-resident individual who has been regarded as resident for tax purposes for 15 years at least and who has left Luxembourg less than five years previously;
- to non-resident individuals selling part or all of an important participation (more than 10%) in a resident trading financial company less than six months after its acquisition.

Under these special provisions, the gain realised is taxed at the normal rate (as applied to income of the year) where the shares were held for less than six months. Otherwise, the tax charge is calculated in the same way as for land and buildings, followed by application of a decennial reduction of EUR 50.000 which is doubled if taxation is collective.

Investment income

This includes dividends or any kind of bank or debenture interest. Dividends paid by resident companies are subject to a deduction withheld at source (except those subject to the withholding). It will be chargeable to the final tax calculated on the basis of the return at the end of the year. Shares allocated on a free basis in case of capital increase by incorporation of reserves are not considered as capital gains and are not taxable in Luxembourg. As the intrinsic value of the existing shares decreases, there is actually no gain for the owner.

A significant advantage is granted to the taxpayer: 50% of dividends are exempt of income tax.

Interests received by a Luxembourg tax resident can be subject to a final 10% withholding tax for full discharge (conditions are attached).

2.6 Losses

In the personal income tax situation in Luxembourg, personal losses can be brought forward but only under specific conditions.

2.7 Exemptions

Not everybody in Luxembourg has to file a tax return. As explained under point 2.3, only certain people have the obligation to file tax returns in Luxembourg. Nevertheless, under certain conditions (mortgage, deduction of insurances), a tax refund can be requested by filing a simplified version of a tax return (tax regulation form).

2.8 Allowances and rates

A basic tax credit of EUR 300 per year is granted to every employee or independent in Luxembourg but proratised from EUR 300 to EUR 0 per year the higher the annual income is. Within the tax return or tax regulation form, people can ask for certain deductions as for example insurances, interests on personal loans or mortgages, complementary pension plans, extraordinary expenses, construction savings plans.

2.9 Social security

In Luxembourg approximately 24% of social contributions are withheld on income. This amount is generally splitted between the employee and the employer and paid every month to the Centre Commun de la Sécurité Sociale. For an independent worker, the total amount of 24% charged to him.

2.10 Expatriates

To encourage people to come to Luxembourg, employers often bear these costs. From a tax point of view, these costs normally are considered as a fringe benefit granted to the employee, and thus taxable as an additional remuneration at the level of the employee.

Luxembourg resolves this issue by specifying that certain costs borne by the employer for the move, stay and exit of the employee in Luxembourg, will be

exempt from tax to the employee during a 5 year period (while remaining tax deductible at the level of the employer).

The employer will therefore be able to compensate free of tax the moving, travel and child care expenses of their employee, including school costs. It will also be able to compensate housing and tax equalisation costs tax-free if the compensation does not exceed:

- EUR 50.000 (EUR 80.000) for a married couple;
- 30% of the expatriate salary. Finally, certain costs of living allowances may also be granted, subject to conditions and limitations.

2.11 Options

On 20 December 2012, the Luxembourg tax authorities issued a new circular (LIR n° 104/2) on the taxation of stock option plans. The new circular updates the previous circular (dated 2002) mainly by increasing the valuation of transferable options from 7.5% of the underlying stock at the moment of the granting of the option to 17.5% of the underlying stock at the moment of the granting of the option.

Transferable Stock Options

- the employee is regarded as receiving a benefit-in-kind at the date of grant of the stock option;
- the taxable benefit is equal to the difference between the quoted or estimated sales value of the stock option at the date of grant and the price paid by the employee for this option;
- the estimated sales value may be calculated by using the Black & Scholes method 1 or another comparable financial method or in the absence of application of such a method, it can be fixed at 17.5% of the value of the underlying stock at the moment of the granting of the option;
- the implementation of a stock option plan has to meet a “reasonable condition” test.

Non-Transferable Stock Options

- the employee is regarded as receiving a benefit-in-kind only at the date of exercise of the stock option;
- the taxable benefit is equal to the difference between the quoted or estimated sales value of the stock and the exercise price paid;
- in the presence of a clause of inalienability of the stock bought within the framework of such stock option plans, a tax reduction equal to 5% per year of the stock value is granted (with a maximum of 20%).

2.12 Partnerships

Partnerships are treated as transparent entities and the income is therefore taxed directly in the partners' hands.

2.13 Pensions

For the pensions, a withholding tax is applied and an adjustment is made by the Administration based on the annual statement. Maintenance allowances and life annuities are generally declared for taxation purpose but, under certain conditions, are totally or partly exempted.

2.14 Tax reform 2017

The tax reform 2017 foresees many changes for private persons in Luxemburg ; hereafter a few interesting extracts :

- Increase of the value for Luncheon Vouchers
- Reduction or increase of the benefit in kind for company cars (related to the carbone missions of the car)
- Abolition of unitary value -> no taxation on taxpayer's residence
- Higher mortgage interest deduction will become applicable
 - Home savings accounts : the deductible annual amount for subscribers between 18 and 40 years will increase
- Debit interest and life insurances premiums will merge into one ceiling
- Increase of the deductible limits for old age pension schemes
- Increased ceilings for extraordinary charges (costs for children not living in the household, tax credit for single parents, domestic costs and monthly maintenance allowances);
- Tax allowances for bikes and zero emission cars;
- Progressive tax rates for single persons (up to marginal tax rate (including EF) up to 45,78%;
- Increase of the withholding tax on interest income for Residents from 10% to 20%;
- Pensions paid to orphans will be tax exempted;
- Proratisation of the tax credit for employed taxpayers;
- Changes for taxation of non-resident married taxpayers.

3. Inheritance and gift tax

Gifts and inheritances are subjected under certain conditions to tax in the Luxembourg.

3.1 Residents and non-residents

Residence is determined “according to the circumstances”. Major factors include having a home at one’s disposal, location of family and work and physical presence.

3.2 Rates

The rates depend on the relationship of the recipient to the deceased and the amount received:

- 5% between spouses without shared children, or shared descendants; this rate applies to the estate less a deduction of EUR 38,000;
- 6% on a transfer between brothers and sisters;
- 9% on a transfer between uncles and aunts, nephews and nieces, adoptive parents and adopted child, unless if the adoption is exempted from taxation of estates;
- 10% on a transfer between great-uncles and great-aunts, grand-nephews and grand-nieces and between the adoptive parents and the adopted descendants;
- 15% on a transfer between other persons.

The above rates are applied to the inheritance that passes under the Will or intestacy.

Gifts received by either a resident or a non-resident are mainly subjected to duty at the following rates:

- 1.8/2.4% in direct line;
- 2.4% between spouses by marriage contract;
- 4.8% between spouses without marriage contract;
- 6% between brothers and sisters;
- from 8% to 14.4% for other relationships.

4. Wealth Tax

There is no wealth tax in Luxembourg for individuals.

For companies and collectivities, total assets are taxable with a wealth tax rate of 0,5%.

Resident companies are taxable at a minimum of EUR 25 (SARL - Société à responsabilité limitée-) and EUR 62.50 (SA –Société anonyme- and SECA). Other resident collectivities are assessable to wealth tax if their total assets are over EUR 2,500.

5. Value Added Tax

5.1 Rates

VAT is levied at 17% for goods and services. Other rates can be applicable (3%, 8%, 14%). A reduced rate of 3% applies to food, books and certain other necessities.

5.2 Changes in relation to the tax reform 2017

Persons in charge of the management of a taxpaying entity (managers, directors, etc.) are jointly responsible for the payment of the VAT due in case they do not respect in a faulty manner their VAT obligations.

VAT authorities will be entitled to request a guarantee (“appel en garantie”) from the persons in charge of the management of a taxpaying entity when they do not respect in a faulty manner their VAT obligations.

Penalties due in case of infringement of VAT obligations, e.g. filing of VAT returns, will be increased to 250 € to 10,000 € instead of 50 € to 5,000 € while those for non-communication of information or documents will be increased to a maximum of 25,000 € per day instead of 50 € to 1,000 €.

When the infringement of VAT obligations occurs with the aim or result of eluding payment of VAT or to obtain an irregular reimbursement, a penalty of 10 to 50% of the eluded or irregularly reimbursed VAT will be applicable.

When the infringement of VAT obligations occurs with the aim or result of eluding payment of VAT or to obtain an irregular reimbursement, a fine of € 25,000 to 6 times the tax and 1 month to 3 years of prison will be applicable when some thresholds are exceeded per tax period: a) one fourth of the VAT due or reimbursed, but no lower than 10,000 € or b) 200,000 €.

6. Other taxes

Other important taxes include:

- transfer tax of properties between 6% and 9%;
- property tax, which is a local tax based on the value of the property, which is determined each year.

There is a withholding tax of 15% on dividends. Interest and royalties are not subject to withholding tax.

7. Foreign income

The Luxembourg system for double tax relief is basically the exemption system other than for income with tax credit.

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