Taxation and Investment in Luxembourg 2013
Reach, relevance and reliability
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1.1 Business environment

The Grand Duchy of Luxembourg is a constitutional monarchy. The function of the monarch is largely ceremonial, with political power resting with the government and the unicameral parliament. The government is headed by a prime minister.

Luxembourg has a long-standing tradition as a financial competence and business center. The country’s strategic geographic location in the heart of Europe, political stability, its multicultural and highly qualified workforce, together with a strong legal environment and attractive tax framework, have been key factors for establishing Luxembourg as a hub for international trade in the financial sector, as well as in the industrial and commercial sectors.

One of the smallest EU member states, Luxembourg is located between Belgium, France and Germany. It has an area of 2,586 square kilometers and approximately 460,000 inhabitants. Once dominated by the steel industry, Luxembourg has managed its evolution over the last 50 years into diversified industries and a highly performing financial services platform. Luxembourg has evolved into one of the leading European financial market jurisdictions by serving a broad range of European and worldwide investors through a network of well-established bank and financial services.

Trade with other EU countries benefits from Luxembourg’s strategic location in the EU, its proximity to other European capital cities and major business centers, and the presence of numerous European institutions. Luxembourg also has developed international trading relations with the Americas, Asia and the Middle East, which have contributed to the diversification of its export markets and the origins of its imports. Luxembourg has a significant trade surplus, with its annual surplus representing more than 10% of GDP. This performance is mainly due to the export of services.

As an EU member state, Luxembourg is required to comply with all EU directives and regulations and it follows EU regulations on trade treaties, import regulations, customs duties, agricultural agreements, import quotas, rules of origin and other trade regulations. The EU has a single external tariff and a single market within its external borders. Restrictions on imports and exports apply in areas such as dual-use technology, protected species and some sensitive products from emerging economies. Trade also is governed by the rules of the World Trade Organization (WTO).

Price controls

Luxembourg has a free market economy in which the principle of market forces is applied to price formation. Traders generally are not allowed to sell at a loss, except, for example, duly authorized discount sales and liquidation sales or sales of goods liable to rapid deterioration that cannot be preserved. The government may enact temporary measures lasting up to six months to prevent excessive price fluctuations in exceptional circumstances. The government also sets maximum prices for taxi fares, pharmaceutical and petroleum products.

Intellectual property

The level of intellectual property (IP) protection is high in Luxembourg. IP protection mainly is provided by the Benelux Intellectual property Convention, Luxembourg’s 1992 patent law and the 2001 law on copyrights, related rights and databases. Luxembourg is a party to all the major conventions in such matters (e.g. European Patent Convention, Patent Co-operation Treaty, Madrid Protocol).

Protection in Luxembourg may be obtained in several ways:

- An application may be filed with the Intellectual Property Service of the Luxembourg Ministry of Economy;
- A European patent application may be filed with the European Patent Office in Munich, Berlin or the Hague;
An international patent application may be filed with the World Intellectual Property Organization in Geneva.

IP litigation is dealt with by the local courts of justice, which may require a suspension of activity and impose penalties for infringements.

1.2 Currency

The currency in Luxembourg is the Euro.

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<th>Countries participating in the Economic and Monetary Union</th>
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1.3 Banking and financing

The two principal pillars of Luxembourg’s financial services sector are private banking and fund administration. With approximately 150 highly experienced and skilled banking institutions, a successful investment fund industry, a dynamic insurance sector, skilled workers and specialized companies, Luxembourg has a full range of diversified and innovative financial services.

1.4 Foreign investment

The Luxembourg government actively seeks foreign investment, and there are no special procedures for the approval of foreign direct investment. The government particularly encourages environmentally friendly light industries, such as communications, finance and high technology, as a way to diversify the economy and provide new employment in industries with high value added, in which high wage costs will not place Luxembourg at a disadvantage.

Responsibility for attracting foreign investment lies with the Board of Economic Development. According to the board, Luxembourg offers a full range of tailored investment incentives for new ventures. The government may grant support for funding specific projects for small and medium-sized companies; companies located in development areas; research, development and innovative investment focusing on new products, services or processes; and environmental protection or the efficient use of energy.

Financial support may take the form of capital grants and medium and long-term loans by the National Credit and Investment Corporation (SNCI).

1.5 Tax incentives

Luxembourg offers tax credits for qualifying investments in enterprises situated in Luxembourg and for eligible assets physically used in another country within the European Economic Area (EEA). Eligible assets primarily consist of depreciable tangible goods other than buildings, livestock and deposits (fossil or mineral) and vessels operating in international traffic. A global investment tax credit of 7% of the acquisition price of investments made during the year is available, subject to a ceiling of EUR 150,000 and 2% on the investment amounts exceeding EUR 150,000. A supplementary investment tax credit of 12% of the acquisition value of qualifying investments made during the tax year also is available. Any unused credit may be carried forward for 10 years.

Under the IP regime, 80% of income derived from IP rights acquired or created by a Luxembourg company or permanent establishment after 31 December 2007, and gains from the disposal of such IP rights, are exempt from income tax. IP rights acquired directly from a related party, however, are excluded from the regime. Taxpayers that use a self-developed patent for their own business benefit from a notional deduction amounting to 80% of the net positive income they would have earned from a third party as consideration for the right to use the patent. The regime applies
to all net income received in consideration for the use of, or the right to use, directly or indirectly, any software copyright, domain name, patent, trademark, design or model. Qualifying assets also benefit from a full exemption from net worth tax.

Luxembourg also is a domicile of choice for cross-border distribution of investment products. Luxembourg investment funds may benefit from a wide range of exemptions: no taxation on income and capital gains, no withholding tax (unless the EU savings directive applies) and no wealth tax. Only a subscription tax and the minimum income tax (see 3.8 below) may apply to a fund.

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

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

1.6 Exchange controls

Luxembourg has no exchange controls and its ability to introduce controls is constrained by membership in the EU.

There are a number of reporting requirements for statistical purposes and to prevent money laundering. Statistics must be filed with the central bank. The reporting is controlled by the financial institution handling the transaction. Large companies that do not use financial intermediaries for their cross-border financial transactions are the only exception to this rule. Luxembourg has implemented the relevant EU anti-money laundering directives.
2.0 Setting up a business

2.1 Principal forms of business entity

The two most commonly used corporate entities in Luxembourg are the société anonyme (SA) and the société à responsabilité limitée (SARL). The SA corresponds to a public limited company and the SARL to a private limited company, both of which are limited liability companies.

The Societas Europaea or SE company form also is available. The SE is designed to enable companies to operate across the EU with a single legal structure, to facilitate mergers and create flexibility for companies wanting to move their head office from one EU state to another. Companies from two or more EU member states are permitted to merge to form an SE or create an SE holding company or branch. A company may convert an existing firm to SE status without liquidating. One advantage of an SE is that it is possible to move headquarters to another EU member state with minimal formalities.

Businesses also can establish as a European Economic Interest Grouping (EEIG). Companies (even non-EU companies if the vehicle is a subsidiary in an EU country) that want to start working with a Luxembourg company, but do not want to commit to a formal joint venture may set up an EEIG. The grouping functions much like a partnership in that the income is taxed in the hands of the member companies. At least two of the companies involved must be from different EU member states.

Formalities for setting up a company

A business license is required to set up a company having a commercial purpose in Luxembourg, which takes about two months. The applicant (the business license being linked to the individual acting as director/manager and not to the company itself) must supply evidence of his/her professional qualifications and good standing. There are separate special requirements for the financial, insurance and reinsurance sectors, and certain professions need additional authorization.

Once established, the company must be registered. Membership in the Luxembourg Chamber of Commerce or Chamber of Skilled Crafts is required, although some professions may be exempt from such requirements. Registration for income tax, value added tax (VAT) and social security is required.

Forms of entity

Requirements for an SA and SARL

**Capital.** SA: The minimum issued share capital is EUR 31,000, of which at least 25% must be paid up at incorporation. The share capital may be issued in a foreign currency. It must be subscribed in cash or in kind, and an independent auditor must determine the value of noncash contributions. Five percent of net profits must be allocated annually to a legal reserve until the reserve equals 10% of the subscribed capital. SARL: The minimum share capital is EUR 12,400, which must be fully paid up in cash or in kind upon incorporation. The transfer of shares is subject to strict regulations and publication requirements.

**Founders, shareholders.** SA: There is a minimum of one founder or shareholder. SARL: There is a minimum of one founder or shareholder and a maximum of 40 partners. Both: There are no residence or nationality requirements.

**Board of directors.** SA: There is a minimum of three members appointed for up to six years. However, where the SA has been formed by a single shareholder, the board of directors can be composed of one member. In large firms, employee representatives have a right to sit on the board of directors or form a mixed works council together with the management. SARL: One or more managers are required. Both: There are no residence or nationality requirements.

**Management.** Both: There are no nationality or residence requirements. The person designated as having responsibility for day-to-day management of the company (managing director) must be in a position to exercise effective oversight of the establishment in Luxembourg on an ongoing basis (which implies a physical presence in the Luxembourg operation most of the time). A one-person operation may hold the business license in his/her own name.
Employee representatives. SA: For an SA with at least 1,000 employees within the past three years, a state participation of 25% or more or whose main activity is the exploitation of a state concession, there must be at least nine directors, at least three (and up to one-third) of which should be appointed by the employees. Both: An SA or a SARL with at least 150 employees must establish a mixed works council (representing an equal number for the employer and the employees). All firms with more than 15 employees must have at least one employee representative.

Taxes and fees at incorporation. Both: Notary fees are a percentage of the company’s share capital. There also are fees for registration with the Trade and Company Register and for publication of the articles in the Official Gazette. A specific registration tax of EUR 75 applies for company incorporation, amendments to the bylaws and the transfer of a seat of a foreign company to Luxembourg. Membership in the Chamber of Commerce is mandatory for all commercial companies with their legal seat in Luxembourg (see 3.8 below).

Types of shares. SA: Preferred shares without voting rights may be issued when a company is incorporated, when there is a capital increase or through the conversion of ordinary shares if the articles of association provide for the issuance of preferred shares. Redeemable shares may be issued if the company’s articles so provide and if shareholders’ equity is not reduced thereby. Each ordinary share must carry one vote. A company also may issue certificates entitling the owner to participate in a specified manner in profit distributions, but these may not carry voting rights or any claim on the company’s assets. Shares may be bearer shares. SARL: Only registered shares are authorized.

Control. SA: A general meeting of shareholders must be held at least annually. The company’s articles define a simple voting majority, but in practice the support of two-thirds of the shareholders (with at least one-half of the shareholders present or represented by proxy) is required for any amendments to the articles of association (with the exception of the change of nationality of the company and the increase of the shareholders’ commitments, which require the unanimous consent of the shareholders). SARL: An annual meeting must be held if there are more than 25 shareholders. Otherwise, resolutions can be made in writing.

Branch of a foreign corporation

A foreign company can set up a branch to conduct business in Luxembourg, but will be required to register with the Trade and Companies Register. Further, the branch must publish in the Official Gazette, inter alia: (1) its articles of association (if the head office is not governed by the law of an EU member state but has a legal form comparable to the company types to which the EU company directive applies) or indicate where they are published (in the case of an EU head office); (2) the appointment of the branch’s manager(s), stating the extent of the manager’s (or managers’) authority. The branch’s manager will need to provide evidence of managerial capability or experience. Similar publication costs as for the incorporation of a company are due. Neither capital duty nor notary fees are due upon the setting up of a Luxembourg branch.

The head office remains fully liable for the liabilities of the branch.

Branches exercising a commercial activity are subject to the same taxes and the same rates as domestic companies.

2.2 Regulation of business

Mergers and acquisitions

Any merger that will lead to the strengthening of a dominant position in Luxembourg may require prior clearance from the European Commission, depending on the size and market share of the companies concerned and irrespective of whether the companies are headquartered in Luxembourg (or in the EU). The EU has jurisdiction:

- When the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in a single member state; and
When the aggregate global turnover of the companies concerned exceeds EUR 2.5 billion for all businesses involved, aggregate global turnover in each of at least three member states is more than EUR 100 million, the aggregate turnover in each of these three member states of at least two undertakings is more than EUR 25 million and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 100 million unless each achieves more than two-thirds of its aggregate EU-wide turnover within the same state.

Companies falling outside these definitions that are required to apply for clearance in at least three EU member states under national laws may apply to the European Commission for it to act as a one-stop shop. The Commission also can delegate to national competition authorities mergers that fall within the Commission’s jurisdiction but that, in practice, will have an impact only in one country.

The thresholds for notifying the stock exchange authorities when acquiring stakes in listed companies are 10%, 20%, 33 1/3%, 50% and 66 2/3%.

Takeovers and mergers in the banking sector are vetted by the Financial Sector Surveillance Commission to ensure that the resulting financial institution will be prudentially sound. The Commission cannot oppose a merger or acquisition by a financial institution from another EEA country unless there is good reason.

**Monopolies and restraint of trade**

Luxembourg law prohibits the abuse of market dominance. An independent administrative authority, the Competition Council, monitors compliance with competition law. It has power to carry out investigations and can take protective measures or impose fines and penalties. Price fixing, market sharing, discrimination between customers and the imposition of terms on suppliers that would prevent them from doing business with competitors constitute *prima facie* abuses under the law.

The principles of Luxembourg competition law are those underpinning EU law, and the European Commission has jurisdiction over anti-competitive practices, even where national law has not been invoked. Luxembourg and EU law restrict price fixing agreements; market sharing or allocation; exclusion of newcomers from the market; sales or production quotas; discriminatory selling; refusal to sell, supply or grant credit; tie-in sales; and exclusive dealing arrangements.

**2.3 Accounting, filing and auditing requirements**

Upon incorporation, companies must file the articles of association and names of all directors/managers with the Trade and Company Register, and publish that information in the Official Gazette. The approved annual balance sheet, profit-and-loss statements, notes to the accounts, annual reports and auditors’ reports also should be registered with the Trade and Company Register.

The rules for publication of the company’s balance sheet, profit-and-loss account and notes are eased for small and medium-sized companies. Small companies are only required to file a simplified balance sheet. Medium-sized companies may publish abridged balance sheets, and notes to the accounts need not include information on turnover and may group several items together under gross profit.

Small companies are defined as those that do not exceed two of the three following limits: (1) no more than EUR 6.25 million in annual net turnover; (2) no more than EUR 3.125 million in total balance sheet; and (3) no more than an average number of 50 full-time employees during the accounting year. Medium-sized companies are those that do not meet the test for small companies but fall within at least two of three higher limits: (1) up to EUR 25 million in annual net turnover; (2) up to EUR 12.5 million in total balance sheet; and (3) up to 150 employees. Other filing requirements apply to listed companies, financial institutions, insurance companies and certain investment companies.

An SA must appoint a statutory or external auditor depending on annual turnover, the balance sheet amount and the number of employees. An SARL needs a statutory auditor if the company has more than 25 shareholders, but will also need an external auditor when annual turnover, the balance sheet amount and the number of employees exceed certain limits.
Legally required annual stand-alone or consolidated accounts should be prepared in accordance with Luxembourg GAAP or IFRS, with IFRS mandatory for the consolidated accounts of an undertaking whose securities are admitted to trading on a regulated market of any EU member state. Financial statements must be submitted annually and revised by a statutory or an independent auditor. Luxembourg companies and branches of foreign companies must file their annual accounts with the Commercial and Companies Register within the month of their approval and no later than seven months after the end of the financial year of reference.
3.0 Business taxation

3.1 Overview

The Luxembourg government is committed to maintaining relatively low income taxes and social insurance costs. The total corporate tax burden is moderate by European standards.

Companies doing business in Luxembourg are subject to corporate income tax, municipal business tax, minimum tax, Chamber of Commerce contribution, net worth tax and VAT. There is no branch tax or excess profits tax.

As explained above in 1.5, special tax regimes are available for: securitization vehicles (all remuneration paid, including dividends, is tax deductible); SICARs (exempt on all income from securities and on transit funds); undertakings for collective investments (SICAVs, SICAFs, FCPs), specialized investment funds (lightly regulated vehicles) and SPFs (private wealth management vehicles).

A SOPARFI is a company that carries out holding or financing activities under the general tax regime (although it may engage in other activities if so provided in the company’s bylaws). The appeal of the SOPARFI lies in its access to the benefits of the EU directives, eligibility for tax deductions, unlimited loss carryforwards and Luxembourg’s broad network of tax treaties.

Luxembourg has implemented the EU parent-subsidiary, interest and royalties and merger directives, as well as the EU savings directive, the latter of which requires the exchange of information between tax administrations when interest payments are made in one EU member state to an individual resident in another member state.

Luxembourg does not have specific transfer pricing or thin capitalization regimes, but transactions between related parties must be on arm’s length terms. There is no controlled foreign company regime.

The Chamber of Representatives is responsible for passing laws. However, a law must be signed by the Grand-Duc before it can enter into force; the law is then published in the Official Gazette. The Direct Tax Administration is responsible for the assessment and collection of taxes.

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### Withholding Tax

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<td>Dividends</td>
<td>0%</td>
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<td>Interest</td>
<td>0%</td>
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<tr>
<td>Royalties</td>
<td>0%</td>
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<tr>
<td>Branch remittance tax</td>
<td>0%</td>
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</table>

### Capital Tax

- No

### Municipal Business Tax

- 6% - 10.5%

### Employment Surcharge

- 7%

### Net Worth Tax

- 0.5%

### Minimum Tax

- Varies

### Chamber of Commerce Contribution

- 0.025% to 0.2%

### Social Security Contributions

- 12.2% to 12.45%

### Real Estate Tax

- 0.7% to 1%

### Transfer Tax

- 6% + 1% transcription tax

### Specific Registration Duty

- 0.6% or 6% + 1% transcription tax

### VAT

- 15%

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**3.2 Residence**

A company is resident in Luxembourg if its legal seat or central administration is in Luxembourg.

**3.3 Taxable Income and Rates**

Resident companies are subject to tax on their worldwide income. Nonresident companies are subject to tax only on Luxembourg-source income. Branches in Luxembourg are taxed on Luxembourg-source income and no withholding tax applies to profit remittances.

A corporate income tax rate of 21% applies to companies whose taxable income exceeds EUR 15,000. Companies whose income does not exceed EUR 15,000 are taxed at 20%. A minimum income tax applies to Luxembourg collective entities that are in a tax loss position or paying less than the minimum income tax (discussed below at 3.8). These taxes are increased by a 7% contribution to the unemployment fund.

Luxembourg’s effective corporate income tax rate includes the statutory rate of 22.47% (21%, plus the 7% surcharge) and the municipal business tax (discussed below at 3.8). For example, the effective tax rate for a company with its registered seat in Luxembourg City is 29.22%.

**Taxable Income Defined**

Taxable income is calculated based on the profits as stated in the commercial balance sheet, plus certain adjustments provided for under the tax law (e.g. nondeductibility of taxes, an exemption for dividends). Taxable income of companies resident in Luxembourg includes business income from all sources. Therefore, foreign-source income, whether distributed or undistributed, is included in taxable income, subject to any specific exemptions.

A number of tax credits are available (see 1.5) that may be used to reduce corporate income tax.

**Participation Exemption**

Dividends received by a Luxembourg company are included in taxable income (and subject to the corporate income tax and municipal business tax) unless the participation exemption applies.

Under the participation exemption, dividends will be exempt from tax in Luxembourg if the following requirements are met:
• The Luxembourg recipient is either a resident company fully subject to tax in Luxembourg, the Luxembourg permanent establishment of an entity that falls within the scope of the EU parent-subsidiary directive, a capital company resident in a country that has concluded a tax treaty with Luxembourg, or a capital or a cooperative company resident in a country of EEA other than an EU member state;

• The Luxembourg recipient company holds or commits itself to hold directly at least 10% of the capital of the payer company (or the shares were acquired for at least EUR 1.2 million) for an uninterrupted period of at least 12 months; and

• The payer company is another Luxembourg company, a qualifying company under the EU parent-subsidiary directive or a non-EU company that is resident in a country in which it is subject to a tax corresponding to the Luxembourg corporate income tax.

Dividends received from participations that do not qualify for the participation exemption (for example, because the participation or holding period requirements are not met) can benefit from a 50% exemption if the dividends are paid by a fully taxable resident company, a company falling within the scope of the EU parent-subsidiary directive or a capital company resident in a tax treaty country that is subject to a tax corresponding to the Luxembourg corporate income tax.

**IP regime**

Under Luxembourg's IP regime, 80% of income derived from IP rights acquired or created by a Luxembourg company or permanent establishment after 31 December 2007, and gains from the disposal of such rights, are exempt from income tax. IP rights directly acquired from a related party, however, are excluded from the regime. Taxpayers that use a self-developed patent for their own business benefit from a notional deduction amounting to 80% of the net positive income they would have earned from a third party as consideration for the right to use the patent. The regime applies to all net income received in consideration for the use of, or the right to use, directly or indirectly, any software copyrights, domain names, trademarks, designs and models. Qualifying assets also benefit from a full exemption from net worth tax.

**Deductions**

Luxembourg tax law permits the deduction of normal operating expenses in calculating taxable income. Deductible items include depreciation, losses, interest paid to third parties, royalties, real property tax, registration tax, certain gifts (up to specified limits), tax losses and contributions to pension plans. Profit distributions, municipal business tax, net worth tax and directors’ fees are nondeductible.

**Depreciation**

Depreciation of fixed assets is deductible. The straight-line depreciation method usually is applied, although the declining-balance method is acceptable, except for buildings and intangible assets. It is possible to switch from the declining-balance method to the straight-line method, but the reverse is not allowed.

Under the straight-line method, the cost of the asset is written off in equal amounts over the asset’s useful life. Under the declining-balance method, a fixed rate of depreciation is applied to the year-end book value of assets at a rate that may not exceed three times the rate applicable if the straight-line method is used or and 30% of the value of the depreciated asset.

For plants, the useful life generally is estimated at 25 years. Other buildings may be depreciated over 25 to 66 years, depending on their structure and use. Goodwill is depreciated over at least 10 years unless a shorter period can be justified. Fixed assets purchased for no more than EUR 870 may be depreciated in full in the year of acquisition. Depreciation allowances must be taken in the year to which the depreciation applies; if not taken, the allowances may not be recovered in subsequent years.

Equipment no longer in use may be completely written off.

Participations and portfolio investments may be written down to the lower market value if the reduction in value is not temporary. Depreciation taken on a participation whose market value does increase again must be reversed.
Reserves
A Luxembourg company must allocate at least 1/20 of its annual profits to a reserve until the reserve reaches 10% of its capital. Otherwise, company also may create reserves for own shares that are specifically provided for in its bylaws.

Losses
Losses may be carried forward without limit; the carryback of losses is prohibited.

3.4 Capital gains taxation
Luxembourg generally does not make a distinction between income and capital gains: both are considered ordinary business income and are subject to corporate income tax. Tax may be deferred on gains on certain fixed assets held for more than five years against the cost of replacement assets acquired in the same tax year or within two years thereafter.

A participation exemption applies for gains derived from the sale of shares, provided the following requirements are met:

- The Luxembourg company holds directly at least 10% of the shares of the relevant company (or the shares had an acquisition price of at least EUR 6 million); and
- The participation has been held (or the shareholder commits to hold the shares) for at least 12 months.

3.5 Double taxation relief

Unilateral relief
Luxembourg generally uses the credit method to eliminate double taxation of dividend, interest and royalty income. This method allows a credit for tax paid in the foreign country, but the deduction may not exceed the income tax computed on such income. When a resident company derives other income under a tax treaty, Luxembourg usually will apply the exemption method, but to calculate the amount of tax on the remaining income of the taxpayer, it will apply the same tax rates that would have applied in the absence of an exemption.

Tax treaties
Luxembourg has a broad tax treaty network. The Grand-Duchy tends to follow the OECD model treaty in its treaty negotiations and has included in all its income tax treaties a mutual agreement procedure and an exchange of information procedure. Companies in the form of SICAFs or SICAVs can benefit under most of Luxembourg’s treaties, but these entities are not subject to income tax or, in principle, withholding tax on outgoing distributions.

To obtain reduced rates under a tax treaty, the payer of income must submit a form to the tax authorities who will verify whether the recipient satisfies the treaty conditions. The payer of the income must declare and pay withholding tax due to the direct tax authorities within eight days from the date the income is made available.

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3.6 Anti-avoidance rules

Transfer pricing
Although Luxembourg does not have specific transfer pricing legislation, transactions between related parties must be conducted at arm’s length. If a transaction does not meet the arm’s length standard, the tax authorities may recharacterize the payment as a hidden contribution/hidden distribution.

Thin capitalization
Luxembourg does not have specific thin capitalization rules, but the arm’s length principle applies. If a Luxembourg resident obtains a loan from a related party on terms that differ from those an independent party would have provided, the tax authorities can recharacterize all or part of the debt as capital. Consequently, interest payments may be regarded as hidden profit distributions.
In practice, the tax authorities use a debt-to-equity ratio of 85:15 for the holding of participations. Where this ratio is exceeded, the surplus may be considered a contribution to capital. Interest on this surplus may be deemed nondeductible and treated as a dividend distribution potentially subject to a withholding tax of 15% (which may be reduced or exempt under a tax treaty).

Controlled foreign companies
Luxembourg does not have CFC legislation.

General anti-avoidance rule
There is no general anti-avoidance rule.

3.7 Administration

Tax year
The tax year for a company is either the calendar year or the accounting year ending in a particular calendar year.

Filing and payment
Companies are required to make four quarterly advance payments of tax based on the latest assessment. Corporate income tax, net worth tax and business tax returns must be submitted before 31 May of the following tax year, although an extension may be possible at the request of the taxpayer. Tax returns must be stated in terms of the Euro.

Capital companies (i.e. SAs, SARLs and partnerships limited by shares) may be entitled to self-assessment. The tax authorities can assess the tax due solely on the basis of the tax return filed by these taxpayers (i.e. without verifying the return). However, taxation becomes fully definitive after expiration of the five-year statute of limitations period (see below).

A 0.6% monthly interest charge applies for failure to pay or late payment of tax. Failure to submit the tax return or a late submission results in a penalty of 10% of the tax due, as well as a fine. In the case of a late payment authorized by the tax authorities, the penalty ranges from 0%-0.2% per month.
Consolidated returns

A fiscal unity can be formed between Luxembourg resident companies where a company and one or more of its 95%-owned subsidiaries are financially integrated. Luxembourg branches of nonresident companies that are fully liable to a tax similar to Luxembourg’s corporate income tax may head a fiscal unity.

Under the fiscal unity regime, each member of the group individually computes its own results (and files a tax return), after which the losses of each group company are totaled and allocated to the head of the group, which files a consolidated return and pays tax on the aggregate result of the group.

Statute of limitations

The statute of limitations for tax assessment and collection is five years starting from 1 January following the year to which the tax return relates (e.g. for income relating to the 2012 tax year, the limitations period starts on 1 January 2013). The period may be extended to 10 years if no return is filed or if incorrect information has been provided (regardless of whether there is intentional failure to pay tax), and may be interrupted by certain circumstances.

Tax authorities

The Direct Tax Administration is divided into a central authority and several tax offices that are competent for a particular territory and/or certain taxpayers for purposes of income tax, municipal business tax and net worth tax. VAT, subscription tax and transfer taxes are entrusted to the Indirect Tax Administration.

Rulings

The Direct Tax Administration may agree, upon application of the taxpayer, on an “advance tax analysis” on the tax treatment of specific circumstances.

Taxpayers also may enter into an advance pricing agreement (APA) with the tax administration. An APA is binding for five years and will be subject to the principle of good faith and compliance with the rules in matters of substance. An extension of the term of the agreement may be requested if the substantive characteristics of the transaction are unchanged at the end of the first five-year period.

3.8 Other taxes on business

Municipal business tax

A municipal business tax, ranging from 6% to 10.5%, is due on profits derived from carrying out business activities in Luxembourg, with the rate depending on the location. For companies operating in Luxembourg City, the rate is 6.75%. A deduction of EUR 17,500 applies to the municipal business tax base for entities liable to corporate income tax and EUR 40,000 for other businesses.

Net worth tax

A net worth tax of 0.5% is levied annually on the total net assets of resident companies. This tax may be reduced in whole or in part if the company creates and maintains for five years a specific reserve amounting to five times the amount of net worth tax reduced. The reduction is one-fifth of the reserve and may not exceed the amount of corporate income tax increased by the contribution to the unemployment fund before the imputation of tax credits. Assets qualifying for the IP regime are exempt from net worth tax.

Minimum income tax

All collective entities with their statutory seat or central administration in Luxembourg are liable to the minimum income tax, regardless of whether they are regulated (before 2013, only unregulated collective entities were subject to the minimum tax). Luxembourg permanent establishments of foreign companies are outside the scope of the minimum tax since, in principle, foreign companies have their statutory seat or central administration outside Luxembourg.

The minimum income tax is viewed as an advance payment of corporate income tax. In practice, the tax will be due when Luxembourg collective entities are in a tax loss position or paying less
than the minimum income tax. In such cases, the amount paid will be creditable against future corporate income tax without time limit. The minimum income tax cannot be reduced by tax credits (such as for investments, recruitment of unemployment persons, etc.), and will not be reimbursed by the Luxembourg tax authorities.

The amount of minimum tax due by a Luxembourg collective entity depends on the composition of its balance sheet. For this purpose, Luxembourg collective entities are divided into two categories:

- Collective entities that have qualifying holding and financing assets exceeding 90% of their balance sheet are liable to a minimum flat income tax of EUR 3,210, including the unemployment fund surcharge; and

- Entities, other than those that hold mainly financial items (broadly, operating companies) are subject to a progressive minimum income tax depending on the total assets on their balance sheet. The tax ranges from EUR 535 (for a total balance sheet up to EUR 350,000) to EUR 21,400 (for total balance sheet exceeding EUR 20 million), including the unemployment fund surcharge.

However, the accounting value of assets producing income that is taxable only in another state under a tax treaty will be excluded from the calculation of the total of the balance sheet (e.g. real estate located abroad).

For tax-consolidated Luxembourg collective entities, all entities in the group are subject to the minimum income tax (payable by the parent entity). However, the aggregate amount due by a tax consolidated group will be limited to EUR 21,400 (including the unemployment fund contribution).

**Chamber of Commerce contribution**

The Chamber of Commerce contribution is imposed annually on any person carrying on commercial, financial or industrial activities in Luxembourg. The fee applies to all commercial companies that have their statutory seat in the country, as well as to Luxembourg branches of foreign companies that carry out qualifying activities.

The contribution is levied on taxable profits at a rate ranging from 0.025% to 0.2%, but the fee may not exceed 0.4% of the commercial profits of the taxpayer. In the event of a tax loss year, a minimum contribution will be levied, but it cannot exceed EUR 140 for public companies, partnerships limited by shares and European companies and EUR 70 for partnerships and private limited liability companies (EUR 14 for individuals).

A lump sum fee system was introduced in 2010 for companies principally carrying out holding activities that are listed as such under the NACE Code (the EU's code for statistical classification of economic activities). Under this special regime, the amount of the contribution is set at EUR 350 per year.
4.0 Withholding taxes

4.1 Dividends

Luxembourg levies a 15% withholding tax on dividends. However, no tax is withheld where dividends are paid to a qualifying company under the EU parent-subsidiary directive. Under Luxembourg’s rules implementing the directive, dividends distributed by a Luxembourg subsidiary to its qualifying EU parent company will be exempt from withholding tax, provided the recipient of dividends has one of the company forms listed in the directive, it holds (or commits to hold) for an uninterrupted period of at least 12 months at least 10% of the capital of the payer company or the shares have an acquisition value of at least EUR 1.2 million. Luxembourg has extended the benefit of this regime to Swiss capital companies subject to corporate income tax with no possibility of exemption, EEA capital companies and corporations located in a treaty country that are subject to a tax similar to the Luxembourg corporate income tax.

4.2 Interest

Luxembourg does not impose withholding tax on interest paid to nonresidents, except for interest that represents a right to a profit participation, which is taxed at the domestic rate applicable to dividends.

4.3 Royalties

Luxembourg does not levy withholding tax on royalty payments.

4.4 Branch remittance tax

Luxembourg does not levy a branch remittance tax.

4.5 Wage tax/social security contributions

Social security contributions apply to wages and salaries and must be withheld by the employer at rates of 12.2% to 12.45%, depending on the nature of the remuneration. Contributions are payable up to a specified annual income base (currently EUR 112,451.28). Unemployment contributions are financed through a tax surcharge, known as the solidarity tax. The surcharge rate for individuals is 7% for income not exceeding EUR 150,000 (EUR 300,000 for couples taxed jointly), and 9% for income exceeding these amounts (applied on individual income tax).

For regular remuneration, the employee and the employer each pay 3.05% for health benefits. The rate is 2.8% for benefits in kind and non-periodic remuneration, such as bonuses. The employer is required to pay 1.10% of an employee’s compensation for accident insurance and 0.11% of payroll to fund the National Health at Work Service. The employer also is liable to a contribution of 0.42% to 2.64% to finance the mutual insurance institution created to ensure cash sickness benefits. The employee must make a 1.4% contribution to fund dependence insurance.
5.0 Indirect taxes

5.1 Value added tax

VAT is levied at each stage of the production and distribution process (including the retail level) or when services are supplied in Luxembourg.

Luxembourg’s standard 15% VAT rate is the lowest permissible rate in the EU. In addition to the standard rate, an intermediate rate of 12% applies to a range of financial sector services and wine. A reduced rate of 6% applies to gas and electricity, and a special 3% rate applies to printed materials, ebooks, water, pharmaceuticals, most food products and radio and television broadcasting services.

Credit, loans and deposits are exempt from VAT, although the granting of a loan may result in a VAT obligation. Transactions concerning currency, bank notes and coins also are exempt, as are services relating to shares and securities. Financial services, such as advisory, management and data process services (i.e. other than core activities) generally are subject to VAT.

Exports and certain services (which include medical and health services and some banking activities) are exempt from VAT. In general, imports are not exempt.

There are no specific restrictions on the deduction of input VAT to the extent the incurred costs relate to VAT taxable activities.

VAT returns are remitted on a monthly, quarterly or annual basis, depending on the annual turnover of the company. Where the company submits monthly or quarterly returns, it also must prepare a final annual return. VAT due is paid at the time the VAT return is submitted. The threshold for VAT registration is EUR 25,000.

5.2 Capital tax

Luxembourg does not levy capital duty.

5.3 Real estate tax

Municipalities in Luxembourg impose a land tax of 0.7% to 1% on the unitary value of real property, including industrial plants. This is multiplied by coefficients fixed by each municipality and varying by the type of real property (land, industrial building or dwelling). However, since the assessments of value are based on the “unitary value” set by the government, they are well below market levels.

In addition to the land tax, the transfer of immovable property is subject to a transfer tax (see 5.4, below).

The contribution of immovable property in exchange for shares to a Luxembourg company is subject to a specific registration duty of 0.6% (plus a transcription tax of 0.5%). In other cases, the contribution will be taxed at a rate of 6% (plus a transcription tax of 1%). However, the transfer will be free of any proportional duty in the case of a corporate reorganization.

5.4 Transfer tax

The transfer of Luxembourg immovable property generally is subject to a tax of 6%, plus a 1% transcription tax. The tax base is the higher of the purchase price or the fair market value of the property. For real estate located in the municipality of Luxembourg, an additional charge amounting to 50% of the transfer tax is imposed. Exemptions are available for the 6% transfer tax, 1% transcription tax and the Luxembourg municipality tax, and these taxes are deductible for income tax purposes by way of depreciation over the life of the real estate to the extent the property is depreciated. The transfer tax is paid by the buyer.

Other transfer taxes are gift tax, subscription tax, tax on the registration of lease contracts and tax on the registration of loan agreements.
5.5 Stamp duty

Stamp duty is levied at various rates on the registration of notary deeds, bailiff deeds and certain acts of the judiciary.

5.6 Customs and excise duties

As an EU member state, Luxembourg has adopted customs rules applied in the EU. Customs controls at the internal borders of the EU and customs formalities have been abolished for the movement of goods within the EU. Customs duties are imposed on the import of goods from outside the EU.

Luxembourg levies excise duties on various items, including electricity, gas, oils, manufactured tobacco and alcohol.

5.7 Environmental taxes

Luxembourg levies environmental taxes (eco taxes) on packaging materials (e.g. glass, steel, aluminum) and on electrical and electronic equipment.

5.8 Other taxes

None
6.0 Taxes on individuals

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6.1 Residence

An individual is resident if his/her domicile or normal place of abode is in Luxembourg. A normal place of abode is created when an individual lives in Luxembourg for six consecutive months without any significant interruption, whether within a given tax year or in two overlapping years. However, even if an individual spends this amount of time in Luxembourg, he/she still may be considered nonresident if his/her customary place of abode is outside Luxembourg.

Expatriates

An expatriate tax regime for highly skilled mobile employees applies to new expatriates coming to Luxembourg as from 1 January 2011. To benefit from the regime, both the employer and the employee must satisfy a number of conditions:

- The company must employ at least 20 local full-time staff and meet certain administration criteria. For companies established in Luxembourg for at least 10 years, a maximum of 10% of full-time employees can benefit from this regime.

- The expatriate must have a higher education degree or at least five years’ experience in the sector concerned and must make a significant economic contribution to Luxembourg and pass know-how on to local staff. The Luxembourg job must be the individual’s primary position, he/she must be Luxembourg resident, must not replace a nonexpatriate employee, must meet minimum wage criteria and must not have been taxable in Luxembourg in the previous five years.

- If an intragroup transfer, the employee must retain his/her home employment with a right to return and a contract must be concluded between the home company and the Luxembourg company. There also are requirements to be met at the group level. For a direct recruit, the expatriate employee must have a specialty that cannot be recruited locally.

If the above conditions are satisfied, the following benefits are granted:
- Costs relating to relocation, certain furniture/appliances, emergency travel, repatriation, and school fees can be provided tax-free.

- Ongoing assignment costs relating to housing, utilities, home leave and tax equalization can be provided tax free, subject to certain limitations and an overall cap.

- Cost of living allowances can be paid tax-free, subject to a monthly cap.

As long as all conditions continue to be satisfied, the regime may be applied for the year of arrival and the following five tax years.

6.2 Taxable income and rates

Taxable income

In general, resident individuals pay tax on worldwide income. Nonresidents are taxed only on their Luxembourg-source income.

Taxable income of individuals includes income from a business or profession, income from employment, all benefits in-kind and income from rentals and royalties. Interest is taxed as investment income.

Dividends are taxed as investment income, but 50% of dividends paid by EU resident companies covered by the EU parent-subsidiary directive and (provided certain conditions are satisfied) companies resident in countries that have concluded a tax treaty with Luxembourg are tax-free for a Luxembourg resident. The total amount of dividend and interest income is subject to a tax-free allowance of EUR 1,500 (EUR 3,000 for couples assessed jointly).

A tax credit may be available for individuals who have paid tax on income earned in countries with which Luxembourg has no tax treaty. Income derived from treaty countries generally is exempt in Luxembourg if it has been taxed in that country. Dividends and interest are an exception, but are likely to carry the right to a tax credit.

Short-term gains of individuals are taxed as income; long-term gains receive more favorable treatment, including an exemption of EUR 50,000 for gains realized in an 11-year period and taxation of remaining long-term gains at one-half the taxpayer’s global rate. Gains derived by individuals on the sale of real estate are long term if the property was held for more than two years; gains on an individual’s private residence normally are exempt. Gains derived by an individual on shares are long term if the shares are held for more than six months and are only taxable insofar as the shareholding exceeds 10%. Gains on other movable assets are exempt if the holding period is more than six months.

Deductions and reliefs

Luxembourg residents are entitled to deduct income-related expenses at a flat amount of EUR 540 per wage earner, or more if the expenses can be justified in computing taxable income. Subject to limitations, deductions are permitted for items, including: insurance premiums for life, accident and sickness; individual pension schemes; alimonies and annuities; childcare and housekeeping costs; charitable contributions; interest on personal and mortgage loans; and home saving and loan schemes. Tax credits are granted to wage-earners, pension earners, self-employed individuals and single parents. The total amount of dividend and interest income is subject to a tax-free allowance of EUR 1,500 (EUR 3,000 for couples assessed jointly). Allowances also are granted for employment income and pension income.

Compulsory contributions to social insurance, including medical and retirement insurance, are deductible. This also applies to contributions paid to social insurance schemes in countries with which there is a social security agreement in force.

A taxpayer’s household children give rise to an annual tax credit of EUR 922.50 per child.

Rates

The personal income tax rate schedule is adjusted periodically for inflation. Liability is based on the individual’s personal status (e.g. family status, number of dependent children). The three tax classes are Class 2 (married taxpayers), Class 1a (intermediate) and Class 1 (single taxpayers). The maximum overall marginal personal income tax rate is 40% for the bracket of income exceeding EUR 100,000 (EUR 200,000 for couples taxed jointly).
Tax liability is increased by the solidarity premium for the employment fund, which puts a surcharge on the income tax rates that amounts to 7% for income not exceeding EUR 150,000 (EUR 300,000 for couples taxed jointly), and to 9% for income above these amounts.

A final withholding tax of 10% is levied on interest income paid by a paying agent established in Luxembourg to beneficial owners resident in Luxembourg, including interest on bank deposits, government bonds and profit-sharing bonds. Interest income subject to this final withholding tax is not required to be reported in the annual tax return. This regime has been extended, at the election of the taxpayer, to certain interest income credited by a paying agent established in another EU/EEA member state or in a state that has concluded a treaty in direct relation to the EU savings tax directive. If the taxpayer is a Luxembourg resident, income excluded from the 10% final withholding tax will be taxable at progressive rates under the normal tax rules.

Directors’ fees are subject to a flat 20% withholding tax and then taxed as part of normal income in the case of residents. The withholding tax is deducted from the final liability. In the case of nonresidents, the withholding tax is final if the total income from directors’ fees in Luxembourg does not exceed EUR 100,000 and the nonresident has no other professional income in Luxembourg.

### 6.3 Inheritance and gift tax

To the extent the deceased was resident in Luxembourg at the time of his/her death, inheritance tax is levied in Luxembourg. The tax base is the market value of the entire net estate inheritance at the time of death. The rates range from 0% to 48%, depending on the proximity of the relationship and the amount of the assets bequeathed to each beneficiary. Exemptions are applicable in certain cases.

Certain gifts and donations must be registered (notably immovable property). The rates range from 1.8% to 14.4%, depending on the relationship between the donor and the donee.

### 6.4 Net wealth tax

The tax on the assets of wealthy residents was abolished in 2006.

### 6.5 Real property tax

Municipalities in Luxembourg impose a land tax of 0.7% to 1% on the unitary value of real property, including industrial plants. This is multiplied by coefficients fixed by each municipality and varies according to the type of real estate.

### 6.6 Social security contributions

Social security contributions apply to wages and salaries and must be withheld by the employer at rates of 12.2% to 12.45%, depending on the nature of the remuneration. Self-employed individuals must register for social security purposes and pay rates at approximately the same combined rate as those for the employer and employees.

### 6.7 Other taxes

Stamp duty usually is levied on the registration of notary deeds, bailiff deeds and certain acts of the judiciary.

### 6.8 Compliance

Individuals are taxed on a calendar year basis.

Tax for salaried employees is withheld by the employer every month, with a year-end adjustment if necessary. Tax returns are due by 31 March of the year following the tax year, which may be extended upon request. Self-employed individuals must make quarterly prepayments of tax in amounts that are fixed by the tax authorities based on the most recent final assessment.
Late payment of tax triggers an automatic default interest of 0.6% per month. Failure to submit a tax return or a late submission is subject to a penalty of 10% of tax due and a fine up to EUR 1,250. If late payment is authorized by the tax authorities, the rate varies from 0% to 0.2% per month.
7.0 Labor environment

7.1 Employees' rights and remuneration

An employment contract is compulsory and generally permanent. Fixed term contracts are regarded as an exception to this rule and the circumstances in which it is possible to conclude a fixed term contract are circumscribed by law.

All employers are bound by the minimum wage. Remuneration of most blue collar workers and some white collar employees is set by collective bargaining contract. Increases in the cost of living automatically trigger wage hikes. Executive compensation is set by negotiation.

Employees enjoy extensive protection. After an initial probationary period, it is difficult to discharge employees. Employees who have been discharged because the employer was experiencing economic problems are entitled to be rehired first when the company expands. Acquired rights are protected by law in situations where a company is merged into or taken over by another.

The workforce has broad rights to information and consultation, and in some cases determination of company policies. Equal pay must be provided for equal work.

Working hours

The legal work week (five days) is 40 hours. The maximum work week (inclusive of overtime) is 48 hours and the statutory maximum daily working time is 10 hours. Longer hours are permissible in businesses with continuous operation or shift work, but in most cases it will be necessary to obtain permission from the Labor and Mines Inspectorate.

The statutory minimum overtime rate is 40% for both blue and white collar workers. Overtime rates for working on Sundays and public holidays are much higher. In some circumstances, time off must be given in addition to overtime.

7.2 Wages and benefits

All wages in Luxembourg have been linked to the retail price index.

The minimum wage is adjusted on the same basis, as well as periodically in line with inflation. The minimum monthly wage for unskilled workers is EUR 1,874.19, and EUR 2,249.03 for skilled employees. Wage increases also may be negotiated collectively.

Pensions

The employer pays 8% of an employee’s pretax salary towards the statutory pension’s scheme. The employee and the state pay the same amount into the scheme. Income subject to contributions is capped at five times the minimum wage (i.e. EUR 9,370.94 monthly or EUR 112,451.28 annually).

Some companies partly fund group pension schemes for their employees. Both the employer and employee contributions are tax-deductible within certain limits.

Social insurance

While all employers must contribute to a wide range of employee benefits, contribution levels are relatively low compared to other EU countries because the state matches the employee contributions to pensions, maternity and sickness benefits.

Social security contributions and benefits are the same for blue and white collar employees, except for sickness benefits. Contributions are payable up to a specified annual income base (currently EUR 112,451.28).

For regular remuneration, the employee and the employer each must pay 3.05% for health benefits. The rate is 2.8% for benefits in kind and nonperiodic remuneration, such as bonuses. The employer is required to pay 1.10% of an employee’s compensation for accident insurance and 0.11% of payroll to fund the National Health at Work Service. The employer also is liable to a contribution of 0.42% to 2.64% to finance the mutual insurance institution created to ensure cash sickness benefits. The employee must make a 1.4% contribution to fund dependence insurance.
Unemployment contributions are financed through a tax surcharge, known as the solidarity tax. The surcharge rate for individuals is 7% for income not exceeding EUR 150,000 (EUR 300,000 for couples taxed jointly) and 9% for income above these amounts (applied on individual income tax).

**Other benefits**

Salaried and hourly employees are entitled to 25 working days of annual vacation upon the successful completion of three months of continuous service for an employer. Many companies have introduced a bonus in the form of a 13th month salary. There are 10 public holidays per year. Employees are entitled to additional paid days off on family or compassionate grounds.

Maternity benefits during maternity leave normally are paid from social security. Prenatal maternity leave of eight weeks is, in principle, compulsory (but in specific circumstances a woman can choose to continue working); an eight-week postnatal leave is compulsory (increasing to 12 weeks for premature or multiple births or breastfeeding mothers). Postnatal leave rules apply in the event of adoption, but either parent can take the leave. An employee cannot be dismissed during pregnancy or while on postnatal leave.

Employees who are parents may take six months of parental leave (or 12 months of part-time leave). One parent may opt for the leave immediately after the maternity leave, and the other parent may take it at any time up to the child’s fifth birthday. During parental leave, the employee receives a benefit paid out by the National Family Allowances Fund.

### 7.3 Termination of employment

Most employment contracts allow for a probation period (a minimum of two weeks and a maximum 12 months). At least two weeks’ notice must be given when the trial employment is being terminated, but the decision to end the contract does not have to be justified.

If both the employee and the employer agree to terminate the contract, the only requirement is that the agreement must be confirmed in writing. Otherwise, an employee being dismissed must be notified by registered letter. Notice periods vary depending on the years of service. If the notice period is not respected, compensation must be paid. At the employee’s request, a full explanation of the reasons for the dismissal must be supplied. In companies with more than 150 employees, a preliminary meeting must first be held with the employee. The employee may appeal to the courts within three months. If successful, the employee must be compensated or rehired.

Employees can be summarily dismissed only for serious misconduct. A predissimissal interview is mandatory.

Employees with five years’ continuous service are entitled to severance pay. The minimum is one month’s pay, and the amount varies according to the employee’s monthly pay averaged over the preceding year and length of service.

An employer planning to lay off seven or more employees within 30 days or 15 or more employees over a three-month period must agree with the trade unions on how to mitigate social hardship, such as through retraining and outplacement programs. If the parties fail to agree, the National Conciliation Service may intervene by imposing a binding decision. The minimum notice period in the event of mass redundancies is 75 days, but can be longer on the basis of length of service or the collective bargaining agreement. The government has the power to extend the period to 90 days to allow more time to resolve the problems caused by the collective dismissal. The minimum notice period at a company that is receiving state aid may be extended to 120 days.

The government can intervene to prevent dismissals in the event of company restructuring by subsidizing the pay of workers on reduced hours.

### 7.4 Labor-management relations

Employees’ right to strike and employers’ right to lock out employees are subject to strict reconciliation procedures. Strikes and lockouts are permitted only after due warning and after negotiations supervised by the National Conciliation Service. Employers may dismiss illegal strikers on the spot.
About 50% of the workforce is unionized, but this rises to nearly 100% in the steel sector. Unions have always taken a moderate approach in negotiations and usually cooperate with the government and employers. Strikes are rare.

Large companies generally are covered by collective bargaining agreements. Unions have the right to represent all workers, even nonmembers, in collective bargaining committees. The government is not represented in wage negotiations and intervenes (if necessary) only through the conciliation service.

Collective bargaining may be conducted at the sector or company level, but in practice sectoral agreements are few. Agreements normally last two years, but are increasingly extended to three (the legal maximum). Collective agreements must be registered with the Labor and Mines Inspectorate.

Every private sector employer with 15 or more employees must set up an employee committee. Where a company is spread over several locations, it must set up an enterprise employee committee. These committees must be informed of and consulted on terms and conditions of employment.

A company with at least 150 employees must have a joint works committee where employer and employee representatives sit in equal numbers. This committee’s agreement must be obtained for recruitment, promotion, transfer and dismissal policy, employee appraisal, health and safety policy and similar issues. It also must be consulted and informed on a wide range of issues, including pay. If the committee is deadlocked on a decision in an area where its agreement must be obtained, the National Conciliation Service arbitrates.

One-third labor representation on the board of directors is required for companies with 1,000 or more employees, for companies with at least 25% state ownership or operating under government license. Firms with more than 1,000 workers in the EU and with at least 150 employees in at least two different member states must form a European Works Council for informing and consulting with employees.

### 7.5 Employment of foreigners

Nationals of EEA countries and Switzerland do not need a work permit. Nationals of Romania and Bulgaria benefit from free movement within the EU as regards their right of residence. However, they must obtain a work permit during their first year of paid employment in Luxembourg. Any Bulgarian or Romanian citizens who have been working in Luxembourg for a year no longer need a work permit. There are a few exceptions to this obligation, mainly for family members of an EU citizen, excluding family members of Bulgarian and Romanian nationals.

Other foreign nationals who intend to perform a salaried activity in Luxembourg must obtain a residence permit, which includes both the work permit and the sojourn permit. The residence permit is first issued for one year and enables the foreign national to work for any employer, but only for a particular sector and occupation. At the first renewal, the permit is valid under the same restrictions of sector and occupation, but its validity increases to two years. Starting with the second renewal, the foreign national is allowed to change sector and occupation; the residence permit is then issued for consecutive periods of three years. Any renewal is subject to the opinion of an advisory committee.

It is worth noting that specific rules apply to highly-skilled employees, intragroup transfers, assignments and other cross-borders situations, as well as for certain categories of individuals other than employees.

**Seconded employees**

Under Luxembourg law, a posted worker is defined as an employee whose regular employment is performed outside Luxembourg and who is temporarily assigned to Luxembourg to perform work under a service agreement. The foreign employer who assigns workers in Luxembourg must respect the public policy provisions under Luxembourg labor law.

Any secondment of employees to Luxembourg must be declared to the Luxembourg authorities (Labor and Mines Inspectorate). Information and documents necessary for the authorities to perform their controls must be kept in Luxembourg during the length of the assignment.
8.0 Deloitte International Tax Source

Professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Tax Source (DITS), an online resource that assists multinational companies in operating globally, placing up-to-date worldwide tax rates and other crucial tax material within easy reach 24/7.

Connect to the source and discover:

A unique tax information database for 65 jurisdictions including –

- Corporate income tax rates;
- Domestic withholding rates;
- Historical corporate rates;
- In-force and pending tax treaty rates on dividends, interest and royalties;
- Indirect tax rates (VAT/GST/sales tax); and
- Holding company and transfer pricing regimes.

Guides and Highlights – Deloitte’s Taxation and Investment Guides provide an analysis of the investment climate, operating conditions and tax system of most major trading jurisdictions, while the companion Highlights series summarizes the tax landscape of nearly 150 jurisdictions.

Tax publications – Global tax alerts and newsletters provide regular and timely updates and analysis on significant cross-border tax legislative, regulatory and judicial issues.

Tax tools – Our suite of tax tools include annotated, ready-to-print versions of the holding company and transfer pricing matrices; expanded controlled foreign company coverage for DITS countries; a monthly treaty update; and expanded coverage of VAT/GST/Sales Tax rates.

Webcasts – Live interactive webcasts and Dbriefs by Deloitte professionals give you valuable insights into important tax developments affecting your business.

DITS is free, easy to use and always available!

http://www.dits.deloitte.com
9.0 Office locations

To find out how our professionals can help you in your part of the world, please contact us at the office listed below or through the “contact us” link on http://www.deloitte.com/tax or visit the Deloitte Luxembourg site at http://www.deloitte.com/view/en_LU/lu/index.htm.

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