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Luxembourg

CABINET D'AVOCATS PHILIPPE MORALES

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content

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1. Regulations

Luxembourg commercial companies are governed by the Law of 10 August 1915, as amended from time to time. The Civil Code deals with Luxembourg civil companies in its articles 1832 to 1873. The Law of 30 March, 1988 and 20 December 2002 govern collective investment undertakings.

2. Type of Companies

Luxembourg companies are mainly divided into two different types: Partnerships (Sociétés de Personnes) and Business Corporations (Sociétés de Capitaux). Only Business Corporations will be examined.

Luxembourg law acknowledges seven types of Business Corporations :

- the Public Limited Company (Société anonyme **"S.A."**)
- the Private Limited Company (Société à responsabilité limitée **"S.à r.l."**)
- the Partnership (Société en nom collectif **"S.N.C."**)
- the Limited Partnership (Société en commandite simple **"S.C.S."**) , Société en com man dite par actions **"S.C.A."**
- The Cooperative Company (Société coopérative **"S.C."**)
- The European Company (Société européenne **"S.E."**)

Public Limited Company and Private Limited Company are the most common forms used in Luxembourg.

Common names of Luxembourg Companies

SOPARFI ("Société de Participations Financières")

Contrary to the 1929 holding company, the SOPARFI may carry on commercial activities. Its tax charges can nevertheless be significantly reduced provided certain requirements are met.

The SOPARFI is a type of holding company which is fully eligible to the benefits offered by Double Tax Treaties.

A SOPARFI can have all the same activities as a 1929-type Holding, but it can also have a connected activity such as the management of participations, financing, real estate...or a real commercial/industrial activity in relation to the aim stated in its by laws.

Therefore, one on hand, a SOPARFI can have a holding activity and on the other hand, an activity subject to VAT. This is called a mixed holding.

The SOPARFI structure is fully compliant with the European Union Holding Directive.

Holding 1929 and société de gestion de patrimoine familial (SPF)

The 1929 holding company is subject to special rules which offer a number of tax advantages,

which are offset by the companies having a restricted field of business.
There are three types of 1929 holding companies:

- ordinary holding companies which may acquire, manage and maximize value from shareholdings, hold patents and exploit such patents exclusively by means of granting of licence to other group companies; to grant loans and advances to companies in which they hold shares, to borrow money and to issue debentures up to a maximum of ten times the paid-up capital. An ordinary holding may not own land or buildings with the exception of its own premises, carry on any industrial zactivity or run any commercial undertaking open to the public.
- financial holding companies which are empowered to carry on any activities which an ordnary holding company may conduct, to provide funding for the group companies;
- billionaire holding companies which shall have a paid-share capital plus the issued debentures must amount to at least 24,000,000.-EUR or the equivalent thereof in another currency.

As a result of the Commission' decision regarding Luxembourg tax exempt companies governed by the law dated 31 July 1929 (the **"1929 holding companies"**) which states that the 1929 holding companies violate the EC's state aid rules, the Grand-Duchy of Luxembourg has agreed to abolish the tax regime given the long transitional period that it has been granted. No new beneficiary has been entitled to benefit from the regime or any of its components from the date of notification of the decision, Companies that currently benefit from the regime may continue to so do until the end of 2010, although the transfer of their capital during this period is not possible.

The Luxembourg government has adopted the law on the family wealth management company as a replacement private equity vehicle for the traditional holding 1929 companies, the law establishing the new société de gestion de patrimoine familial (company for family wealth management, (the **"SPF"**) was passed by the parliament on 11 May 2007.

The SPF is clearly out of the scope of the "state aid" problematic, as it is a mere private investment vehicle as opposed to the notion of enterprise in the meaning of article 87 of the E.C.C.

The exclusive company purpose of a SPF is the acquisition, holding, management and disposal of financial assets. According to the Law, the following may invest in a SPF :

- any individual managing his private property
- an entity acting exclusively in the interest of one or more individuals in the domain of private asset management (except commercial companies)
- intermediaries acting on behalf of the investors referred to above

SICAR

The SICAR is a new vehicle for investments in private equity. The Law of 12 May 2004 refers to a wide definition of private equity and includes all types of financial assets as shares, loans, bonds, hybrids instruments, representing interests in non-quoted companies. The Law defines a SICAR as a company:

- which has adopted the form of a company (either in the form of limited company or in the form of a limited partnership) with a minimum share capital of 1,000,000. EUR (or its equivalent in any other currency). This minimum amount must be reached within twelve months of the establishment of the SICAR. It may be a fixed or a variable share capital depending on what the articles provide, if the capital is a variable one, it will be at all times equal to the net asset value of the SICAR, any

capital variations being automatic without any specific publicity or recording formalities being required. The shares issued by the SICAR must be fully subscribed to but may on creation be paid up for 5 per cent only, contributions to the SICAR may be in cash or in kind.

- the object of which is a venture capital investment with the purpose of offering its investor the result of its management of such investments as a consideration for the particular risks they assume
- the shares of which are reserved for sale to informed investors. The Law defines an informed investor as being an institutional investor, a professional investor as well as an investor having satisfied the following tests (i) the investor has declared in writing its acceptance to adhering to the informed investor status, and either (ii) the investor's minimum investment in the SICAR represents 125,000.-EUR or (iii) a professional of the financial sector confirms the investor's expertise, experience an knowledge in respect of a venture capital investment.

The SICAR is not obliged to create a legal reserve, the SICAR is expressly dispensed from preparing consolidated accounts. The distributions and reimbursements of capital to shareholders are not subject to any restrictions other than those organized by the articles.

The SICAR must entrance the custody of all its assets to a depositary that its registered office in Luxembourg or is acting through a Luxembourg establishment. The depositary must be a credit institution within the meaning of the Luxembourg Banking Act.

SICAR can be incorporated either in form of a company or in the form of a limited partnership. This choice will thus result in the application of two different sets of tax provisions, on top of rules which are common to both types of SICAR.

On 21 February 2008, a bill was introduced by the Luxembourg Government in order to improve the measures as regards to the SICAR (Société d'Investissement au Capital à Risque).

First, this project will allow the creation of several compartments in a SICAR. This amendment will allow the setting up of umbrella funds with separation of the assets and the liabilities of each compartments.

The SICAR could issue securities which different nominal values or no value at all.

Moreover, the rights of the investors and debtors will be limited to the compartments, which they belong to.

The modifications mainly concern:

- there is a possibility to create several compartments in a SICAR
- the obligations of SICAR custodians will be the same as these applicable to the Specialized Investment Fund
- the qualified investors status will be extended to persons who are implicated in the SICAR management
- it will be possible to segregate the assets and the liabilities and to issue transferable securities with different nominal values. The rights of the investors and debtors will be limited to the assets of the compartments they belong to
- the share premium is now included in the computation of the subscribed minimum capital

  the assets of the funds would be evaluated to the fair market value concept instead of to their value of realization

- the annual report must be available to the investors during the 6 months following the period it relates to
- the net asset value publication won't be required anymore

Specialised investment fund(SIF)

Due to strong growth in investment schemes, Luxembourg has introduced a new vehicle for the well informed investors which is a flexible UCI (Undertaking for Collective Investment, Law dated 13 February 2007).

This SIF is more regulated than non resident private fund established in foreign jurisdictions, SICAR, HOLDING 1929 or SPF, but it is more flexible than common UCI or SICAV.

The SIF issues shares only to institutional and well-informed investors. The SIF can invest in any type of securities, hedge fund, real estate, funds, shares, buyout...

The shares are exclusively issued to:

- institutional investors
- professionals
- well informed investors (investment of 125.000 Euro or confirmation of their expertise in financial placement by a bank or a management company).

It can therefore be used by private funds, family offices, High Net Worth Individuals (HNWI), families, pension pooling or hedge funds.

The Luxembourg supervisory authority (CSSF) supervises the SIF, its activities and legal documents within a month after having launched the SIF. No approval of a promoter is required. Only a Luxembourg Depositary Bank is required for supervision of assets and safe keeping.

The minimum capital is 1.250.000 Euro to be reach within a year. Contributions in kind are possible. Capital duty is 1.250 Euro flat.

SICAV (société à capital variable) and SICAF (société à capital fixe)

Those are special purpose companies, exclusive business purpose of which is to be investments funds, i.e entities which collect investments from public and pool for investing them on risk spreading basis.

SICAV are companies with variable share capital. SICAF have fixed share.

A tax ("taxe d'abonnement") calculated as a yearly 0,05% or 0.01% of the amount of issued capital of SICAV or SICAF is payable quarterly in arrears. There are no other taxes on income or distributions, whether made to Luxembourg residents or foreigners.

While there are no restrictions based on nationality regarding operation of there companies, it is however legal requirement that central management of entity be in Luxembourg . Rationale behind this rule is to facilitate task of supervisory authorities (« Commission de Surveillance du Secteur Financier », or CSSF), depositary bank need external qualified auditor in monitoring fund's activities. Following activities consequently must be undertaken in Luxembourg : fund accounting and bookkeeping ; issue and redemption of units ; and calculation of fund's net asset value. It is furthermore mandatory that share registers be kept in Luxembourg. All documents regarding entity (i.e., prospectus, notices, and financial statements) must be prepared in cooperation with Luxembourg authorities and must be mailed from Luxembourg.

Before beginning operations, all investment funds must obtain approval of CSSF, which monitors activities of Luxembourg-based investment funds. During their existence, funds must provide periodic financial statements regarding their investment portfolio to CSSF and periodic accounts must be published for information to public. It is also requirement that each shareholder be provided with latest prospectus and appendixes at date of subscription. External qualified auditor,

approved by CSSF, must furthermore be appointed to monitor activities of fund.

Besides forms of SICAV or SICAF, undertaking for collective investment may also choose form of « fonds commun de placement », i.e., unit trust or mutual fund (FCP).

FCP are undivided co proprietorships of assets made up and managed according to principle of risk spreading on behalf of its unit holders who are liable only up to amount invested by them. Their rights and obligations, and investment rules, are all determined by FCP's management regulations. Such fund has no legal personality itself and therefore needs to rely on its management company to do business.

SEPCAV and ASSEP

The Law of 8 June 1999, as amended, introduced two forms of investment funds specifically designed for international and pan- European pension funds. SEPCAV is comparable to SICAV, whereas ASSEP is comparable to FCP.

Law ensures security of pension to be paid, even in case of insolvency, and portability of pension benefits, especially in case of employees leaving employer before end of career. Pension funds (SEPCAV or ASSEP) are legal entities separated from employer's assets with, on assed side, accumulated and invested assets and, on liability side, commitments corresponding to pension promises. Assets are payments by employer and / or employee and are managed according to principles applicable to UCITS, SEPCAV will pay capital at time of retirement, whereas ASSEP may pay capital or life annuity. Assets are entrusted to depository located in Luxembourg and may be managed by asset manager. ASSEP are subject to specific liability supervision

CSSF will be in charge of supervision and prudential control. Special tax regime applicable to pension funds allows deduction of contribution and premium in country of exercise of work and gives possibility of taxation of benefits in country of residence.

Pension funds themselves should be exempt form tax, but should benefit from treaty network.

Economic Interest Grouping (EIG) and European Economic Interest Grouping (EEIG)

Aim of these groupings is to facilitate or to develop economic activities of their members and to improve or increase results of those activities. Therefore purpose of EIG and EEIG must be related to economic activity of their members. Such link is essential and distinguishes these groupings from company, which has much broader object, i.e., realizing and sharing profits.

Both have legal personality and their members are fully and personally liable.

There are no essential differences between EIG and EEIG. ; Members of EEIG must however originate from at least two member States of European Community.

3. Liability of Shareholders

CIn SA and S.à r.l., shareholders liability is limited to the capital contribution.

4. Share Capital

The minimum subscribed capital of an S.A. and an S.à r.l. is respectively 30,986.70.-EUR and 12,394.68.-EUR, rounded off in practice to 31,000.-EUR and 12,500.-EUR. Indeed, the minimum subscribed capital is not specifically converted in any provision of law of 1 August 2001 relating to the Euro changeover. Consequently and further to the provisions of article 1 of this law, con-

version rules laid down in EC regulation n°1103/97 apply to both amounts.

For the S.A., the minimum share capital must be subscribed entirely but only 25% needs to be paid up at the time of the incorporation whereas for the S.à r.l., the minimum share capital must be entirely subscribed and paid up.

When a company is formed, the subscription of its capital is subject to a duty tax equal to 0,5% of the capital (except for special companies as Sicar and SPF). The same is true for capital increase, whether in cash, in kind or for share premium.

However, if a company is formed in another European Country and can show that a similar tax has already been paid in that country, the Luxembourg duty tax does not apply. This structure is used when a company requires large amounts of capital subscription.

5. Classes of Shares

In the S.A., the shares of the company may be in registered form or in bearer form or partly in one form or the other form, at the option of the shareholders subject to the restrictions foreseen by law as shares shall be in registered form until they are fully paid-up.

The company will recognise only one holder per share. In case a share is held by more than one person, the company has the right to suspend the exercise of all rights attached to that share until one person has been appointed as the sole owner in relation to the company.

When the shares are under registered form, a shareholders' register which may be examined by any Shareholder will be kept at the registered office. The register will contain the precise designation of each Shareholder and the indication of the amount of shares held, the indication of the payments made on the shares, as well as the transfers of shares and the dates thereof.

Non voting shares representing capital may be issued only on the following conditions:

- they may not represent more than half of the subscribed capital ;
- they must, in case of distribution of profits, confer the right to a preferential and cumulative dividend corresponding to a percentage of their nominal value or accounting par value determined by the articles, without prejudice to any right which may be given to them in the distribution of any surplus profits ;
- they must confer a preferential right to the reimbursement of the contribution, without prejudice to any right which may be given to them in the distribution of liquidation proceeds.

Preferred non-voting shares may be issued:

- at the incorporation of the company if provided for by the articles;
- by an increase of capital ;
- by the conversion of ordinary shares into preferred non-voting shares.

The general meeting shall determine the maximum amount of such shares to be issued. If non-voting shares are created by the conversion of ordinary shares in issue or, where authority for that purpose is included in the articles. If non-voting preferred shares are converted into ordinary shares, the general meeting shall determine the maximum amount of shares to be converted and the conditions for conversion.

The offer for conversion shall be made at the same time to all shareholders in proportion to the amount of capital held. The right to subscribe may be exercised within a period to be determined by the board of directors, which may not be less than thirty days from the start of the

subscription period which shall be announced by means of a notice determining the subscription period which shall be published in the Mémorial C and in two Luxembourg newspapers.

However, where all shares are in registered form, the shareholders may be notified by registered letter.

In a S.à r.l., the shares shall be issued under registered form. Corporate units may not be transferred inter vivos to non-members unless members representing at least three-of the corporate share capital shall have agreed thereto in a general meeting.

Transfer of corporate units must be recorded by a notarial instrument or by a private document.

6. Corporate Governance

MINIMUM NUMBER OF SHAREHOLDERS MEETINGS/YEAR

For a S.A., a minimum of one shareholder is required. Shareholders shall be individuals or companies, Luxembourg or foreign nationals, residents or non residents. Representation of the shareholder is possible by proxies or fiduciary contracts.
For a S.à r.l., a minimum of one member is required but the number is limited up to 40.
For both types of companies, an annual general meeting of shareholders has to be held at the registered office of the company or at such other place as may be specified in the convening notice once a year

DIRECTORS

For the S.A., a board of directors composed of three members minimum who need not be shareholders of the company, are elected by the general meeting of shareholders, which determine their number, for a period not exceeding six years. They are re-eligible, but they may be removed at any time, with or without cause, by a resolution of the general meeting of shareholders.
Except for those powers which are expressly reserved by law to the general meeting of shareholders, the board of directors is vested with the broadest powers to perform all acts necessary or useful to accomplish the company's object.
In the S.àr.l., one or several managers are appointed by the general meeting of shareholders to perform all acts necessary or useful to accomplish the company's object.
For both types of companies, the board of directors or the manager may delegate the daily management of the company and the representation of the company within such daily management to one or more directors, officers, executives, employees or other persons who may, but need not, be shareholders, or delegate special powers or proxies, or entrust determined permanent or temporary functions to persons or agents chosen by it.
Delegation of the daily management of the company to a member of the board of directors is subject to previous authorisation by the general Meeting of shareholders.

STATUTORY AUDIT

No statutory auditor is needed in the S.àr.l whereas a statutory auditor is required in the S.A. If the size of the company requires it, an auditor is needed instead of the statutory auditor.

ANNUAL ACCOUNTING PROCEDURES

Each year, management must prepare an inventory indicating the value of all the movable and

immovable assets of, and all the debts owed to and by, the company. Management prepares the balance sheet and the profit and loss account in which the necessary depreciation charges must be made.
Under Luxembourg law, at least one general meeting must be held each year in the place and on the day indicated in the articles of incorporation of the company. This meeting shall hear the reports of directors and of the statutory auditor and shall discuss the balance sheet. After adoption of the balance sheet, the general meeting shall vote specifically as to whether discharge is given to the directors and statutory auditor.

DEADLINE FOR DELIVERY OF DOCUMENTS

One month before the ordinary general meeting, management shall deliver documentary evidence, together with a report on the business of the company, to the statutory auditors who must prepare a report setting for their proposals.
Fifteen days before the general meeting, shareholders may inspect at the registered office, the balance sheet and the profit and loss account as well as the report of the statutory auditor.
The balance sheet and the profit and loss account, must within one month after approval be published by the directors in the " Mémorial C " by means of a reference to the lodgement of such documents at the Trade register.

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1. Personal Income Tax

The following persons are liable to income tax: resident taxpayers, i.e. those physical persons who have their domicile or normal place residence in Luxembourg and non resident taxpayers, taxable on income arising from Luxembourg sources only.

Taxable Income

It is the income earned by the taxpayer during the tax year, which coincides with the calendar year consisting in the total net income less special expenses. Total net income is made up of eight sources of income which are: trade and business income, agriculture and forestry income, income from independent professional services, net income from employment, net income from pensions and annuities, net income from capital and investments, net income from rentals and leases and sundry net income.

Taxpayers must make quarterly payments calculated on the basis of their presumed income. Furthermore the following kinds of income are subject to tax withheld at source: income from employment, income from pensions and annuities received by virtue of previous employment or from an independent retirement fund finances, income arising from investments as follows: dividends and other income from shares or stocks in joint stocks companies, limited liability companies and co-operative companies, interest and payments on bonds, where over and above the fixed rate of interest. Those kinds of income are considered to be Luxembourg sourced income if the debtor is the Grand Duchy of Luxembourg, a Luxembourg municipality, a public Luxembourg institute, a private corporation that has its statutory seat or principal place of management in Luxembourg or a physical person resident in Luxembourg for tax purposes.

The withholding tax on director's fees amounts to 20%. The tax is withheld on the gross amount paid free from any deductions. For a non resident, the withholding tax on directors' fees is considered to be a definitive tax only if the fees amount to less than 100,000.-EUR.

There is a graduated scale of tax rates with 17 income bands. Each attracts a different rate, ranging from 0% to the top rate of 38%; application of the rates varies according to the class to which the taxpayer belongs. The basic scale is adjusted periodically to keep pace with variations in the weighted consumer price index.

In past, a fortune tax with a rate of 0,5 % was payable by Luxembourg residents. However, this tax was abrogated since the 1st January 2007.

2. Corporation Tax / Corporate income tax

Resident companies are taxed on their global revenue, taking into account the various exemptions applicable under the European Treaty and the Double tax Treaties between Luxembourg and a number of other countries. Taxable revenue is calculated in the increase in a company's

net assets during the fiscal year after deduction of exempted revenues (e.g capital gain taxes on participations, tax exempted dividends, permanent establishment in other countries...). The income tax rate as at 1-1-2006: 29,63%. The distribution of dividends is added to the tax base and may be subject to a withholding tax depending on the beneficiary status.

Are exempted from corporation tax:

- certain corporate bodies whose direct and exclusive objectives are charitable or in the public interest;
- electricity, gas and water undertakings owned by the State, by a local authority or by a consortium of local authorities;
- the national lottery, the national housing corporation and independent employers ' pension and provident funds;
- trade associations, provides they have no other aim whatsoever, and agricultural cooperatives for the shared use of agricultural machinery and the processing of sale of members 'agricultural produce;
- association whose sole aim is the underwriting of professional loans and the issuing of sale and construction guarantees for the benefit of their members;
- investments funds as defined by the law of 30 March 1988
- holdings companies as defined by the law of 31 July 1929

The Act of 31 July 1929, which lays down the tax status for 1929 holding companies, provides for an exception from the effects of general tax law. The only direct taxes payable by the 1929 holding company are as follows:

- Capital duty (i.e.a maximum capital of 0,5% is due by the company)
- Subscription tax. This is an obligatory annual tax on the aggregate value of the shares of the holding 1929 determines as follows: if the shares are listed : on the basis of their stock market value at the average price for the previous year, if the shares are not listed, on the basis of the nominal value of the shares. In practice, however, the assessment is made on the basis of the amount of paid-up capital and the share premium, if any.

When the paid dividends exceed 10% of the paid-up capital, the subscription tax is calculated on ten times the amount distributed. The minimum tax to be paid for a 1929 holding company is 48.-EUR per annum.

Because of the beneficial tax treatment of 1929 holding companies, the treaties which Luxembourg has concluded with other countries in order to avoid double taxation as well as the EU Patent-Subsidiary Directive are not applicable.

There is no withholding tax on dividends paid by a 1929 holding company under Luxembourg law.

Corporate tax rates are based on corporate income tax, commercial income tax, fortune tax and other indirect taxes.

Municipal trade tax

The Luxembourg City tax is included in the 29,63% income tax rate.

Fortune tax

Fortune tax is calculated on net assets (gross fortune, debts, exemptions) as shown in the balance sheet at the end on the tax period. Significant participations are tax exempt. The rate is 0,5%.

Indirect taxes

When a company is formed, the subscription of its capital is subject to a duty tax equal to

0,5% of the capital (except for special companies as Sicar and SPF). The same is true for capital increase, whether in cash, in kind or for share premium.

However, if a company is formed in another European Country and can show that a similar tax has been paid in that country, the Luxembourg duty tax does not apply. This structure is used when a company requires large amounts of capital subscription.

The SOPARFI is subject to the same tax rules as any other commercial limited company. However, its tax charges may be reduced through holdings of shares and by its:

- fulfilling the conditions laid down in section 166 of the Income Tax Act (ITA) relating to participation exemption for both income through holdings and capital gains realized in connection with share transfers.
- fulfilling the conditions laid down in section 147 of the Income Tax Act concerning tax withholding on dividends paid.

Luxembourg tax law lays down special rules for parent companies and subsidiaries, which is known as the " Schachtelprivileg ". Income from shareholdings is exempt if:

- the distributing company is a fully taxable resident limited company, or a non-resident limited company that is fully liable to a tax corresponding to a corporation tax or a company that is resident in another member state of the European Union and is covered by article 2 of the EU Council Directive of 23 July 1990 on the common tax treatment applicable to parent companies and subsidiaries of different member states.
- the receiving company is a limited company that is resident in Luxembourg and fully taxable or a Luxembourg domestic permanent establishment of a company that is resident in another state of the European Union and is covered by article 2 of the EU Council Directive of 23 July 1990 on the common tax treatment applicable to parent companies and subsidiaries of different member states or a Luxembourg domestic permanent establishment of a limited company that is resident in a state with which Luxembourg has concludes a double taxation treaty.
- at the date on which the income is made available, the beneficiary holds or undertakes to hold the shares in question for an uninterrupted period of at least twelve months, and that during this period the holding rate does not fall below the threshold of 10%, or the acquisition price below 6,000,000.-EUR.

A shareholding held indirectly through a tax transparent entity (in compliance with the tax framework) is considered as a direct shareholding in proportion to the fraction held in the assets of this entity. If the Soparfi does not benefit from the full exemption on received dividends, it may still benefit from an exemption of 50% of this dividend income under certain conditions.

A further benefit of the system by comparison with the one applicable in other countries is the ability to deduct expenses relating to dividends (e.g. interest charges incurred in financing the shares). Nevertheless, they may only be deducted insofar as they exceed the deductible charges for the year in question.

Exemption from withholding tax on dividends paid:

Section 147 of the Income Tax Act provides for an exemption from withholding tax on dividends paid and other share proceeds, on that condition that:

- the distributing company is a fully taxable limited company under Luxembourg law
- the company receiving the dividends and other income is: a fully taxable resident limited company, or resident in a member state of the European Union and falls under article 2 of the EU Council Directive of 23 July 1990 on the common tax

treatment applicable to parent companies and subsidiaries of different member states, or a domestic permanent establishment of a limited company resident in a other member of the European Union and falls under article 2 of foregoing Directive, or a domestic permanent establishment of a limited company resident in a state with which Luxembourg has concluded a double taxation treaty.

- at the date on which the income is made available, the beneficiary holds or undertakes to hold directly for an uninterrupted period of at least twelve months a participation of at least 10%, or an acquisition price of at least 1,200,000.-EUR.

SICAR tax rules

The common tax rules applicable to all types of SICARS are the following:

- the 0,5 % capital contribution duty on any cash contributions or contribution in kind applicable to any company is replaced by a fixed unique capital duty the maximum of which is 1,250.-EUR
- the management services provided to a SICAR are exempt from Luxembourg VAT;
- the SICAR is exempt from net wealth tax
- no withholding tax is applied to any distributions or return on capital effected by the SICAR to its shareholders
- capital gains realized by non resident investors on the disposal of their interests or shares in the SICAR are tax exempt in Luxembourg
- the tax consolidation regime is not applicable for SICAR

SPF tax rules

- a SPF is exempt from corporate income tax, municipal business tax and net wealth tax
- a SPF is not subject to VAT, but is subject to all other direct and indirect taxes (registration duties, capital duty, payroll tax)
- capital gains and liquidation proceeds connected to a SPF and received by non resident investors are tax exempt in Luxembourg even if they are short term gains/proceeds
- a SPF is excluded from double tax treaty benefits and cannot benefit from the parent-subsidiary directive
- dividend distributions by a SPF are not subject to withholding tax

3. VAT

This tax was first implemented in Luxembourg on the 1st of January 1970 and has been modified twice since: in 1980, and most notably in 1993.

The current intra-community VAT regime is the result of the 6th directive, modified by the EC directives 91/690 of the 16th December 1991 and the 92/111 of the 14th December 1992.

All the rules that apply in the rest of the European Community also apply in Luxembourg . There are some differences involved with appointing fiscal representatives in Luxembourg compared with other countries.

Basically, the end-user client is liable for VAT. The various steps of a transaction are not relevant, as the supplier and its direct client can claim VAT back from the government. VAT is fully deductible on certain goods, expenses (phone, energy, petrol, publicity, etc.) and investments (car, machinery, computer, plane, etc.) used by the VAT -liable business.

As a general rule, VAT paid on goods and services used by a taxpaying company for its own purposes (i.e tax paid at earlier stages) is deductible.

The VAT standard rate is 15%.The following other rates can apply: 12%, 6%, or 3% for the delivery of goods and the supply of services. On the 1st July 2003, the new European Community Directive on services provided by electronic means (E-Commerce) came into effect which explains that a lot of well known companies (Apple,Skype,eBay,AOL...) invoice services from Luxembourg in order to benefit from VAT 15 % which is the most reduce VAT common rate in European Union.

Some VAT incurred by foreign enterprises in Luxembourg can be claimed back annually via a specific procedure. This procedure is applicable in all European Countries.

When a VAT-registered company imports goods, Luxembourg does not claim VAT. The VAT can simply be declared via the reverse charge principle. The consequence of this is that the costs linked to the pre-financing of VAT are lower.

Other advantages are that VAT is fully reclaimable on the purchase (or lease) and maintenance costs of cars.

Luxembourg

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1 Foreign Investment

Luxembourg has always supported economic openness, the development of foreign relationships and the integration in larger economic spaces. Luxembourg is the smallest

Under the terms of the Luxembourg constitution of 1868 and of the principles underlying in it, every citizen of Luxembourg is guaranteed freedom of trade and of industry, as well as freedom of establishment of a business.

Since 1944, exchange control has been jointly organized with Belgium . In 1918 monetary association was created by Luxembourg and Belgium , leading to almost complete liberty of exchange between two countries. Since 1990, Luxembourg enjoys absolutely free movement of capital within EU as last exchange control barriers have been waived. Some documentation must be provided to administrative authorities but for statistical purposes only. Under the Treaty on European Union, the rights of freedom of trade and of industry, as well as freedom of establishment of a business are also guaranteed to the national of the member states of the European Union and to nationals of all other non-member. Nevertheless, nationals of non-member states have to forward a bank guarantee to the Ministry of Justice in order to obtain a residence permit. The right to set up in the skilled craft trades, industry, the commercial business and certain professions is regulated by the Law of 28 December 1988. Under this law, a government permit is required for any industrial or trade activity. Applications must be submitted in writing and by mail to the Ministry of Middle Class.

Foreign investment is free in Luxembourg. Capital and income may be freely repatriated.

According to leading international competitiveness analyses, Luxembourg is generally ranked among the top competitive countries in the world for doing business. Over 35,000 companies from all over the world have chosen Luxembourg as their base to do business.

The main recognized advantages are Luxembourg's geographical situation, its international and skilled labour force, high return on investment, neutrality, easy access to government bodies and a very attractive and stable tax framework. Over the years, Luxembourg has become a great financial centre, the Luxembourg stock exchange has consolidated its predominant role in international bonds and investment funds.

Luxembourg is the leader of the European Fund industry with 24% of European funds domiciled in the country.

The EU Interest & Royalties Directive, implemented as a law on 12 may 2004 provides Luxembourg with additional flexibility as a business centre. Regarding interest paid on mortgage loans to non-residents, the law levies existing withholding tax. In relation to royalties paid to non-residents, previous Luxembourg legislation imposed

Luxembourg adopted on 12 November 2004 the law on the combat against money laundering and terrorist financing. Luxembourg's combat against money laundering has been approved by the International Monetary Fund.

Luxembourg adopted on 21 June 2005 a law implementing the EU Directive on the taxation of savings income in the form of interest payments. For a transitional period, Luxembourg, as well as Austria and Belgium apply a withholding tax of 15% for the first three years of application. This

rate will be increased gradually to 35% in 2011 and will apply until the end of the transitional period. However, there are exceptions to the withholding tax. The Luxembourg law has retained two procedures for avoiding a withholding tax. These are: the investor can choose to provide the Luxembourg paying agent with an authorization to exchange information on all the interest paid by this same paying agent or the investor can choose to provide the paying agent with a certificate issued by the law authority of the country of residence of the investor. Unlike in the case of an authorization for an exchange.

European Union and European Economic Area Citizens require no work permit. The right of other foreign workers to be employed on the territory of the Grand Duchy is subject to the provisions of the Grand-Ducal regulation of 12 May 1972 as amended. As a rule, foreign nationals may be employed in Luxembourg only with a work permit issued by the Minister of Labour.

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Right to work is guaranteed by Article (11) 4 of the Constitution of 1868. In accordance with such provision, state is under duty to adopt rules that assure work to everyone to largest extent possible. An exception to this rule was established by the Law of 23 March 2001 which lays the prohibition of employment of children aged under 15 down as a principle, whatever the nature of the work. Similarly, the Law of 24 December 1977, as subsequently amended, empowering the government to adopt measures to encourage economic growth and maintain full employment, prohibits the engagement or continued employment under contract of any person who has reached the age of retirement and is in receipt of a pension higher than the minimum statutory wage, unless that person has specifically applied to the Minister of Labour for an exemption, which is granted after seeking the opinion of the Employment department.

Labour law consists of a set of legal and regulatory acts and collective bargaining agreements. The law dated 24 May 1989 on the employment contract defined the rights and responsibilities existing in the employer-employee relationship by establishing a set of minimum rights and responsibilities.

The Law of 31 July 2006 abrogated the law dated 24 May 1989 and introduced a Labour Code which is efficient since the 1st September 2006.

Nevertheless, coding is not yet finished and the bill relating to unique statute should be effective on 1st January 2009.

1 Employment Contracts

Under Luxembourg law, the relationship between employer and employee is in principle an individual one.

Regulated by the Labour Code, employment is normally of unlimited duration and must be evidenced in writing. The rules for conclusion of a contract of employment are set out in this law and apply to both staff and manual workers. In absence of written contract, existence and content of labour contract may be evidenced by any means, but contract is deemed to be for indefinite period of time, without possibility to prove contrary. Employment contract for definite period of time is exceptional under Luxembourg law, it may only be entered into for performance of specific and temporary task. Term or at least minimal duration must be disclosed in contract, which cannot be cancelled before term except for gross negligence. Contract of limited duration can only be renewed twice and has maximum duration of 24 months, including renewals. If the employer fails to observe these rules, the employee is entitled to damage equal to the remuneration which would have been applicable had the contract been open-ended.

Any contract of employment must contain following provisions:

- the identity of the parties
- the date the contract begins to take effect
- the place of employment or, if appropriate, the principle that the employee may be employed in various locations and/or, more specifically, abroad, as well as the

employer's registered office or residence;
- the nature of the employment with, if appropriate, a statement of the employee's tasks or functions at the moment of the contract, without prejudice to any subsequent appointment,
- the employee's normal working day of week
- the normal working hours
- the basic salary or wage to be paid, plus, if appropriate, any additional payments, together with the frequency at which the employee's remuneration is to be paid
- the length of any probation period
- any derogation or additional clauses

Reference should also be made in the contract to the statutory provisions, regulations, administrative rules, service rules or collective agreements governing the length and conditions of the employee's paid holiday and the length and method of application of the notice of termination by either employee or employer. When appropriate, reference should also be made to the collective agreements governing employment conditions of employees, as well as to the eventual existence in the enterprise of an additional pension system.

A probation period may be provided for in writing both open-ended and fixed-term contracts for. Probation periods vary between two weeks, which is the minimum period and six months, with two exceptions based on the level of the employee's qualifications or his salary: 1) for unskilled workers may not exceed three months; and (2) trial period for employees whose monthly salary exceeds certain amount to be determined by decree may be 12 months at most. The probation clause cannot be renewable. Labour contract may be terminated during trial period upon 15 days' to one month's notice. If contract is not terminated during trial period, it is deemed to be contract of unlimited duration as of first day of working relationship. A contract of employment cannot be terminated unilaterally during the minimum probation period of two weeks except in the case of gross misconduct. After completion of the first two weeks' probation, either party may terminate the contract. The contract must be terminated by registered.

2 Termination with notice of a contract of employment

Termination with notice is possible only in the case of an open-ended contract. Both employer and employee have the right to terminate a contract of employment, even against the wishes of the other party. Termination is a unilateral action and subject to certain rules of form; it must also take due account of the appropriate period of notice prescribed by the law. In certain circumstances termination with notice is prohibited by the law. This is the case for a female employee during pregnancy, any employee incapacitated through illness and workers and staff representatives.

Prior to any dismissal, employer of more than 150 persons must meet with worker whose dismissal is envisaged for preliminary discussion. Worker must be called to meeting by registered mail at least two business days in advance. Notice must indicate reason for meeting as well as its date, place and time, and specify that employee may be accompanied by co-worker or trade union representative. If employer still wants to dismiss employee after meeting, employee must be notified of decision by registered mail, at earliest on day following meeting no more than 8 days later. This procedure applies both in cases of dismissal for serious fault and dismissal for serious fault and dismissal with notice period. An employer who has been notified of an employee's illness or who has received a medical certificate is prohibited from calling that employee to an interview with a view to dismissal, even in the case of gross misconduct.

If less than 150 persons are employed, dismissal must simply be notified to employee by registered

mail. Failing this, the dismissal will be deemed irregular. The employee's countersignature on the letter of dismissal is equivalent to the post office advice of receipt of the letter. The same applies in the case of the employee who wishes to leave his employment.

Dismissal must be made upon following notice periods. (1) two months if employee has worked with same employer for less than five years: (2) four months if employee has worked five to ten years with same employer, (3) six months if working relationship existed for more than ten years. If it is the employee who gives notice, the period of notice is half of these notice periods.

If so requested by the employee, the employer must state the reasons for dismissal. The request must be made by the employee by registered letter within one month of the date of the notification of dismissal. The employer must state his reason in detail within a further month. The statement must be sent by registered mail. It shall indicate the reasons for dismissal supported by detailed and explicit fact.

If notice periods are not respected and in absence of gross misconduct justifying an immediate dismissal, employer must pay indemnity equal to employee's salary during period required for notice.

In addition, indemnifications for dismissal must be paid to every dismissed employee (if not dismissed on grounds of gross misconduct) who has been working for employer for more than five years. Indemnity varies in accordance with length of service, and ranges from one to 12 months' salary.

3 Employment contracts for directors

Directors can also be employees of their companies provide that they really work under the supervision of an employer. A subordination link is required. Whenever the condition is not fulfilled the directors are excluded from the benefit of labour law provisions.

4 Union representation and collective agreements

Trade Unions are organized along ideological lines, with socialist and Christian trade unions being most representative independent unions. Every industry, every sector has special features which call for specific treatment .White collar employees have their own union, and those active in banking sector usually affiliate with bank employee's union. All unions are moderate and effective in controlling their members. Membership has decreased over past years. Luxembourg's tradition of consensus politics integrates unions in periodic meetings together with employers and government. This has proved very successful in preventing labour disputes. The Law of 12 July 1965 provides for the conclusion of a collective labour agreement which is defined as a contract covering reciprocal relationships and general conditions of employment concluded between one or more employers' organizations or a single enterprise or group of enterprises in the same line of business or all the enterprises in the same trade or industry, on the other. A Grand-Ducal regulation may declare such collective agreements generally binding on all employees and employers in the trade, industry or sector for which they have been concluded.

5 Employers' Obligations

Within eight days of beginning of working relationship, employer must notify new hire to Coordination Centre of Social Security Institutions. Sickness and pension insurance are paid on equally shared basis by employer and employee, although accident insurance and State family allowances are exclusively supported by employer.

6 Working Time

Limited by law to eight hours per day and 40 hours per week. However, blue and white collar workers can be asked to work up to nine hours per day as long as weekly working hours do not exceed 40 hours. Other derogations may be obtained with Ministry of Labour approval, if required for structural or technical reasons.

Overtime is allowed without prior approval if it does not exceed two hours per day. Overtime hours must be paid extra, i.e. + 25% per hour for manual workers, +50% for office employees, and + 100% for minors. Sunday work is in principle prohibited, but the law recognizes derogations.

7 Holidays

Each employee is entitled to yearly leave of 25 days. Collective labour agreements may provide for additional holidays.

Extraordinary paid leaves are granted on certain occasions for: (1) death of a first-degree relative parent or death of the employee's spouse or husband (three days); (2) birth or wedding of child (two days); (3) employee's own wedding (six days); and (4) employee moving house (two days).

8 Compensation

There is no legal requirement as to amount of salary to be paid. However, (I) salary must not be less than minimum wages periodically determined by Government (currently approximately for unqualified employees 1,500.0.-EUR and approximately for qualified employees 1,885.-EUR, and (2) it must be periodically adapted to wage index. Salaries must be paid at least once a month. Detailed salary statement must be remitted to employee.

Salaries must be paid in case of extraordinary leaves for family events (e.g. death of parent, birth of child). In case of sickness of white collar worker, salary is paid by employer during first three months of sickness absence, and then by health insurance for 52 weeks at most, (2) in case of blue collar worker, salary is paid by health insurance from first day of absence and for 52 weeks maximum. Similar rules apply to maternity ;ayes, which generally start eight weeks prior to birth of child and terminate eight weeks prior to birth of child and terminate eight weeks after

Upon her return, employer is compelled to reintegrate woman to her former job or to equivalent position.

9 Retirement

Entitlement to old-age pension normally begins at age 65 for a beneficiary who has a record of at least 10 years' continuous compulsory contribution or retrospective purchase of rights.

Early retirement schemes may be entered into upon special agreement with Ministry of Labour. Beneficiaries of this scheme must be at least 57 and may not execute any other paid or unpaid professional activity after early retirement. Pre-pension rights and duties ease when employee becomes untitled to normal pension.

Luxembourg

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Luxembourg law governing derives to a great extent from Roman law.

1 Types of ownership

Title to real property may be either entire (" pleine propriété "), or divided into two separate rights: on the one hand a right to the use and proceeds of the property (" usufruit ") and on the other hand a stripped ownership (" nue propriété ") corresponding to the ownership stripped of the right to use and proceeds of the property.

2 Transfer Formalities

Transfers of real property interest by contract must be done by notarial deed and recorded in Mortgage Registry.

Registration duty is payable on the transfer of real property. The standard rate is 6%. However, there is a reduced rate of 1.2% in the case of a sale forced by bankruptcy and also applies, under certain circumstances, to rural properties. Low-cost housing sold by the Luxembourg State housing corporation attracts a flat rate of 12.-EUR.

3 Mortgages

A mortgage (" hypothèque ") creates a security lien over real property for the purpose of guaranteeing performance of a financial obligation. A "following-up" right is available to the holder of a mortgage and allows him, in the event he is not paid, the holder to seize his debtor's real property. Thanks to a right of preference, the beneficiary of the mortgage has the right to be paid, by preference over other creditors on the sale price of he real debtor.

Mortgage remains on real property even if such property changes hands. Contracts made abroad cannot, in principle, create mortgage on real estate located in Luxembourg, except where special treaties might provide to contrary. Validity of conventional mortgage is subject to condition that notarial deed specifies exactly nature and location of each element of real property owned by debtor which he agrees to mortgage. Each and all of debtor's actual property may be nominally subject to mortgage. Conventional mortgage further requires, in order to be valid, settlement of sum for which it has been given, this sum being certain and determined in deed.,

The mortgage tax is payable to the Administration de l'Enregistrement et des Domaines on the price of real property with a rate of 1%. A reduced rate of 0,5% applies to certain properties (rural properties) and to certain types of deed (exchanges, sale of property on bankruptcy). Legal mortgages on the property of minors, incapacited persons and the State and mortgages guaranteeing municipal borrowings and loans made by the Banque et Caisse d'Epargne de l'Etat (State and Savings bank), the Crédit Foncier (Land mortgage institution), the subsidized housing service, compulsory social security schemes are exempted from mortgage tax.

4 Leases

Real property can be rented under lease agreements. Residential leases are regulated by the Law of 21 September 2006 and by the Civil Code. Commercial leases are not regulated by a specific law and are regulated as the residential leases and by case law.

5 Zoning, Building Permits, etc

All building requires a prior permit issued by the local administration in the context of zoning rules and regulation.

6 INTELLECTUAL PROPERTY

On the 1st January 2008, the Government introduced an attractive measure for companies granting or using copyrights linked to softwares, licences, patents, designs or models. 80% of the net income of companies will be exempted from tax. This exemption is also given for taxpayers creating or using their own copyrights. This notional tax deduction is calculated in relation to the market value of these rights.

The exemption is also available for the capital gain generated by these rights (a recapture rule will be instituted).

The exemption of income up to 80 % applies also to the management, the concession of internet domain names; these names constitute indeed an intellectual right under the law (outside of the content of the website itself). A Luxembourg's company which collects incomes, royalties, in connection with the concession of such a domain name will be exempted up to 80 % on the net profit relating to these incomes. This measure constitutes an important element in the policy of Luxembourg as regards to e-commerce development.

Therefore the Government confirms its intention to make the country attractive for companies wishing to invest in copyrights and development in Research & Innovation. It is important to note that this measure is available for all companies, without differentiation based on their origin, nationality, type, shareholding, holding, structure, size...

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