

Doing Business in Luxembourg

2006



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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in nearly 50 countries throughout the world. Business partners work together throughout the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering a business operation in Luxembourg has been provided by the office of UHY's representative there:

Fibetrust
UHY Fibetrust S.à.r.l.
82, route d'Arlon
mail@fibetrust.lu

You are invited to contact Mr. Jürgen Fischer with any further inquiries you may have.

Fiduciaire Fibetrust has been established since 1996 and specialises in business services and international tax planning. Clients include Fund managers.

Information in the following pages has been updated so that it is effective at the date shown, but inevitably it is both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at January 2006.

We look forward to helping you do business in Luxembourg.

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2. Business environment

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

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

Facts

Population:	± 439,500
Area:	2,586 square kilometres
Banks:	189 with 23,651 employees
Total balance sheet:	euros 721 billion
Holding companies:	14,335
Capital:	euros 41.3 billion
Currency:	EUR

Distances by car

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

3. Foreign investment

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

1. Société Anonyme (SA)

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

Due to the special status of Holding '29 and SOPARFI companies (see pages 7–8), a large number of *Société Anonyme* have recently been incorporated.

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

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

The company is managed by a board of at least three directors. A general meeting of shareholders must be held at least once a year. The supervision of the company is entrusted to one or more auditors (*commissaire*).

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

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

The profit of the company is subject to corporation tax (*Impôt sur le revenu des collectivités*) and municipal business (*Impôt commercial communal*).

Losses from previous years can be carried forward.

2. Société à responsabilité limitée (Sàrl)

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

The company's articles of incorporation must be drawn up by a notary and published in full. The number of shareholders may not be fewer than two

or greater than 40. The company's capital must not be less than euros 12,394.67, fully subscribed and paid up.

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

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

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

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

Certain branches may not adopt the form of the *Sàrl*. The company is liable to corporation tax (see SA). The law of 28 December 1992 permits the establishment of a one-man *Sàrl* company.

3. Société en nom collectif (Senc)

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

It is formed by deed under private seal or by notary's deed, published in short form.

Shares are generally not transferable.

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

The partnership is managed by a manager.

The law does not prescribe any controlling body.

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

4. Société en commandite simple (Secs)

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

It is formed by deed under private seal or by notary's deed, published in short form.

Shares are generally not transferable.

The daily management is carried out by a manager.

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

No controlling body is prescribed.

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

5. Société en commandite par actions (Seca)

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

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

6. Société Coopérative (Sc)

For the formation only a deed under private seal is required, but it must be published in full. The number of members must be at least seven. Shares are not transferable to third parties. A co-operative is subject to corporation tax.

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

Branch

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

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

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

Prior to depositing and publishing in the business register and *Mémorial*, the documents have to be authenticated in the country of origin and in Luxembourg. (Special rules may apply to branches registered elsewhere in the EU.)

In general, upon incorporation of a new company, increase of capital or when a branch is established, a subscription tax of 1% is payable on the capital invested. Branches of companies whose registered office is elsewhere in the EU are not subject to the tax.

Holding '29 companies

The law of 31 July 1929 says that the name 'holding company' shall apply to any Luxembourg company whose exclusive aim is to take holdings, of whatever kind, in other Luxembourg or foreign companies and to manage and capitalise on such holdings, without any industrial activity or commercial establishment open to the public.

A Holding '29 company pays no tax on ordinary income (interest and dividends) or on capital gains. All it has to pay is the contributions duty (*droit d'apport*) and composition duty (*taxe d'abonnement*).

Contribution duty is 1% of the net value of the company's original assets and of any subsequent increases in its capital. Exemptions, which may be granted in the case of mergers, splits and the incorporation of branches of activity, may also be extended to company reorganisation operations involving the exchange of shares.

Composition duty is 0.20% pa of share capital as quoted on the stock exchange (or paid-up capital if not). If, during the course of a given year, a company distributes dividends of more than 10% of the paid-up capital, the duty is calculated on the basis of ten times the dividend.

The holding company is subject to a 1:3 ratio between subscribed capital and borrowings and a 1:10 ratio between paid-up capital and debentures issued.

Interest payments are not subject to deductions at source and there are no withholding taxes on dividends distributed.

However, companies operating under these arrangements are not covered by such treaties as Luxembourg has concluded on the avoidance of double taxation.

In the case of the so-called 'millionnaire' companies (companies whose capital, comprising share and bonds amount to at least LUF 1,000 millions; euros 24,789,352), composition duty is replaced by a tax on revenue calculated on the basis of the interest paid on bonds, dividends distributed to shareholders, director's fees and other remunerations paid.

Financial participation companies (SOPARFI)

A financial participation company (*société de participation financière*, SOPARFI) is a regular commercial company (SA or Sàrl) which has as a principal activity the acquisition of shareholding participations in other Luxembourg or foreign companies as well as the administration of such participations or any other commercial activity.

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

Generally the SOPARFI is subject to a 1:6 ratio between subscribed capital and borrowings.

The tax system of dividends received

On the basis of the '*Schachtelprivileg*' principle outlined in article 166 LIR (parent/subsidiary regime) income from dividends resulting from financial participations are fully free from income taxation and communal business tax on profit, under the following conditions:

- The shareholding participation must amount to at least 10% of the capital of the subsidiary or, if lower, the purchase price must be at least euros 1,239,467.62
- The shareholding participation must have been held (or will be held) during an interrupted period of at least 12 months prior to the closing of the financial year.
- The subsidiary must be a share capital company fully taxable and subject to income tax at a rate of at least 15%
- Usufruct cannot qualify, because full ownership is required

Capital gains on transfer of shares

Capital gains on the transfer of shares is completely free from tax subject to the following condition: the shareholding participation must be at least 10% of the capital of the subsidiary or, if not, the purchase price of the participation must be at least euros 6,000,000.

Capital losses on the participation

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

Tax losses may be carried forward indefinitely.

Financial participation companies benefit as a rule from double tax treaties and may therefore claim the reduced withholding taxes provided for under such treaties with respect to foreign investments.

Tax treatment of dividends distributed by a SOPARFI

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

- If the parent company is established in the EU, no withholding tax is applicable to such distribution as long as the parent company has held a participation of at least 25% for at least two years
- If the parent company is not a resident of the EU, the rate will be either that provided by the agreement of non-double taxation concluded between Luxembourg and the country of the parent company or, in the absence of such a treaty, the rate of 25% resulting from Luxembourg law. This rate is also applicable if the dividend is paid to a Luxembourg holding company

4. Setting up a business

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

In order to set up a business in Luxembourg, a business permit, which is a government permit, regulated by the law of 28 December 1988, is required. Special rules may apply to certain activities.

This permit is strictly personal and the applicant must supply evidence of professional qualifications and good standing.

5. Labour

The working population in Luxembourg is approximately 280,000 and is growing.

Obligation

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

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

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

Probation period

A probation period cannot last for less than two weeks:

- Two weeks but not more than three months for an employee whose training qualifications are below the level of the CATP (vocation training certificate)
- Two weeks but not more than six months for an employee with a CATP, equivalent or higher
- Two weeks but not more than 12 months for an employee whose gross monthly starting salary is euros 3,495.58 (index 652.16) as per 1 October 2005.

A probation clause cannot be renewed.

Duration of contract

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

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

Remuneration

The law guarantees a minimum social wage to all employees. Since 1 October 2005 the minimum wage for skilled workers is euros 1,804.11 per month and for unskilled workers euros 1,503.42 per month. As a rule, wages and salaries increase with the cost of living.

Working hours

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

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

Social security

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

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

Employee's total contribution:	11.65%
Employer's total contribution:	11.46%
Total contribution of employee's gross pay:	23.11%

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

6. Taxation

The law of 4 December 1967, 'Loi sur l'impôt sur le revenu', or LIR (Income Tax Act), is now the basis for taxation.

Due to the course of history, the structure of the Luxembourg tax system is comparable to the German system. We therefore also find a municipal business tax (*Gewerbesteuer*) (abolished for physical individuals since 1.1.2006) and a wealth tax (*Vermögenssteuer*) together with a general tax code analogous to the *Abgabenordnung* (AO). At the same time, and unlike Germany, Luxembourg also has a system of registrations and registration duties, as in France and Belgium.

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

Taxing authorities

Three separate government departments are involved collecting taxes.

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

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

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

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

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

Corporation income tax

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

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

The rates range from 20–22% depending on the income level. A local income tax (municipal business tax) – non-deductible, a surcharge for an unemployment fund – makes the total maximum effective tax rate for 2006 30.38%.

Please note the existence of corporation tax relief on investments in establishments located in Luxembourg (due to the complexity of this matter please contact us for further information).

Profit	150.00
Municipal business tax or income (ICC)	(11.25)

Corporate income tax	(33.00)
Add 4% unemployment fund	(1.32)

	104.43
	=====
Total income taxes	45.57
As a percentage of profit	30.38%

Exemptions

The following are exempted from corporation tax:

- Holding companies as defined by the law of 31 July 1929
- Investment funds as defined by the law of 30 March 1988

Special exemptions

Parent company exemption '*Schachtelprivileg*' (Article 166 LIR)

The income from a holding held by the following is exempt from corporation tax if, at the date of distribution, the beneficiary has held (or undertakes the hold) the holding without interruption for 12 months or more, throughout which period the holding has not fallen (or will not fall) below 10% of issued capital, or its acquisition value below euros 1,239,467.62:

- A fully liable company whose registered office is in Luxembourg
- The permanently established Luxembourg branch of a company resident in another member state of the EU and covered by Article 2 of the Council Directive on the common fiscal rules applying to parent and subsidiary companies of different member states
- The permanently established Luxembourg branch of company residing in a third country with which Luxembourg has concluded a double taxation agreement

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

- A fully liable company whose registered office is in Luxembourg
- A company which is now resident but fully liable to a tax equivalent to Luxembourg
- A company resident in another member state of the EU and covered by Article 2 of Council Directive 90435/EEC, on the common fiscal rules applying to parent and subsidiary companies of different member states

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

Municipal trade or business tax

As previously mentioned, this must be paid by commercial industrial enterprises located in Luxembourg.

This tax is deductible from the corporation tax.

An allowance of euros 29,747.22 is granted on profits of physical persons and partnerships, and euros 17,352.55 on income of companies subject to corporation tax.

The rate varies, depending on the municipality, between a fixed 4% of business profits after deductions on which a multiplier between two and 3.5 is applied.

Individual income tax

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

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

Exempt items include:

- Investment income up to euros 1,487.36 pa; for married tax payers, euros 2,974.72
- Interest subsidies within certain limits
- Lump-sum life insurance proceeds and accident insurance payments
- Overtime paid up to euros 1,784.83 pa

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

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

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

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

Compulsory social security contributions are deductible without limitation.

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

Rates

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

There is a graduated scale of tax rates with 18 income bands. Each attracts a different rate, ranging from 0% to the top marginal rate of 38%.

Application of the rates varies according to the class to which the tax payer belongs (a solidarity surcharge of 2.5% is added, making the effective rate 38.95%).

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

Wealth tax

All legal persons are liable, except partnerships, members of which are assessed personally on the value of their participation.

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

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

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

Rates

The rate is 0.5%. The minimum assessable net wealth for companies is euros 12,394.68; for limited liability partnerships euros 4,957.87; and for partnerships of individuals euros 2,478.94.

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

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

Value added tax

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

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

The rates are 3%, 6%, 12% and the standard 15%.

Tax on capital

A tax of 1% of the capital is levied upon incorporation and on increase in capital.

Special tax on director's fees

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

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

The tax has to be withheld by the paying company.

For residents, taxation is set against the final annual liability. For non-residents, taxation is set against the final annual liability if the gross amount of the director's fees is equal to or higher than euros 1,313.84.

The rate, depending on who is tax liable, is 20–25%.

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

Estate duty

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

The average rates vary from 2.5–17.2% (maximum 48%), depending on the size of the inheritance and the relationship between the parties. The tax rates for gifts vary from 1.8–14.5%.

Transfer duty (applicable to non-residents)

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

The basis of assessment is the market value of the real estate located in Luxembourg, calculated at the date of death. Liabilities are not deductible and there is no exempt amount.

The rates vary from 2–7.2%.

Land tax

Owners of farms and woodland holdings located in the municipality are liable for Land Tax A. Owners of real estate in the municipality are liable for Land Tax B.

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

The tax is on the property, not its owner.

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

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

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

Incentives to business and investment

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

Facilities are provided by the *Statec* and by the European Union, including:

- Capital grants for buildings, equipment and plants
- Financing of major investments in whole or in part through a medium- or long-term loan from the SNCI (National Credit and Investment Corporation)
- Equipment loans from the SNCI
- Minority shareholding by the SNCI for Luxemburgish SA or Sàrl companies
- Industrial land may be made available under a superficial rights contract
- Financing of up to 50% of the cost of research and development projects
- Various forms of tax relief are available as incentives to new investments in Luxembourg

For further information please contact us.

7. UHY firms in Luxembourg

UHY Fibetrust S.à.r.l.

38 Boulevard Napoléon I
L-2210 Luxembourg

Tel: +352 45 45 49 1

Fax: +352 45 45 41

Email: fibe@pt.lu

Associated worldwide with UHY, Fiduciaire Fibetrust was established in 1996 to serve a local and fast-growing international clientele in a multilingual environment.

A small team of experienced professionals skilled in operating in a multilingual environment serve their clients in English, French, German, Spanish and Luxemburgish with a high level of discretion.

The following services are provided:

- Accountancy/auditing
- Tax consultancy
- Management consultancy
- Set-up and assistance with new companies
- Forensic accounting/expert witnesses
- Business support services
- Set-up of support services
- Set-up of onshore and offshore companies

8. UHY worldwide

UHY offices

For details of UHY offices worldwide please visit www.uhy.com

UHY executive office

St Alphage House
2 Fore Street
London
EC2Y 5DH
United Kingdom

James Vrac

UHY Executive Director

phone: +44 20 7216 4612

email: james.vrac@uhy.com

Claire Fisher

UHY Manager

phone: +44 20 7216 4622

email: claire.fisher@uhy.com

Anita Parker

UHY Assistant Manager

phone: +44 20 7216 4684

email: anita.parker@uhy.com

Fax: +44 20 7628 3069