***WU*** Institute for Austrian
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# Trends and Players in Tax Policy

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European and International
Tax Law and Policy Series

IBFD

# Trends and Players in Tax Policy

**Why this book?**
Tax policy has always been a predominant element of national economic policies and a decisive tool in directing the actions of governments in the economic field. In the past decade, however, as an increasingly globalized economy has presented challenges, tax policy has gained new importance because of its global dimension.

The aim of this book is to provide a comprehensive overview of the tax policy trends that can be seen in various countries since the turn of the century. Thirty-three national reports from countries across the globe have been compiled in this volume. The reports, which were prepared for the conference "Trends and Players in Tax Policy" that took place in Rust (Austria) from 4-6 July 2013, focus on how different countries pursue their tax policy goals in the global economy and try to secure competitiveness and, at the same time, protect the national tax base. Much attention is given to the main factors influencing the formulation of tax policies and tax legislation as well as to the changes in the relationship between tax administrations and taxpayers. In addition to the national aspects, the book also outlines global trends and best practices through which it hopes to set the path to building up a globally consistent exercise of tax sovereignty. The general report extensively discusses issues connected with the Base Erosion and Profit Shifting (BEPS) project, taking into account national reports and other information on additional countries.

The book is of relevance to tax policymakers, tax practitioners, academics and students doing research on tax law, and all those who have an interest in the most current issues in the field of tax policy.

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# Preface

Understanding the major trends in tax policy around the world is of great relevance not only for researchers, but also for tax policy makers, government officials and tax practitioners active in the field of national and international tax law. Accordingly, the main purpose of the research project the final result of which is this book was to analyse various aspects of national tax policies, including the main drivers of tax policy decisions, the players influencing such decisions and the translation of tax policy decisions in the legislative process in the different political and economic systems of the countries included in the project.

Although the focus is on national tax policies, this topic cannot be analysed in isolation from international and global aspects. In the past decade, the globalization of the economy has progressed at an unprecedented pace thereby presenting global challenges, among which has been the financial crisis, to governments around the world. Global issues require global answers. Therefore, the analysis included in this book extends not only to the way governments pursue their national tax policy goals but also to the various answers national tax policy makers give to global challenges.

The comparative analysis in this respect aims at pointing out similiarities and differences in national tax policies reacting to common challenges and at identifying global trends. Throughout the book and in particular in the general report we have highlighted best practices that can be implemented by states around the world in the framework of voluntary compliance. The national implementation of global initiatives for coordination of tax policies and tax rules is also examined in a comparative perspective. Great attention is given to the change in the relationship between tax administrations and taxpayers from a strict authority approach to a more cooperative relationship, the role of "major players" in the formulation of tax policy decisions and tax legislation as well as aspects of good governance in international relations in the tax field.

More than a hundred experts, including the national reporters, participated in the Conference "Trends and Players in Tax Policy" from 4 to 6 July 2013 in Rust, Austria, which was hosted by the Institute for Austrian and International Tax Law of WU (Vienna University of Economics and Business) in cooperation with the Research Council of Norway.

We are very grateful for the contributions of all the national reporters and authors who tirelessly worked in order to deliver up-to-date reports. We would also like to thank them for their active participation in the discussions at the Conference.

IBFD agreed to include this book in its new WU Institute for Austrian and International Tax Law – European and International Tax Law and Policy Series. We would like to take the opportunity to express our sincere thanks to IBFD for its cooperation and the smooth carrying-out of the project; in particular we would like to thank Estela Ferreiro Serret, João Nogueira and Alessandro Turina. Ms Margaret Nettinga contributed greatly to the finalization of the book by editing and polishing the reports for the authors, for whom English is – to a great extent – a foreign language.

Our gratitude also goes to the members of the secretariat and the research staff of the Institute for Austrian and International Tax Law, especially Ms Renée Pestuka, Na Li, Alejandro Ruiz Jiménez, Lukas Mechtler, Nikolas Neubauer and Rita Szudoczky, who were responsible for the organization and preparation of the Conference in Rust as well as the publication of this book. Without their efforts and talent for organization, the success of the Conference and the completion of this book could not have been achieved.

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Vienna, August 2015

Sample Chapter

# Luxembourg*

Anne Selbert and Katharina Schiffmann

## 27.0. Introduction

The Luxembourg tax system has been subject to several important changes in the past 10 years, influenced by the growing importance of European legislation and obviously by the economic crisis affecting Europe recently. However, Luxembourg has remained an attractive financial centre, also due to important changes in its tax system.

Below, the most important changes are outlined on the basis of the kind of tax.

## 27.1. Personal income tax

### 27.1.1. Final withholding tax on interest income (for resident and non-resident individuals)

In the course of implementing the European Savings Directive (EUSD) in 2005, Luxembourg introduced a final withholding tax (WHT) on interest income accrued from 1 July 2005 and paid after 1 January 2006 for resident individuals by the law of 23 December 2005[1] (the "Relibi-Law"). Any Luxembourg paying agent paying interest to a beneficial owner who is resident in Luxembourg must apply a final WHT tax of 10%. This WHT can be deemed final, as no further tax is due on interest income by the resident. Furthermore, the interest income does not have to be reported in the taxpayer's tax return and it is not taken into account when calculating the average rates of tax on the income. Interest that is only paid once a year on savings accounts and does not exceed EUR 250 per person and per paying agent is exempt from WHT.

* This contribution was finalized in the spring of 2014 and is current through that date.

1. The law of 23 December 2005 introducing a domestic withholding tax on certain interest income on interest payments (*Loi du 23 décembre 2005 portant introduction d'une retenue à la source sur certains intérêts par l'épargne mobilière*).

With the law of 21 June 2005[2] (the "EUSD Law"), Luxembourg implemented the EUSD (Council Directive 2003/48/EC) into domestic law. Under the EUSD Law, which has been in effect since 1 July 2005, Luxembourg levies a WHT on interest payments or other similar income paid by a paying agent within its jurisdiction to or for an individual resident in another EU Member State unless such individual agrees to an exchange of information regarding the interest or similar income it received between the tax authorities of Luxembourg and the relevant EU Member State. The rate of the WHT is equal to 35% from 1 July 2011.

Political announcements in April 2013 by the Luxembourg Prime Minister Jean-Claude Juncker already led to the assumption that the WHT option will be abolished. The Luxembourg draft bill No. 6668, which was submitted to the parliament on 18 March 2014, is purporting to finally abolish the withholding tax principle in order to introduce an automatic exchange of information regarding the payment of interest or similar income. The entry into force of this reform is expected to take place on 1 January 2015.

### 27.1.2. Special expat tax regime

A special regime for highly skilled and dedicated employees who are transferred to the Luxembourg office of a company group or who are directly recruited in a foreign country by a Luxembourg company ("LuxCo") to work temporarily[3] in Luxembourg came into effect on 1 January 2011 through Circular No. 95/2.[4] On 27 January 2014, the Luxembourg tax authorities issued an update[5] to the original Circular No. 95/2.[6] The main change from 1 January 2014 is the extension of the scope of the tax regime to the benefit

2. The law of 21 June 2005 on taxation of savings income in the form of interest payments, transposing the European Directive 2003/48/CE of 3 June 2003 into Luxembourg law (*Loi du 21 juin 2005 transposant en droit luxembourgeois la directive 2003/48/CE du 3 juin 2003 du Conseil de l'Union européenne en matière de fiscalité des revenus de l'épargne sous forme de paiement d'intérêts*).
3. The expatriate can benefit from the regime up to 5 calendar years following the year of arrival, provided the conditions mentioned in Circular No. 95/2 are met.
4. Circular of the Director of the tax authorities LITL No. 95/2 of 31 December 2010 (*Circulaire du directeur des contributions L.I.R. – n° 95/2 du 31 décembre 2010*).
5. Circular of the Director of the tax authorities LITL No. 95/2 of 27 January 2014 (*Circulaire du directeur des contributions L.I.R. – n° 95/2 du 27 janvier 2014*).
6. The original Circular was already updated by the Circular of the Director of the tax authorities LITL No. 95/2 of 21 May 2013 (*Circulaire du directeur des contributions L.I.R. – n° 95/2 du 21 mai 2013*), which provides all details and conditions to be fulfilled (e.g. the employee should satisfy a shortage of competent workers in Luxembourg, the employee meets minimum salary requirements (i.e. EUR 50,000 per year as

of the employees directly recruited abroad not only by companies established in Luxembourg but in any member state of the European Economic Area.

Employees falling under this special regime benefit from special tax deductions (e.g. costs of moving to Luxembourg and similar repatriation expenses at the end of the secondment, school fees associated with primary and secondary education) and tax reliefs but this is subject to an overall cap (e.g. home leave, costs associated with the difference in taxes between Luxembourg and the home country).

### 27.1.3. Fund manager's carried interest regime

The expat tax regime can be combined with the special tax regime on the remuneration of fund managers.[7] Usually, the remuneration of fund managers (i.e. carried interest) is governed by the Luxembourg Income Tax Law (LITL) and is in principle taxable as speculative capital gain (and not as income). The intended regime foresees a temporary reduced rate amounting to 25% of the average (i.e. in 2013, a marginal rate of 10.34%) provided that several conditions are fulfilled.

### 27.1.4. Crisis contribution

In the course of the economic crisis of the European Union, Luxembourg introduced a "crisis contribution" in 2010 to make its residents help balance the consequences of the economic and financial crisis.

A non-deductible tax was withheld at a rate of 0.8% on all categories of income of individual persons (also on replacement income like sickness benefits and unemployment benefits) for the tax year 2011 (even though it was originally foreseen to withhold such a tax in 2012 as well).[8]

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at 1 January 2013) and must not replace another non-expatriate employee) for the expat tax regime to apply.

7. The law of 12 July 2013 relating to managers of alternative investment funds transposing Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Managers into Luxembourg law provides for a special regime on the remuneration of such fund managers.

8. With the law of 16 December 2011 on the budget of revenues and expenditures of the state for year 2012 (*Loi du 16 décembre 2011 concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2012*) Luxembourg abolished the crisis contribution for 2012 within the framework of signing an agreement on civil service reforms.

### 27.1.5. Abolishment of net wealth tax for individuals

The net wealth tax for individuals of 0.5% on their net assets was abolished from the tax year 2006 in the course of introducing the above-mentioned 10% WHT on interest income.

## 27.2. Corporate income tax

### 27.2.1. Common tax regime

#### 27.2.1.1. Decreasing tax rate and minimum income tax

Luxembourg's corporate income tax (CIT) rate and municipal business tax (MBT) rate have been constantly decreasing since 1999 from 37.45% down to 28.59% in 2010[9] (for companies situated in Luxembourg City).

Starting in 2011, Luxembourg introduced several measures to balance its national budget and public debt.[10] From 1 January 2011, the solidarity surtax[11] was increased from 4% to 5%, which has resulted in a rise of the total effective tax rate from 28.59% to 28.80%.

Furthermore, the above-mentioned measures also included the introduction of a minimum CIT of EUR 1,500 per fiscal year for Luxembourg residents, fully taxable corporate entities whose activity does not require a business licence and for which the sum of fixed financial assets, receivables on related entities, transferable securities and cash at bank exceeds 90% of their balance sheet[12] (i.e. the so-called Soparfi).

With effect from 1 January 2013, the minimum CIT for such corporations was increased to EUR 3,000 per annum and was extended to all other corporations (i.e. corporations other than the above-mentioned collective undertakings falling under the EUR 3,000 minimum CIT) having their registered seat or central administration in Luxembourg. For such other

9. B. Höfer and C. Alter, *Luxembourg's Minimum Flat Tax for Corporations*, Tax Notes International, Vol. 61, No. 11 (2011), pp. 853-857.
10. Draft law No. 6166 of 30 July 2010 (*Projet de loi n° 6166 du 30 juillet 2010*, p. 2).
11. I.e. contribution to the Employment Fund.
12. Law of 17 December 2010 introducing tax measures relating to the financial and economic crisis (*Loi du 17 décembre 2010 portant introduction des mesures fiscales relatives à la crise financière et économique*, Mémorial A n° 247, 31 décembre 2010, p. 4095, article 2).

corporations the minimum CIT will range from EUR 500 to EUR 20,000 depending on the total balance sheet of the company.[13] Additionally, this was followed by an increase of the contribution made by corporations to the solidarity surtax from 5% to 7%. This increase resulted in a rise of the aggregate CIT payable from a rate of 28.80% to 29.22% (for Luxembourg City), even though the rate itself remained unchanged.

#### 27.2.1.2. Abolishment of the capital duty

The law of 19 December 2008[14] abolished the capital duty (which was levied before at a rate of 0.5%[15] on the capital contributed to commercial and civil entities) in Luxembourg and replaced this with a fixed registration duty of EUR 75. This fixed capital duty applies for the incorporation of a LuxCo and for any amendments to the articles of incorporation of a LuxCo.

### 27.2.2. Specific activity regimes

#### 27.2.2.1. Transfer pricing practice

In 2011, the tax authorities published two important circulars[16] (together, the "Transfer Pricing Circulars") relating to the tax treatment of intra-group financing transactions at the level of affiliated companies.

Under Article 56 LITL and according to the transfer pricing guidelines of the Organisation for Economic Co-operation and Development (OECD), any activity carried out between related parties should be remunerated at arm's length according to the functions performed. Specifically, under the Transfer Pricing Circulars, companies performing a back-to-back financing activity must realize an arm's length margin on this activity.

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13. Law of 21 December 2012 / Circular of the Director of the tax authorities LITL No. 174/1 of 1 August 2013 (*Loi du 21 décembre 2012*, Mémorial A n° 270, 28 décembre 2012, p. 3831, article 2 / *Circulaire du directeur des contributions L.I.R. – n° 174/1 du 1er août 2013*).
14. Law of 19 December 2008 (*Loi du 19 décembre 2008*, Mémorial A n° 207, 24 décembre 2008, p. 3136).
15. Such rate was decreased from 1 January 2008 from 1% to 0.5%.
16. Circular of the Director of the tax authorities LITL No. 164/2 of 28 January 2011 and Circular of the Director of the tax authorities LITL No. 164/2bis of 8 April 2011 (*Circulaire du directeur des contributions L.I.R. – n° 164/2 du 28 janvier 2011 et Circulaire du directeur des contributions L.I.R. – n° 164/2bis du 8 avril 2011*).

An advance pricing agreement (APA) filed with the Luxembourg tax authorities securing this margin[17] may only be issued to intra-group financing companies which have sufficient substance[18] in Luxembourg and which bear the risks linked to the financing activities.[19]

#### 27.2.2.2. Intellectual property regime

With the intellectual property (IP) regime, which came into force on 1 January 2008 by the introduction of Article 50bis in the LITL, Luxembourg offers an 80% exemption on the net income arising from the use of or the right to use copyright on software, patents, trademarks, domain names, designs or models (hereinafter intellectual property rights (IPR)) acquired[20] or created by a LuxCo or a Luxembourg permanent establishment after 31 December 2007. Furthermore, the exemption also applies to net capital gains realized on such IPR. Applying this special IP regime, the effective tax rate for such IP income is 5.84% for the tax year 2013.[21]

## 27.3. Value added tax

### 27.3.1. Introduction

The present value added tax (VAT) regime relies mainly on Directive 2006/112/CE of 28 November 2006, which partly rewrote and completely reorganized the old Sixth VAT Directive of 17 May 1977. The Sixth VAT Directive of 17 May 1977 was implemented in Luxembourg by the law of 12 February 1979 on VAT,[22] as amended (the “LTVA”).

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17. Margin is secured for 5 years.
18. A majority of LuxCo’s board members – those able to take binding decisions – should be resident in Luxembourg, LuxCo should not be viewed as being tax resident in another state, LuxCo must have its own bank account at a Luxembourg credit institution or a Luxembourg branch of a foreign credit institution, etc.
19. The company’s equity (share capital and reserves) must be appropriate with regard to the functions it carries out, the assets being invested and the risks it assumes, i.e. at least 1% of the nominal value of the loan being granted, but without exceeding EUR 2 million.
20. IP should not be acquired from a related party according to the definition mentioned in the Circular of 5 March 2009 on Article 50bis LITL.
21. On 5 March 2009, the Luxembourg tax authorities published a circular (*Circulaire du directeur des contributions L.I.R. – nº 50bis/1 du 5 mars 2009*) on the Luxembourg IP regime, which aimed to provide some guidance regarding the interpretation of this partial exemption regime pursuant to Article 50bis LITL.
22. Law on Value Added Tax (*Loi concernant la taxe sur la valeur ajoutée*).

Since the implementation of the "VAT package" on 1 January 2010,[23] new rules on the place of taxation of services[24] apply in Luxembourg.

### 27.3.2. E-books

A super-reduced VAT rate of 3% applies in Luxembourg to physical books, journals, newspapers, etc. In December 2011, the Luxembourg government issued a circular[25] stating that the reference to books in the LTVA should be understood as including e-books. Before this Circular, the supply of digitized products fell within the meaning of electronically supplied services, subject to the normal VAT rate. The European Commission has decided to refer Luxembourg (and France) to the Court of Justice of the European Union (ECJ) regarding the application of reduced rates of VAT to e-books (Case C-502/13). The decision of the ECJ is still pending.

### 27.3.3. E-services and VAT

Luxembourg is currently home to many e-service providers as Luxembourg has an attractive way of applying VAT to these services. For services supplied to European customers, e-businesses duly established in the European Union are required to charge VAT on their services at the rate applicable in their country of establishment. With a rate of 15%,[26] Luxembourg has the lowest standard VAT rate in the European Union, which provides the opportunity to save costs, thus leading to more competitive sales prices. From 2015, Luxembourg will establish mandatory rules[27] for e-business under the VAT package. The new VAT rules will abolish the distinction between European and non-European companies providing their e-services to European customers because the VAT will be due at the place of the customer from 2015.

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23. Implemented into Luxembourg domestic law by the law of 10 November 2009 (*Loi du 10 novembre 2009 "Paquet TVA"*).
24. In this respect, most business-to-business supplies of services are taxed where the customer is situated rather than where the supplier is located. For business-to-consumer supplies of services, the place of taxation continued to be where the supplier is established.
25. Circular No. 756 of 12 December 2011 (*Circulaire n° 756 du 12 décembre 2011*).
26. Luxembourg's Prime Minister Xavier Bettel has recently confirmed the government's decision to increase Luxembourg's VAT rate by 2% to 17% from 1 January 2015.
27. As soon as a company provides e-services to a non-VAT-registered EU customer, regardless of whether a legal or natural person, it is bound to these rules.

## 27.4. Other taxes

### 27.4.1. Environmental taxes

Energy taxes are levied within the framework of the 2003/96/EC Energy Taxation Directive.[28]

### 27.4.2. Excises

Luxembourg levies excise duties on specific goods such as electricity, gas, oils, manufactured tobacco and alcohol.

### 27.4.3. Social security contributions

In Luxembourg, social security contributions must be paid both by employees and employers. It covers healthcare, sickness, accidents at work, maternity, unemployment, old-age pension, invalidity pension and survivor pension. Rates for employees range from 10.80% to 11.05% of the employment income. Rates for employers range from 12.72% to 14.89%.

### 27.4.4. Inheritance tax and gift tax

Inheritance tax is due on all the deceased's assets, except for real estate located outside Luxembourg if the last residence of the deceased was in Luxembourg (if not, transfer tax applies, which is charged only on the real estate located in Luxembourg).

Inheritance tax and transfer tax have progressive rates with a range between 0% and 48% depending on the degree of relationship between beneficiary and deceased and the value of the inherited property.

28. Transposed into Luxembourg law by the Ministerial Regulation of 5 August 2004, published in the Mémorial A No. 151 from 18 August 2004, and by the Law of 22 December 2006 concerning the state receipts and expenses budget for the financial year 2007 (*Loi concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2007*).

Gift tax is levied on the donee of a gift. If the donor is a Luxembourg resident, the tax is levied on any asset received. If the donor is a non-resident, the transfer tax is only levied on immovable property in Luxembourg.

Rates range from 1.8% for relatives in a direct line up to 14.4% for non-related persons.

## Notes

# Notes

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