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Luxembourg

PRIVATE CLIENT

Contributor

Atoz Tax Advisers



Romain Tiffon

Partner | romain.tiffon@atoz.lu

Marie Bentley

Chief Knowledge Officer | marie.bentley@atoz.lu

This country-specific Q&A provides an overview of private client laws and regulations applicable in Luxembourg.

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LUXEMBOURG PRIVATE CLIENT



1. Which factors bring an individual within the scope of tax on income and capital gains?

Under Luxembourg tax law, an individual is considered resident for Luxembourg tax purposes if he/she has either his/her domicile or his/her habitual abode in Luxembourg.

The term “domicile” under Luxembourg tax law is interpreted more restrictively than the “permanent home” as generally construed under double tax treaties, although the provisions are very similar. There is however no strict definition. Luxembourg tax law refers to the individual circumstances based on which it may be concluded that the individual has a domicile available to him/her and that he/she has retained it for his/her permanent use. The threshold under Luxembourg domestic tax law is relatively low so even the stay of an executive director/employee in a hotel for a few months or the use of a Luxembourg address for official Luxembourg purposes may constitute tax residency in Luxembourg. Even an apartment that is rented by the taxpayer himself or his/her spouse may constitute a domicile under Luxembourg tax law. In case of transferred/seconded individuals, the case is not clear-cut and depends on the individual fact pattern.

A habitual abode is assumed under Luxembourg tax law where an individual does not merely temporarily reside in Luxembourg. To determine the habitual abode, the circumstances must be examined as a whole; a continuous stay of more than six months (183 days) in any twelve-month period commencing or ending in a fiscal year invariably constitutes a habitual abode in Luxembourg under domestic tax law.

Apart from the above, tax residency is always assumed for executive directors and executive employees of a Luxembourg company involved in the day-to-day management of this Luxembourg company.

Finally, non-resident individuals may be subject to tax in Luxembourg if they earn Luxembourg sourced-income,

which may notably include income from employment physically exercised in Luxembourg or capital gains from the sale of real estate located in Luxembourg or of a participation of more than 10% in a Luxembourg company that is sold within six months of acquisition.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

A Luxembourg resident taxpayer is subject to income tax on the basis of his/her worldwide income, unless otherwise provided by double tax treaties.

For individuals, the tax rates range from 0% to 42%, with a surcharge of 7% for the employment fund and 9% for a taxable income of more than EUR 150,000 (EUR 300,000 for a household of two persons). Therefore, the marginal income tax rate for 2024 is 45.78%.

Taxable income is divided into eight different categories, which notably include (i) income from employment, (ii) capital income and (iii) miscellaneous income.

The tax year in Luxembourg starts on 1 January and ends on 31 December.

While tax on employment income is performed by way of withholding tax, individuals whose total annual income is above EUR 100,000 have to file a tax return. Personal income tax returns must be submitted by 31 December of the year following the relevant tax year.

Once a tax assessment is issued by the Luxembourg tax authorities, the taxes due must be paid within a month. A taxpayer may also be requested to pay quarterly instalments which are determined based on the last filed tax returns.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

A Luxembourg resident taxpayer who is employed in Luxembourg is subject to tax on his/her employment income that is withheld by the employer.

The rate of withholding tax will depend on two main factors: (i) the annual income and (ii) the personal situation of the employee.

The tax rates range from 0% to 42%, with a surcharge of 7% for the employment fund and 9% for a taxable income of more than EUR 150,000 (EUR 300,000 for a household of two persons). Consequently, the marginal income tax rate for 2023 is 45.78%.

Withholding tax also applies on dividend distributions made by Luxembourg corporate entities (other than those that are specifically excluded such as *sociétés de gestion de patrimoine familial* (SPF), undertakings for investments in risk capital (SICAR), undertakings in collective investments (UCI) and undertaking for collective investment in transferable securities (UCITS)) to Luxembourg resident individuals. The withholding tax rate on these distributions is 15% but this may be credited against the personal income tax liability of the recipient.

Withholding tax also applies to interest on certain debt that is paid by a Luxembourg paying agent to a Luxembourg resident individual. The withholding tax is a final one and applies at a rate of 20%.

Finally, directors' fees are also subject to a 20% withholding tax.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Under most double tax treaties concluded by Luxembourg, foreign-sourced investment income that is also taxed in a country that has concluded a treaty with Luxembourg will generally be exempt in Luxembourg. That exempt income will nevertheless be included for the purpose of determining the progressive rate of tax to be applied in Luxembourg.

When the exemption method is not the one that is applied, double taxation relief may be obtained under

the foreign credit method.

Where there is no double tax treaty, Luxembourg will provide a unilateral relief under the form of credit for foreign taxes against the Luxembourg tax paid on that income. This is only possible to the extent the tax that is levied in the other country is comparable to the Luxembourg personal income tax.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

Wealth tax for individuals was abolished in Luxembourg as from fiscal year 2006. The recently elected government has confirmed no wealth tax on individuals will be reinstated.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

Inheritance tax is due upon the death of an individual who has his/her domicile or centre of economic interests in Luxembourg at the time of death. The taxable basis for the inheritance tax is the fair market value of the inheritance assets which includes all worldwide assets (except any foreign property) that is reduced by the amount of liabilities.

The inheritance tax rates vary from 0% to 15% depending on the degree of relationship between the deceased and the heirs. This rate can nevertheless be increased incrementally depending on the value of the share received by the heir.

As regards gift taxes, donations that are made before a notary public are subject to registration duty, the rate of which depends on the nature of the relationship between the donor and the donee.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

Donations that are made before a notary public are subject to registration duty, the rate of which depends on the nature of the relationship between the donor and the donee. The rates vary between 1.8% for direct line donations and 14.4% for relationships which do not fall within the prior brackets.

Gifts that are deemed manual gifts (dons manuels) which are not made before a notary public are not subject to any gift tax (unless the donor deceases during the fiscal year when the gift is given, in which case it becomes part of the inheritance).

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Taxpayers who file a personal income tax return in Luxembourg may deduct certain expenses such as gifts or donations provided that the cash gifts are paid to public-interest organisations (a list of which is published by the Luxembourg direct tax authorities) and that the cash gift is of at least EUR 120. The total deduction that the taxpayer may claim cannot exceed 20% of the total net income (up to EUR 1 million). Any exceeding amount can be carried forward to the next two fiscal years.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

Where a non-resident individual directly owns Luxembourg real estate, rental income and capital gains realised upon disposal of that property will be subject to non-resident personal income tax in Luxembourg applying the same rules as those that are applicable to resident individuals.

Where a Luxembourg real estate asset is sold within two years following its acquisition, the capital gain (being the difference between the acquisition price and the selling price) is considered as a speculative gain and is subject to tax at the progressive rate of up to 42%. Where it is sold after a holding period of two years, the maximum rate is 21%. In all cases, the disposal benefits from a rebate of EUR 50,000 or EUR 100,000 (for individuals taxed collectively) which is available every ten years.

There is a property tax that is levied by the municipalities on built and unbuilt properties which are

owned by any individuals, whether resident or not, as of 1 January of the tax year.

10. Does your jurisdiction have any specific rules in relation to the taxation of digital assets?

Currently, Luxembourg does not have any specific rules in relation to the taxation of digital assets so they are, for the time being, considered as traditional securities.

11. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

Luxembourg levies a final withholding tax of 20% on certain interest income paid by Luxembourg paying agents and beneficially owned by Luxembourg resident individuals.

12. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

Luxembourg provides for an impatriate tax regime which aims at attracting highly qualified foreign workers to Luxembourg through specific tax provisions.

The Luxembourg impatriate tax regime allows to exempt, in whole or in part, costs the Luxembourg employer has to bear in relation with the change of residence of its employees, provided certain conditions are fulfilled.

At the level of the employee, all expenses related to his/her impatriation are tax exempt (i.e. not considered as a taxable benefit in kind).

The following expenses are notably covered by the impatriate regime:

- Moving expenses;
- Accommodation costs;
- School fees;
- Cost for an annual trip from Luxembourg to the home country for the employee and his/her family;
- Special travel costs (birth, wedding, death of a close family member);
- Tax equalisation;
- Impatriation allowance.

The main conditions to benefit from this regime are that:

- The individual should be considered as making a significant economic contribution to or should contribute to creating new high-value-added economic activities in Luxembourg;
- The base gross remuneration of the impatriate should amount to at least EUR 75,000 per year;
- In the previous five years, the individual did not reside in Luxembourg or within 150 km of the border and should not have been subject to personal tax on professional income in Luxembourg.

If all the conditions are fulfilled, the regime is available for a period of eight years.

The newly elected government indicated in its coalition agreement that there will likely be improvements to the impatriate tax regime in order to ease the recruitment and retention of foreign talents. As of the date of publication, no further indication of the content or of the timing was mentioned.

13. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

Establishing residence in Luxembourg is rather easy to achieve. Where an individual was not previously resident in Luxembourg, this may therefore lead to dual residency situations. To avoid dual residency situations, what will therefore be critical for an individual to ensure when establishing residence in Luxembourg will be to meet the tie-breaker rules in the relevant tax treaty (notably with the centre of vital interests).

14. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

In the absence of any wills stating otherwise, the rules of succession are as follows:

- Descendants, being children and grandchildren;
- Surviving spouse;
- Privileged ascendants being the mother, father, brother and sister of the deceased;
- Ascendants other than the privileged ones;

- Other collateral relatives;
- The State.

Where the deceased has both a surviving spouse and descendants, the surviving spouse can either receive a usufruct right giving the right to live free of charge in the home where the spouses lived together or a child's share in the estate which may not be less than one quarter thereof.

Luxembourg operates a system of forced heirship whereby relatives will automatically be able to claim a proportion of the estate notwithstanding any provisions stating otherwise in a will: 1/2 of the estate will be reserved to the children if there is one child, 2/3 if there are two children, and 3/4 if there are three or more children.

15. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

The community acquisitions regime is the statutory matrimonial regime which provides for common property regarding the acquisitions performed during the marriage but for a separation of the property for any assets owned by each spouse prior to the marriage or those inherited by gifts during the marriage.

Spouses can nevertheless decide not to be subject to the statutory regime by concluding a nuptial agreement which is nevertheless subject to certain restrictions that are based on the civil code, notably in regard to parental authority. Spouses can opt for a community of property where all current and future property is common, or for a separate property regime where the spouses have no common property or for a participation in acquisitions property.

Nuptial agreements must be redacted before a notary public and are made public.

Marriage is dissolved notably by death. This liquidation requires the division of assets and liabilities with a sharing thereof between the surviving spouse and the heirs in the case of death. Where a marriage contract was concluded providing for a separation of assets, there is in principle no property that is in common so that the death of one spouse does not result in the liquidation of the assets.

16. What factors cause the succession law

of the jurisdiction to apply on the death of an individual?

Inheritance tax is levied on the total net value of the assets (being the fair value reduced by liabilities attached to these assets) that are inherited following the death of an inhabitant of Luxembourg, which is defined as a person who, at the time of death, had his/her domicile or centre of economic interests in Luxembourg. This inheritance tax is levied irrespective of where the heirs are resident.

As regards real estate not located within Luxembourg, no inheritance tax is payable thereon.

17. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

Given that there are no tax treaties with regards to inheritance tax or gift tax, Luxembourg grants unilateral relief under the form of exemptions to mitigate the risk of double taxation.

18. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

Where an individual deceases intestate, the assets are distributed according to the order set forth by law starting with the descendants, followed by the surviving spouse.

A will enables anyone to decide on how the assets will be distributed taking into account the fact that there are forced heirs, i.e. heirs whose portion of the estate is considered as being reserved. It is only the portion of the estate that is not reserved which can be distributed according to the provisions of the will.

Wills must be (i) handwritten, (ii) notarised or (iii) sealed.

Wills that are handwritten must comply with the following conditions: they must be entirely handwritten, dated and signed by the testator. Where a handwritten will is registered with the central register of last wills and testaments with the Luxembourg Registration Authorities, a fee is payable.

A notarised will is received either by two notaries or by

one notary alongside two witnesses. A notarised will is compulsorily registered with the central register of last wills and testaments.

Finally, a sealed will is one that is presented before two witnesses by the testator in a closed and sealed format to a notary public.

19. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

For an individual who dies intestate or where the will does not name an executor, the president of the local district court where the deceased resided and died will appoint a notary public to administer the estate.

20. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

Luxembourg law allows individuals to create fiduciary agreements, private foundations, family companies and family partnerships to hold, administer and regulate successions. There are no provisions under Luxembourg law to create trusts though Luxembourg law recognises foreign trusts.

Under Luxembourg law, there are solutions for managing private wealth that can take the form of (i) a contractual arrangement (such as a fiduciary agreement, or a life insurance product) or (ii) a corporate arrangement (such as a partnership structure established as either a special limited partnership or a simple limited partnership, a *société de gestion de patrimoine familial* or wealth management company or a traditional corporate entity). Depending on the amounts managed, it may also be possible to structure the wealth of individuals via supervised products such as the undertaking for investment in risk capital (SICAR), the specialised investment fund (SIF) or the reserved alternative investment fund (RAIF).

The choice of the most optimal structure will depend on many factors, including but not limited to, the amounts that the individual wishes to dedicate to a given product, the assets that are at stake, the expected cash flow, the

distribution strategy during the life of the individual and how this interacts with the estate planning.

21. How are these structures constituted and what are the main rules that govern them?

Corporate products available for private wealth management will be constituted according to Luxembourg corporate law, and where this is a supervised or regulated product according to regulatory law. For example, a traditional corporate structure will have to comply with Luxembourg company law of 10 August 1915 as amended whereas a Luxembourg reserved alternative fund will also have to comply with the provisions of the law of 23 July 2016.

Contractual products will have to comply with the legal provisions applicable thereto so that fiduciary or trust contracts will need to satisfy the requirements of the law of 27 July 2003 ratifying the Hague Convention on the law applicable to trusts and their recognition. A fiduciary contract is a contract by which a person, the *fiduciant* or settlor, agrees with another person, the fiduciary or trustee, that, subject to the obligations determined by the parties, the fiduciary becomes the owner of assets which shall form a fiduciary property. The fiduciary will have to transfer the property to a designated person at the end of the contract. It is worth noting that the fiduciary law provides that a fiduciary or trustee can only be a credit institution, an investment firm, an investment company with variable or fixed share capital, a securitisation company, a fiduciary representative acting in the context of a securitisation transaction, a management company of common funds or of securitisation funds, a pension fund, an insurance or reinsurance undertaking or a national or international public body operating in the financial sector.

22. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

Corporate products which involve the set-up of a vehicle structure will need to be registered before a notary public. The level of information and the content thereof will vary depending on the structure. For example, where a private limited liability company is used, the name of the shareholder(s) and of the manager(s) will be publicly available and the company will need to publish annual accounts that are publicly available. The public limited liability company's shareholders may not be public

information, but its annual accounts are. On the other side of the spectrum, the fact that a special limited partnership has been established will be public information, but the content of the limited partnership agreement will not. The special limited partnership does not need to produce annual accounts. Luxembourg also introduced a law in January 2019 on the register of beneficial owners that imposes on Luxembourg entities that are registered with the Luxembourg trade and commerce register ("**RCS**") an obligation to identify, obtain and maintain up-to-date information regarding their beneficial owners, which is defined as being a natural person that owns or controls that entity with a percentage that exceeds 25% of the share capital. This information is to be filed with the RCS.

Unless they concern immovable property located in Luxembourg, airplanes, ships or boats for circulation on internal waterways registered in Luxembourg or rights on such asset which must be transcribed, recorded or registered, contractual products on the other hand do not need to be registered with any governmental authorities (even if the use thereof is made by public deeds, before the courts or before any other Luxembourg authorities) and the information pertaining to these products is not publicly available (save that in any public register in which the capacity of owner is inscribed, irrespective of the reason or circumstance, the fiduciary and the trustee must require that the capacity in which they act be mentioned after the indication as owner).

23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

As regards corporate products, the structure may be either fully taxable (S.à r.l., SCA or SA) or tax transparent (SCS or SCSp). In addition, irrespective of the legal form that is chosen, the vehicle may opt for a special regulatory regime (SPF, SICAR, SIF) that may provide for a particular tax regime. The tax treatment of the shareholders or unitholders will depend on where the beneficiaries are resident and how they analyse the Luxembourg vehicle.

There is no specific tax regime applicable to a fiduciary agreement so general tax principles should apply and notably the substance over form principle. Therefore, prior to the asset becoming a fiduciary property, the beneficial ownership is normally with the *fiduciant* or settlor and is transferred to the beneficiary when it becomes a fiduciary property.

24. Are foreign trusts, private foundations, etc recognised?

Foreign constructs such as trusts that are governed by the law of another jurisdiction are recognised in Luxembourg under the Hague Convention on the law applicable to trusts and their recognition.

25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Luxembourg generally adopts a substance over form approach in tax matters so that any foreign form that is not specifically recognised as such for tax purposes will be assessed based on this substance over form principle which is laid down in the Luxembourg Adaptation Law. Pursuant to that principle, an entity or instrument will be qualified according to its fundamental economic nature rather than according to its name or civil law qualification. As regards foreign entities, their opacity or transparency will be assessed based on a comparability test which will compare the legal characteristics of the foreign entity with Luxembourg entities and in light thereof will qualify them either as transparent or opaque for Luxembourg tax purposes.

26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

In a fiduciary contract, the assets that make up the fiduciary property are segregated from the personal property of the fiduciary as well as from any other fiduciary property. The assets which make up such fiduciary property can only be attached by the creditors whose rights have arisen in connection with the fiduciary property. They do not form part of the personal property of the fiduciary in case of the fiduciary's liquidation or bankruptcy or in any other situation of the fiduciary generally affecting the rights of its creditors. Equally, they no longer form part of the settlor's property therefore resulting in a shelter of the fiduciary property from the creditors of the settlor (fiduciant) and beneficiary.

27. What provision can be made to hold and manage assets for minor children and grandchildren?

The provision to make in order to hold and manage assets for minor children and grandchildren is generally

realised by way of any of the structures to manage private family wealth described under question 20.

28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

Luxembourg law has three protection regimes for adults which are put in place and controlled by the guardianship judge (*juge des tutelles*):

- safeguard of justice: it is aimed to be limited in time and often constitutes the transition regime until the set-up of curatorship or guardianship;
- curatorship: it applies to people whose alteration of mental faculties is such that they need to be assisted by a curator in the acts of civil life (but that do not require the individual to be placed under guardianship);
- guardianship: it applies to people who can no longer express themselves and who therefore need to be represented by a guardian.

Requests for these three protective regimes must be addressed to the *juge des tutelles* (guardianship judge) and must be supported by medical evidence.

29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

It is possible to establish a private foundation in Luxembourg which must be approved by a Grand-Ducal decree. The foundation must serve a general interest supporting causes such as philanthropic, educational and artistic ones, to name a few.

In terms of formalities, this requires a notarial deed and an application which must be submitted to the Ministry of Justice that will approve the application having consulted the Ministry of Finance. The application should notably include a note outlining the project thesis of the foundation for its first three years of existence alongside a financing plan.

30. What is the jurisdiction's approach to information sharing with other jurisdictions?

Luxembourg has now become a champion when it comes to the exchange of information. It has notably implemented the intergovernmental agreement with the United States in relation to the implementation of the Foreign Account Tax Compliance Act (“**FATCA**”) in Luxembourg.

On a European level, it implemented the Directive on Administrative Cooperation (“**DAC**”) by a law dated 29 March 2013 which introduced an exchange of information upon request. It is worth noting that while the DAC initially provided for an exchange of information upon request, its subsequent amendments have been transposed into Luxembourg domestic law and now includes spontaneous and automatic exchanges of information.

The latest initiatives focus on automatic exchange of information. Luxembourg implemented the Common Reporting Standards (“**CRS**”) by transposing the 1st amendment to the DAC which became effective as from

1 January 2016 at the same time as the multilateral competent authority agreement providing for an automatic exchange of information under the CRS.

As regards individuals, the subsequent amendments to the DAC had limited impact except the more recent automatic of exchange of information initiatives encompass the sixth and seventh amendments to the DAC on respectively digital platforms and cryptocurrency which, broadly speaking, require digital businesses to report information about their users (including individual) to local tax authorities.

31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

The latest coalition agreement of the newly elected government has not announced any material legislative changes in regard to private wealth management.

Contributors

Romain Tiffon
Partner

romain.tiffon@atoz.lu



Marie Bentley
Chief Knowledge Officer

marie.bentley@atoz.lu

