LUXEMBOURG

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1. INTRODUCTION

a. Forms of Legal Entity

Corporate Income Tax ("CIT") applies to corporate entities, including: the public limited liability company (*société anonyme*), the Simplified Stock company (*société par actions simplifiée*), the partnership limited by shares (*société en commandite par actions*), the private limited liability company (*société à responsabilité limitée*), the simplified private limited liability company (*société à responsabilité limitée simplifiée*), the European Company (*société européenne*). CIT does not apply to tax transparent entities, such as general partnerships, limited partnerships or European economic interest groupings. The latter are not subject to CIT. Instead, the partners are taxed according to their share in the partnership's income.

As far as Municipal Business Tax ("MBT") is concerned, it also applies to partnerships, as it is levied on any income generated on a Luxembourg commercial activity. Partnerships may be subject to MBT if either they perform a commercial activity or, under certain conditions, if their activity is deemed commercial because of the commercial nature of their partners. For example, the common limited partnership (*Société en Commandite Simple, SCS*) and the special limited partnership (*Société en Commandite Spéciale, SCSp*) are considered as performing an economic activity if at least one of their general partners is a capital company holding an interest of at least 5%. When SCSs and SCSps qualify as alternative investment funds within the meaning of the alternative investment fund management directive ("AIFMD"), their activity is never considered as commercial, meaning that they will only be subject to MBT if their activity is commercially tainted because of the commercial nature of their partners.

b. Taxes, Tax Rates

The CIT rate is 17% for taxable income exceeding EUR200,000. In addition, the reduced CIT rate of 15% applies to taxable corporate income not exceeding EUR175,000. Finally, income exceeding EUR175,000 without exceeding EUR200,000 is taxed at an intermediary rate between 15% and 17%.

Luxembourg corporate entities are also subject to a surcharge (contribution to the employment fund) corresponding to 7% of the CIT. Finally, they are subject to MBT on their income (at a rate of 6.75% for Luxembourg City). This brings the global corporate tax rate to 24.94% (17% + 1.19% + 6.75%) and 22.80% (15% + 1.05% + 6.75%) for companies subject to the reduced CIT rate of 15%.

Corporate entities are subject to net wealth tax ("NWT"), which is a state tax levied on the net wealth of companies, charged on their so-called "unitary value" (generally equal to the net asset value of the company – subject to certain exemptions and adjustments). The NWT rate is 0.5% on the part of the net wealth which is lower or equal to EUR500 million and 0.05% on the part of the net wealth exceeding EUR500 million. A minimum NWT of EUR4,815 applies to companies with financial assets, transferable securities bank deposits and receivables against related parties exceeding both EUR350,000 and 90% of their total balance sheet. In the case where the company does not meet these requirements, the minimum NWT varies between EUR535 and EUR32,100, depending on the level of the total balance sheet.

c. Common divergences between income shown on tax returns and local financial statements

In Luxembourg, the values reflected in the tax balance sheet of a company generally correspond to the values of the local financial statements, unless a different valuation is required for tax purposes.

The tax profit corresponds to the difference between the net assets invested at the end of the financial year and the net assets invested at the beginning of the financial year, increased by the withdrawals made and decreased by capital contributed during the period.

2. RECENT DEVELOPMENTS

a. BEPS related developments

- The Luxembourg law of 7 March 2019 ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("MLI").
- The law of 21 December 2018 implemented the EU Anti-Tax Avoidance Directive ("ATAD"). The aim of ATAD is to implement at EU level the Base Erosion and Profit Shifting ("BEPS") recommendations made by the OECD and the G20 in October 2015. The new law introduces the following ATAD measures: a limitation to the tax deductibility of interest payments, an amendment to the existing general anti-abuse rule ("GAAR"), the introduction of non-genuine arrangement CFC rules, a framework to tackle hybrid mismatches and new exit taxation rules.
- The law of 21 December 2018 also introduced the following non-ATAD (but still BEPS-related) tax changes: as from 2019, the tax neutrality provision applicable to a specific category of exchange operations involving the conversion of a loan or other debt instruments into shares of the borrower has been abolished. In addition, the permanent establishment definition has been amended.
- The law of 20 December 2019 implemented the amended anti-hybrid rules of the EU Anti-Tax Avoidance Directive 2 ("ATAD 2") which are in force in Luxembourg since 1 January 2020.
- The law of 25 March 2020 implemented the EU Directive of 25 May 2018 as regards mandatory exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6").

b. COVID-19 crisis related tax developments

The law of 24 July 2020 implemented the optional deadline extensions of EU Directive of 24 June 2020 to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic. The law introduced mainly a six month deadline extension for reporting under the mandatory disclosure regime applicable to tax intermediaries ("DAC6") and a three month deadline extension for reporting under both the Common Reporting Standards ("CRS") and the Foreign Account Tax Compliance Act ("FATCA").

The Luxembourg Government has also concluded some agreements with its three bordering countries, Belgium, France and Germany, in order to anticipate the income tax implications for cross border workers having to work from home due to the COVID-19 crisis. The protocols to the double tax treaties concluded by Luxembourg with Belgium, France and Germany provide rules allowing cross border workers to perform their activity outside of their employment State for a maximum amount of days (19 days in Germany, 24 days in Belgium and 29 days in France) while remaining taxable in their employment State (Luxembourg in most cases). Given that the maximum amount of days could easily be exceeded during the COVID-19 crisis due to travel restrictions and the requirement of "social distancing", the Luxembourg Government reached an agreement with these three countries according to which the days spent outside of Luxembourg due to the COVID-19 crisis would not be taken into account.

3. SHARE ACQUISITION

a. General Comments

To take control over a business it can be envisaged to either buy the shares of the company operating the targeted business (share acquisition) or buy the business directly (asset acquisition). The main tax advantage of a share purchase is the tax cost since asset sales are generally fully taxable for the seller while share sales are generally tax exempt. Furthermore, share deals enable the target company to continue to carry forward its losses.

b. Tax Attributes

In Luxembourg, a share deal enables the target company to continue to carry forward its losses. While losses incurred as from 2017 can only be carried forward over 17 years, losses incurred before 2017 may be carried forward indefinitely. In practice, the Tax Authorities may deny the carry forward of losses in case of both a change of control (the shares of the company are transferred to new shareholder(s)) and a change of activity (the loss making activity is no longer performed after the change of control and a new profitable activity is started) if it can be evidenced that the sole purpose of the transaction was to use the losses of the target in order to offset income derived from a new profitable activity.

c. Tax Grouping

Tax consolidation (vertical or horizontal) is allowed upon request for Corporate Income Tax ("CIT") and Municipal Business Tax ("MBT") purposes, but not for Net Wealth Tax ("NWT") purposes. Tax consolidation is available only upon filing a written request with the Luxembourg Tax Authorities. The fiscal consolidation becomes effective retrospectively as of the beginning of the fiscal year during which the consolidation was requested. The consolidation has to be maintained during at least five tax years.

Each consolidated company files its own tax returns. In addition, the integrating entity files a single tax return combining the individual results of the consolidated entities with corrections applied in order to eliminate from the taxable result of the group any double deduction or double taxation resulting from the application of the tax consolidation regime. Intercompany operations do not need to be eliminated. Losses incurred before the tax consolidation is put in place can be used during the consolidation by the integrating entity but only up to the profit realised by the company that incurred them. Losses incurred during the tax consolidation can only be used by the integrating entity during as well as after the tax consolidation. Where the tax consolidation is "broken" before the five year period has elapsed, the entities forming part of the consolidation will be retroactively taxed on a standalone basis.

d. Tax Free Reorganisations

Luxembourg corporate income tax law provides for a special tax neutral regime applicable to certain qualifying corporate restructurings (such as mergers, demergers, etc.), based on the tax regime of the EU Merger Directive 2009/133 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

In Luxembourg, tax neutral mergers are possible for purely domestic reorganisations or if a Luxembourg company transfers its assets to another EU company in the course of a merger or demerger involving a company from another EU member state. A cash payment of a maximum of 10% of the nominal value of the shares allocated to the shareholders of the absorbed company is allowed. The merger is tax neutral only to the extent Luxembourg retains the right to tax the deferred gain in the future, which generally means that a permanent establishment has to be maintained in Luxembourg.

If the absorbing company has a participation in the absorbed company which is cancelled at the time of the merger, this participation is deemed to be sold at fair market value, even if the merger is realised in a tax neutral manner. A tax exemption is available based on the participation exemption regime under certain conditions when the absorbing company holds a qualifying participation of 10%, or has an acquisition value of at least EUR1.2 million in the absorbed company for at least 12 months. In addition, the gain realised upon the cancellation of the participation in the absorbed company is tax exempt if the absorbing company held a participation of at least 10% in the subsidiary, without any holding period requirement.

A tax neutral demerger is possible for purely domestic reorganisations under the condition that all or part of the assets of a company are transferred to several Luxembourg resident capital companies in the course of the demerger. Under similar conditions, a tax neutral demerger is available in an EU context. The partners or shareholders of the demerged company have to receive shares in the beneficiary companies on a basis which is proportional to their participation in the demerged company. A cash payment not exceeding 10% of the nominal value of the shares allocated to the shareholders of the absorbed company is allowed. The assets transferred have to constitute an enterprise or a branch of activity.

e. Purchase Agreement

The use of tax grouping and debt pushdown can be considered. Please refer to section 3.c. above and section 6.c. iv. below in this respect.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are no transfer taxes levied on a share sale unless the securities that are sold are those in a Luxembourg tax transparent entity (*e.g. société civile*) holding at least one Luxembourg real estate asset. In such a case, registration duty applies in the same way as it would in the case of a direct sale of the real estate asset, (i.e. registration duty of 6% on the value of the real estate), increased by a transcription tax of 1% (or 4% for certain real estate assets located in Luxembourg City). The deadline for registering and paying the registration duty is three months following the date of the deed. The authority qualified to receive the payment is the indirect tax authority (*Administration de l'enregistrement, des domains et de la TVA*).

g. "Purchase accounting" applicable to share acquisitions

The acquisition method (formerly called "the purchase method" in the 2004 version of IFRS 3) can be applied to a direct acquisition of shares in which the acquiror obtains control of another business in consolidated accounts under Luxembourg Generally Accepted Accounting Principles ("GAAP") or, if IFRS is chosen, as an accounting standard under normal IFRS principles. However, the practical application in both cases differs in several ways (especially in measurement principle for shares held in the capital of an undertaking which is part of the consolidation scope).

h. Share Purchase Advantages

As mentioned above, except in cases of abuse, a share deal enables the target company to continue to carry forward its losses. However, losses incurred as from 2017 can only be carried forward over 17 years. Capital gains realised upon the sale of shares can benefit from the participation exemption regime under certain conditions.

There are no tax clearance certificates as such. However, it may be possible to accelerate the issue of final assessments on an ad hoc basis.

i. Share Purchase Disadvantages

In a share deal, the assets in the company sold will not be revalued at fair market value, (i.e. there is no step-up in the basis of the assets).

4. ASSET ACQUISITION

a. General Comments

The second way to take control over a business is to buy the targeted business directly (asset acquisition). The main disadvantage of an asset acquisition is the tax cost since asset sales are generally fully taxable for the seller. In addition, an asset acquisition does not enable a purchaser to use the losses carried forward. However, in an asset acquisition, the purchaser will have a higher basis for depreciation in the future.

b. Purchase Price Allocation

Since there are no specific rules regarding the allocation of the total acquisition price of a business to the individual assets, the tax treatment will generally follow the Luxembourg accounting treatment.

c. Tax Attributes

i Upon acquisition

The acquisition cost of the assets acquired is in principle reported in the balance sheet, as part of the acquisition price of the asset. Therefore, acquisition costs can be depreciated. If the acquisition cost is not recorded as a "fixed asset" but as an expense, in principle, there is no limitation to its deductibility. Since the exit tax rules of ATAD entered into force (i.e. on 1 January 2020), in case of a transfer of assets or business carried on by a permanent establishment to Luxembourg, Luxembourg has to follow the value considered by the other jurisdiction as the starting value of the assets for tax purposes, unless this does not reflect the market value.

ii Upon divestiture

In principle, gains arising on the disposal of business assets are fully subject to tax in Luxembourg. However, based on article 54 of the Luxembourg income tax law ("LITL"), the taxation of capital gains realised upon the disposal of fixed assets consisting of real estate or on the sale of non-depreciable assets may be deferred until the disposal of a replacement asset under (mainly) the following conditions: the sale proceeds have to be reinvested into a newly acquired or newly created fixed asset which has to be allocated to a permanent establishment of the Luxembourg entity located in any EEA Member State. In addition, the Luxembourg company has to remain tax resident in an EEA Member State.

The taxation of capital gains can be deferred, upon request, until the effective realisation in the case of transfers of assets within the meaning of article 2 of EU Directive 2009/133, (i.e. where a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer).

Since the exit tax rules of ATAD entered into force (i.e. on 1 January 2020), Luxembourg taxpayers are subject to tax at an amount equal to the market value of the transferred assets at the time of the exit less their value for tax purposes. This applies where there is:

(i) a transfer of assets from the Luxembourg head office to a permanent establishment located in another country, but only to the extent that Luxembourg loses the right to tax the transferred assets;

(ii) a transfer of assets from a Luxembourg permanent establishment to the head office or to another permanent establishment located in another country, but only to the extent that Luxembourg loses the right to tax the transferred assets;

(iii) a transfer of tax residence to another country except for those assets which remain connected with a Luxembourg permanent establishment; and finally

(iv) a transfer of the business carried on through a Luxembourg permanent establishment to another country but only to the extent that Luxembourg loses the right to tax the transferred assets.

Where there are transfers within the European Economic Area ("EEA"), the Luxembourg taxpayer may request to defer the payment of exit tax by paying in equal instalments over five years.

Finally, with effect as from 1 January 2021, an annual 20% real estate levy (*prélèvement immobilier*) has been introduced. It applies to income and gains arising from real estate assets situated in Luxembourg and realised either directly or indirectly (through tax transparent entities) by certain categories of exempt investment vehicles (i.e. undertakings for collective investment, specialised investment funds and reserved alternative investment funds) which are "opaque" from a Luxembourg tax perspective.

d. Tax Free Reorganisations

Luxembourg corporate income tax law provides for a special tax neutral regime applicable to certain qualifying corporate restructurings (such as mergers, demergers, etc.), based on the tax regime of the EU Merger Directive 2009/133 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States. Tax neutral mergers are possible for purely domestic reorganisations or if a Luxembourg company transfers its assets to another EU company in the course of a merger or demerger involving a company from another EU member state. A cash payment of a maximum of 10% of the nominal value of the shares allocated to the shareholders of the absorbed company is allowed. The merger is tax neutral only to the extent that Luxembourg retains the right to tax the deferred gain in the future, which generally means that a permanent establishment has to be maintained in Luxembourg.

The transfer of permanent establishments located outside Luxembourg is also covered: if the permanent establishment is located in an EU treaty country, Luxembourg exempts the transfer of this permanent establishment by a Luxembourg company. In the absence of a tax treaty between said country and Luxembourg, Luxembourg retains the right to tax the gain on the transfer of this permanent establishment.

If the absorbing company has a participation in the absorbed company which is cancelled at the time of the merger, this participation is deemed to be sold at fair market value, even if the merger is realised in a tax neutral manner. A tax exemption is available based on the participation exemption regime when the absorbing company holds a qualifying participation of 10%, or has an acquisition value of at least EUR1.2 million in the absorbed company for at least 12 months. In addition, the gain realised upon the cancellation of the participation in the absorbed company is tax exempt if the absorbing company has had a participation of at least 10% in its subsidiary, without any holding period requirement. A tax neutral demerger is possible for purely domestic reorganisations under the condition that all or part of the assets of a company are transferred to several Luxembourg resident capital companies in the course of the demerger. Under similar conditions, a tax neutral demerger is available in an EU context. The partners or shareholders of the demerged company have to receive shares in the beneficiary companies on a basis which is proportional to their participation in the demerged company. A cash payment not exceeding 10% of the nominal value of the shares allocated to the shareholders of the absorbed company is allowed. The assets transferred have to constitute an enterprise or a branch of activity.

e. Purchase Agreement

In an asset deal, standard sale and purchase agreement provisions could be expected.

f. Depreciation and Amortisation

For tax purposes, only straight line depreciation is available for intangible assets. The goodwill may be depreciated over a 10 year period.

g. Transfer Taxes, VAT

Contributions of real estate assets situated in Luxembourg in exchange for consideration other than shares are subject to registration duty at a rate of 6% and to transcription tax of 1% (or 4% for certain real estate assets located in Luxembourg City). Contributions of real estate assets situated in Luxembourg in exchange for shares are subject to registration tax at the reduced rate of 0.6% and to transcription tax of 0.5% (or 0.8% for certain real estate located in Luxembourg City).

Contributions of assets other than real estate in exchange for shares do not trigger any registration duty. Contributions predominantly remunerated by the issuance of shares and by consideration other than shares are also not subject to proportional registration duty to the extent that the movable property is transferred in the context of the contribution of all assets and liabilities or of one or several lines of business. In all other cases, transfers other than real estate transfers as well as transfers of liabilities are subject to registration duty at the rates provided by the law on registration duties. The deadline for registering and paying the registration duty depends on the type of asset transferred. For real estate assets, the registration deadline is three months following the date of the deed. The authority qualified to receive the payment is the indirect tax authority (*Administration de l'enregistrement, des domains et de la TVA*).

As far as VAT is concerned, in principle, a transfer of assets falls within the scope of VAT, either as a supply of goods or as a supply of services. However, the transfer of a business as a going concern is not subject to VAT (17%) provided that certain conditions are met. Following a transfer, the new owner should be in possession of a business that can be operated as such.

Input VAT incurred in relation to VAT exempt asset deals or to share deals is in principle not deductible. Nevertheless and under certain conditions, input VAT could potentially be deductible. It is therefore important at early stage of the M&A transaction to design the cost structure in such a way that an optimal recovery of input VAT could be achieved.

h. Asset Purchase Advantages

In an asset deal, the purchaser will have a higher basis for depreciation in the future.

i. Asset Purchase Disadvantages

In an asset deal, the relatively high Luxembourg registration duty applicable on the disposal of certain assets (essentially real estate) has to be taken into account. The registration duties in an asset deal are higher than in a share deal. Finally, in an asset deal, the target's losses may not be carried forward by the purchaser.

Historical tax liabilities will not generally pass on an asset purchase.

The property taxation is not reset on an asset purchase.

5. ACQUISITION VEHICLES

a. General Comments

The structuring of investments may be achieved by using either an unregulated Luxembourg vehicle, a regulated Luxembourg vehicle or both a regulated and an unregulated vehicle. It can also be considered using both a Luxembourg master holding and several local investment companies.

b. Domestic Acquisition Vehicle

Investors contemplating to invest via an unregulated vehicle may consider using a so called "Soparfi" generally set up either as a public limited liability company (*société anonyme*) or as a private limited liability company (*société à responsabilité limitée*). The Soparfi is a fully taxable corporation that may, under certain conditions, benefit from the participation exemption regime.

Investors contemplating to invest via a regulated Luxembourg vehicle may consider, among others, depending on the type of investor (as certain vehicles are only available to a certain type of investor) and the type of investment (as there are restrictions in some cases), consider using the following investment vehicles which are exempt from any taxation on their income, but are subject to a so called "subscription tax" of either 0.01% or 0.05% on the value of their net assets: an alternative investment fund ("AIF") or a specialised investment fund ("SIF"), which is a multi-purpose investment fund dedicated to so called 'sophisticated investors'. Alternatively, sophisticated investors might consider using a SICAR (investment company in risk capital), if they intend to invest in risk capital only, which is either (when set up in corporate form) fully subject to Corporate Income Tax ("CIT") and Municipal Business Tax ("MBT") on its income as any other fully taxable Luxembourg corporate entity but benefits from an exemption from CIT and MBT on income and capital gains derived from transferable securities or (when set up in partnership form) is a fully tax transparent entity not to subject to any tax on its income. Finally, well informed investors might also consider using a reserved alternative investment fund ("RAIF") for structuring their investments, which combines the characteristics and structuring flexibilities of both the Luxembourg regulated SIF and the SICAR qualifying as an AIF managed by an authorised AIF manager ("AIFM"), except that RAIFs are not subject to prior authorisation from the Luxembourg financial regulator as they must be managed by a fully authorised AIFM. For tax purposes, depending on the activity they perform and the legal form chosen (corporate form or partnership), RAIFs are subject to either the same tax exemption regime as a SIF (and subscription tax) or the same tax regime as a SICAR.

c. Foreign Acquisition Vehicle

The use of a foreign acquisition vehicle is possible. However, it offers no real advantage and so would be unusual.

d. Partnerships and joint ventures

Investments may be structured via a Luxembourg partnership, for example as a common limited partnership (*Société en Commandite Simple,* "SCS") or as a special limited partnership (*Société en Commandite Spéciale,* "SCSp"). The main difference between the two limited partnership forms is that the SCSp has no legal personality and constitutes as such a Luxembourg solution which is as flexible as an Anglo-Saxon Limited Partnership. Both types of Luxembourg limited partnerships may be set up as either a non-regulated vehicles (be it an AIF or not) or as a regulated fund subject to the SIF, the SICAR or the RAIF regime.

e. Strategic vs Private Equity Buyers

A private equity acquiror will often use a local Bidco. A strategic acquiror will generally tailor the structure according to their existing presence in Luxembourg, if any.

6. ACQUISITION FINANCING

a. General Comments

Beside anti-money laundering and know your client considerations and/or requirements, there are no specific challenges for bringing funds to Luxembourg.

b. Equity

In Luxembourg, there are no specific tax incentives regarding the equity funding of assets (such as a notional interest deduction, for example). Still, Luxembourg is a prime holding location and is frequently used for structuring investments in and throughout Europe. Luxembourg companies are often operating as European investment platforms, holding participations and providing financing to the operating businesses. Luxembourg has an attractive participation exemption regime which applies under certain conditions to dividends and capital gains realised upon the sale of participations as well as to liquidation proceeds. Luxembourg has also a large network of double tax treaties (83 in force as of today).

From a Luxembourg tax perspective, a company is considered tax resident in Luxembourg if its statutory seat or its central administration (i.e. place of effective management) is located in Luxembourg. Luxembourg tax law does not include any additional specific substance requirements and in practice, the needs in terms of substance requirements are in most cases driven by the expectations of the foreign jurisdictions involved in the structure, meaning that the appropriate level of substance has to be determined on a case by case basis. However, this may change in the near future if the Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes is adopted at EU level and implemented into Luxembourg law. When Luxembourg is used as a holding platform, a sufficient level of substance is required in order to make sure that the general anti-abuse rule ("GAAR") of the EU Parent Subsidiary Directive or the GAAR of the ATAD, as implemented into Luxembourg law, will not apply, according to which tax benefits (e.g. dividend exemption or capital gain exemption) may be denied in case of arrangement or series of arrangements that, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage which defeats the object or purpose of the tax law, are not genuine having regard to all relevant facts and circumstances. In addition, specific substance requirements apply when a Luxembourg company performs an intra-group financing activity. Finally, should the Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes be adopted, minimum substance criteria will be required in order to ensure tax benefits under the EU Parent Subsidiary Directive, the EU Interest and Royalty Directive as well as under double tax treaties.

c. Debt

i Limitations on use of debt

Luxembourg tax law does not provide for any specific debt-to-equity ratio. However, in practice, for holding companies, a debt-to-equity ratio of 85:15 is required in respect of the funding of shareholdings. The ratio does not apply to third-party debt to the extent that shareholders do not provide any guarantees. Should the debt portion be exceeded, the related portion of interest may be considered as a hidden profit distribution, and thus, not deductible and potentially subject to the Luxembourg 15% dividend withholding tax (to the extent it is not reduced or exempt under the EU Parent Subsidiary Directive or a double tax treaty).

ii Limitations on interest deductions

Luxembourg has five types of limitations to the deductibility of interest on borrowings currently in force: (i) limitation related to the purpose of the expense, (ii) limitation based on transfer pricing rules, (iii) limitation based on the recharacterisation of the interest expense into a dividend, (iv) the limitation to interest deduction provided by the ATAD and (v) denial, under certain conditions, of the deduction of interest (and royalties) due to entities located in non-cooperative jurisdictions.

- Limitation related to the purpose of the expense: only expenses incurred exclusively for business purposes are tax deductible. The purpose of this rule is to draw a line between operational and personal expenses (a comment relevant mostly for individual commercial enterprises).
- Limitation based on transfer pricing rules: Luxembourg transfer pricing principles are defined in articles 56, 56bis and 164(3) of the LITL. Article 56 LITL provides a legal basis for transfer pricing adjustments where associated enterprises deviate from the arm's length standard. Article 56bis LITL complements Article 56 of the LITL, formalises the authoritative nature of the OECD TP Guidelines and provides for some definitions and guiding principles in relation to the application of the arm's length principle.
- Limitation based on the recharacterisation of the interest expense into a dividend: based on the "substance over form" approach, an instrument is qualified as debt or equity based on its economic nature – that is, not necessarily based on its legal qualification. If an instrument is requalified from debt into equity, the proceeds are no longer considered as interest but are instead considered as dividends for tax purposes and the payment will not be tax deductible. Article 164(2) LITL furthermore includes specific situations where interest might be recharacterised into dividends. Distributions of any kind made to holders of shares, founder's shares, parts bénéficiaires, parts de jouissance or any other titles, including variable interest bonds entitling the holder to a participation in the annual profits or the liquidation proceeds, are to be treated as dividend distributions and thus non-deductible.
- Limitation on interest deduction of the ATAD: under the Luxembourg interest limitation rules, the deductibility of "exceeding borrowing costs" is limited to a maximum of either 30% of the corporate taxpayers' earnings before interest, taxes, depreciation and amortisation ("EBITDA") or EUR3 million. "Exceeding borrowing costs" correspond to the amount by which the deductible "borrowing costs" of a taxpayer exceed the amount of taxable "interest revenues and other economically equivalent taxable revenues". Corporate taxpayers who can demonstrate that the ratio of their equity over their total assets is equal to or higher than the equivalent ratio of the group can fully deduct their exceeding borrowing costs (the so-called escape clause that should protect multinational groups that are highly leveraged). Moreover, the optional provision under ATAD according to which EBITDA and exceeding borrowing costs can be determined at the level of the consolidated group (in case several companies form a tax consolidation) has been introduced by the 2019 budget law with retroactive effect as from 1 January 2019. The interest limitation rule explicitly excludes financial undertakings and standalone entities

from its scope. Loans concluded before 17 June 2016 are also excluded from the restrictions on interest deductibility. However, this grandfathering rule does not apply to any subsequent modification of such loans. Moreover, loans used to fund long-term public infrastructure projects are excluded from the scope of the interest deduction limitation rule. The interest deduction limitation rule also provides for a carry forward mechanism in regard to both non-deductible exceeding borrowing costs and unused interest capacity. In case of corporate reorganisations such as mergers, exceeding borrowing costs and unused interest capacity carried forward can be continued at the level of the remaining entity.

- No deduction of interest due to entities located in non-cooperative jurisdictions: With effect as from 1 March 2021, interest and royalties due by Luxembourg corporate taxpayers are not tax deductible in Luxembourg if the beneficial owner of the interest or royalty is a collective undertaking (within the meaning of article 159 of the Luxembourg corporate income tax law) established in a non-cooperative jurisdiction for tax purposes (based on the EU list of non-cooperative tax jurisdictions).

iii Related Party Debt

Article 56 of the LITL is a legal basis for upward and downward adjustments where the terms and conditions agreed between associated enterprises deviate from what third parties would have agreed upon. Article 56-bis of the LITL complements Article 56, formalises the authoritative nature of the OECD Transfer Pricing Guidelines, and provides some definitions and guiding principles in relation to the application of the arm's length principle.

On 27 December 2016, the Luxembourg Tax Authorities released a circular on the tax treatment of intragroup financing activities which provides guidance on the practical application of the arm's length principle to intragroup financing activities, ensuring consistency with all international transfer pricing standards. The term "intragroup financing transaction" is to be interpreted very broadly and includes any activity involving the granting of loans (or advancing of funds) to associated enterprises irrespective of whether these loans are financed by internal or external debt (intragroup financing, bank loans, public issuances, etc.). Under the transfer pricing regime, Luxembourg finance companies have to assume the risks in relation to their financing activities and actively manage these risks over the lifetime of the investment. This requires that a Luxembourg finance company has control over the risk and the financial capacity to assume the risk. Therefore, the amount of equity financing should be sufficient to cover the risk in relation to the financing activity (i.e. the equity at risk). The amount of equity at risk should further be remunerated with an arm's length return on equity. The amount of equity at risk and the arm's length character of the remuneration need to be substantiated in a transfer pricing study.

iv Debt Pushdown

Tax consolidation between the profit making entity and the debtor entity may be one way to push down debt on acquisitions. Another strategy is to form a domestic holding company which, in turn, forms a temporary merger subsidiary used to perform the acquisition. Upon the consummation of the transaction, the merger subsidiary is merged into the target, and the proceeds are disbursed to the selling shareholders in exchange for their stock. Financing is arranged for the merger subsidiary, which is subsequently assumed by the target as the successor to the merger. Financing may come directly from third parties or internally through back-to- back loans. If the acquisition is initially done without using debt at the local level, it can subsequently be introduced in Luxembourg through a variety of means. Direct financing of the target and a distribution of the proceeds may be one way. Causing the target to be sold to a newly formed domestic subsidiary of the foreign parent for a note may be another. Caution should be exercised, however, as such transactions may create a dividend, giving rise to withholding tax.

d. Hybrid Instruments

On 1 January 2019, the generic anti-hybrid mismatch provisions included in ATAD were introduced in order to eliminate, in an EU context only, the double non-taxation created through the use of certain hybrid instruments or entities. These rules were replaced with effect as from 1 January 2020 by the amended anti-hybrid rules of ATAD 2 which also aim at neutralising the effects of hybrid mismatches but which have a broader scope of application as they apply to hybrid mismatches with both EU and third countries. They generally apply in case of mismatch outcomes which include deductions without inclusions and double deductions. However, mismatch outcomes shall not be treated as hybrid mismatches unless they arise: between associated enterprises, between a taxpayer and an associated enterprise, between the head office and PE, between two or more PEs of the same entity, or under a structured arrangement (in this case, even unrelated parties may come within the scope of the anti-hybrid mismatch rules).

With regard to deduction without inclusion and double deduction outcomes, the hybrid mismatch rules provide for linking rules that align the tax treatment of an instrument or an entity with the tax treatment in the counterparty jurisdiction, setting out a primary rule and a secondary (or defensive) rule for the neutralisation of mismatch outcomes:

- According to the primary rule, the deduction of a payment is denied to the extent that it is not included in the taxable income of the recipient or is also deductible in the counterparty jurisdiction.
- When the primary rule is not applied, the counterparty jurisdiction may apply a defensive rule, requiring the deductible payment to be included in the income or denying the duplicate deduction depending on the nature of the mismatch.

When a hybrid mismatch involves a third country, the responsibility to neutralise the effects of hybrid mismatches is placed on the EU Member State.

With regard to financial instruments, a hybrid mismatch means a situation where a payment gives rise to a deduction without inclusion outcome and the mismatch outcome is attributable to differences in the characterisation of the instrument or the payment made under it and such payment is not included within a reasonable of time.

e. Other instruments

There are no other instruments in Luxembourg.

f. Earn-outs

Earn-outs are common and are generally structured as an increase in purchase consideration.

7. DIVESTITURES

a. Tax Free

Capital gains deriving from the sale of shares held by a Luxembourg corporate taxpayer in a subsidiary may benefit from a full Corporate Income Tax ("CIT") and Municipal Business Tax ("MBT") exemption in Luxembourg (Luxembourg participation exemption regime), provided the following conditions are met:

- The beneficiary is a Luxembourg fully taxable company, which holds a shareholding in (i) an undertaking resident of the EU covered by article 2 of the Council Directive 2011/96/EU; or (ii) a Luxembourg resident capital company fully liable to Luxembourg tax; or (iii) a non-resident company liable to a tax corresponding to Luxembourg corporate income tax. For that purpose, a taxation of at least 8.5% (i.e. half of the CIT rate) on a basis comparable to the Luxembourg basis is usually required by the Luxembourg Tax Authorities.
- At the date the capital gain is realised, the holder has held or commits itself to hold for an uninterrupted period of at least 12 months a direct and continuous shareholding of at least 10% in the capital of the subsidiary or of a minimum acquisition price of EUR6 million.

Capital gains remain subject to tax up to the sum of all related expenses that were deducted for tax purposes in the year of disposal or in previous financial years. However, the amount is usually offset by the tax losses carried forward previously incurred by the shareholder.

As far as Luxembourg individual investors are concerned, capital gains realised on the sale of shareholdings are exempt if the individual investor holds less than 10% in the company and the sale is performed more than six months following the acquisition of the shares. In case of a sale after more than six months of a shareholding of 10% or more, the Luxembourg investor benefits from a EUR50,000 deduction and a taxation of the gain at a reduced rate (half of the applicable income tax rate).

Based on article 54 of the LITL, the taxation of capital gains realised upon the disposal of fixed assets consisting of real estate or on the sale of non-depreciable assets may be deferred until the disposal of a replacement asset under (mainly) the following conditions: the sale proceeds have to be reinvested into a newly acquired or newly created fixed asset which has to be allocated to a permanent establishment of the Luxembourg entity located in any EEA Member State. In addition, the Luxembourg company has to remain tax resident in an EEA Member State.

The taxation of capital gains can also be deferred, upon request, until the effective realisation in the case of transfers of assets within the meaning of article 2 of EU Directive 2009/133, (i.e. where a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer).

b. Taxable

Capital gains realised by Luxembourg corporate taxpayers are generally taxed as ordinary income, i.e., at the CIT rate of 17% if the taxable corporate income exceeds EUR200,000, at the reduced CIT rate of 15% if the taxable corporate income does not exceed EUR175,000 and at an intermediary rate between 15 and 17% if the corporate income exceeds EUR175,000 without exceeding EUR200,000. However, capital gains realised on the sale of qualifying shareholdings may benefit from a full exemption under the Luxembourg participation exemption regime under certain conditions (see 7. a. above).

In principle, gains arising on the disposal of business assets are fully subject to tax in Luxembourg. However, the taxation of capital gains realised upon the disposal of fixed assets consisting of real estate or on the sale of non-depreciable assets may be deferred until the disposal of a replacement asset under certain conditions (see 7. A. above).

Since the exit tax rules of ATAD entered into force (i.e. on 1 January 2020), Luxembourg taxpayers are subject to tax at an amount equal to the market value of the transferred assets at the time of the exit less their value for tax purposes. This applies where there is:

(i) a transfer of assets from the Luxembourg head office to a permanent establishment located in another country, but only to the extent that Luxembourg loses the right to tax the transferred assets;

(ii) a transfer of assets from a Luxembourg permanent establishment to the head office or to another permanent establishment located in another country, but only to the extent that Luxembourg loses the right to tax the transferred assets;

(iii) a transfer of tax residence to another country except for those assets which remain connected with a Luxembourg permanent establishment; and finally

(iv) a transfer of the business carried on through a Luxembourg permanent establishment to another country but only to the extent that Luxembourg loses the right to tax the transferred assets.

Where there are transfers within the European Economic Area ("EEA"), the Luxembourg taxpayer may request to defer the payment of exit tax by paying in equal instalments over five years.

Finally, with effect as from 1 January 2021, an annual 20% real estate levy (prélèvement immobilier) has been introduced. It applies to income and gains arising from real estate assets situated in Luxembourg and realised either directly or indirectly (through tax transparent entities) by certain categories of exempt investment vehicles (i.e. undertakings for collective investment, specialised investment funds and reserved alternative investment funds) which are "opaque" from a Luxembourg tax perspective.

c. Cross Border

Provided no double tax treaty which grants the exclusive taxation right to the country of the non-resident (corporate) investor applies, capital gains derived by non-resident taxpayers from the sale of a substantial participation (i.e. more than 10% of the shares) in a Luxembourg company are subject to (corporate) income tax in Luxembourg only if the period between the acquisition and the disposal is less or equal to six months. However, no taxation applies if the gains are realised on the sale of a participation in an Undertaking for Collective Investment, a SICAR or a private wealth management company (*société de gestion de patrimoine familial* or "SPF").

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

The Luxembourg tax system is a worldwide tax system. Luxembourg companies are taxed on their worldwide income.

b. CFC Regime

Luxembourg has implemented the CFC rules of the ATAD. With regard to the fundamental scope of the CFC rules, Luxembourg has opted for the non-genuine arrangement concept. Accordingly, a Luxembourg corporate taxpayer will be taxed on the non-distributed income of an entity or permanent establishment which qualifies as a CFC provided that the non-distributed income arises from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage. A CFC is an entity or a permanent establishment of which the profits are either not subject to tax or exempt

from tax in Luxembourg provided that the following two cumulative conditions are met: in the case of an entity, the Luxembourg corporate taxpayer by itself, or together with its associated enterprises holds a direct or indirect participation of more than 50% of the voting rights; or owns directly or indirectly more than 50% of capital; or is entitled to receive more than 50% of the profits of the entity (the "control criterion") and the actual corporate tax paid by the entity or permanent establishment is less than 50% of the tax that would have been due in Luxembourg. Given the currently applicable corporate income tax rate of 17%, the CFC rule will only apply if the taxation of the profits at the level of the CFC entity or permanent establishment is lower than 8.5% on a comparable taxable basis.

The Luxembourg legislator adopted the options provided under ATAD according to which the following entities or permanent establishments are excluded from the scope of the CFC rules: an entity or permanent establishment with accounting profits of no more than EUR750,000 or an entity or permanent establishment of which the accounting profits amount to no more than 10% of its operating costs for the tax period. The CFC income to be included in the tax base shall further be computed in proportion to the taxpayer's participation in the CFC and is included in the tax period of the Luxembourg corporate taxpayer in which the tax year of the CFC ends.

CFC income is subject to corporate income tax at a rate of 17%. A specific deduction has been included in the MBT law to exclude CFC income from the MBT base.

c. Foreign branches and partnerships

These are fully taxed, subject to double tax treaty relief. Luxembourg double tax treaties generally exempt foreign branch profits.

d. Cash Repatriation

Dividends distributed by a Luxembourg resident company to a foreign company are in principle subject to a 15% withholding tax in Luxembourg, unless the foreign company is eligible to the Luxembourg withholding tax exemption regime (which requires mainly a qualifying participation of either 10% or with an acquisition value of at least EUR1.2 million which has to be held for at least 12 months), or unless it benefits from an exemption or reduced withholding tax rate based on a double tax treaty.

The payment of liquidation proceeds by a Luxembourg company is not subject to Luxembourg withholding tax.

Arm's length interest payments paid to non-residents are not subject to Luxembourg withholding tax, except in the case of interest on profit participating bonds and similar securities.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Luxembourg tax legislation does not provide for any rules on "real-property-rich" companies.

b. CbC and Other Reporting Regimes

The Luxembourg law implementing the EU Directive on Country-by-Country Reporting extends administrative cooperation in tax matters to country-by-country ("CbC") reporting. Multinational ("MNE") groups with a consolidated revenue exceeding EUR750 million are required to prepare a CbC report and file it with the Luxembourg Tax Authorities within 12 months of the last day of their reporting fiscal year. In addition, each Luxembourg constituent entity of an MNE group falling within the scope of the directive must notify the Tax Authorities of its role in the group (i.e. whether it is the reporting entity of the group and if not, which entity of the group is the reporting entity), and must provide all the information required to identify the reporting entity and verify the submission of the CbC report no later than on the last day of the reporting fiscal year for the MNE group.

Additional reporting regimes include among others mandatory reporting under the common reporting standard ("CRS"), mandatory automatic exchange of information on tax rulings and advance pricing agreements, reporting under the US Foreign Account Tax Compliance Act, etc. Luxembourg taxpayers may also be subject to other reporting obligations which are based on tax treaty provisions dealing with exchange of information upon request or the anti-money laundering rules. Non-compliant taxpayers may incur a fine of up to EUR250,000. Finally additional reporting obligations apply following the implementation of the sixth Directive on administrative cooperation ("DAC6"), which introduces a mandatory and automatic exchange of information in the field of taxation in relation to reportable cross border arrangements.

10. TRANSFER PRICING

Luxembourg has no integrated transfer pricing legislation. Instead, transfer pricing adjustments aimed at restating arm's length conditions can be made based on different tax provisions and concepts applicable under Luxembourg domestic tax law. The arm's length principle is explicitly stated in Article 56 of the LITL, which serves as a legal basis for upward adjustments as well as for downward adjustments when a Luxembourg company receives an advantage from an associate enterprise. Article 56-bis of the LITL complements Article 56, formalises the authoritative nature of the OECD Transfer Pricing Guidelines, and provides some definitions and guiding principles in relation to the application of the arm's length principle.

In addition to Articles 56 and 56-bis of the LITL, the concepts of hidden dividend distributions (Article 164(3) of the LITL) and hidden capital contributions (Article 18(1) of the LITL) play an important role in ensuring that associated enterprises adhere to the arm's length standard. Finally, the Circular of 27 December 2016 provides guidance on the practical application of the arm's length principle to intragroup financing activities.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Hybrid entities are not commonly used in Luxembourg. In addition, following the implementation of the anti-hybrid rules of ATAD in Luxembourg (effective since 1 January 2019), the subsequent implementation of the anti-hybrid rules of ATAD 2 and the implementation of the reverse hybrid rules of ATAD 2 (effective as from tax year 2022), using hybrid entities will often not be an option. A reverse hybrid is an entity that is treated as transparent under the laws of the jurisdiction where it is established, but as a separate entity (i.e. opaque) under the laws of the jurisdiction(s) of the investor(s). The reverse hybrid mismatch rule aims to eliminate double non-taxation outcomes through the treatment of reverse hybrids as resident taxpayers. However, the amount of income to be included in the corporate tax base of the reverse hybrid entity should be limited to amounts that would otherwise result in double non-taxation rather than taxing all of the income of the reverse hybrid entity. The reverse hybrid rule does not apply to collective investment vehicles, which are investment funds or vehicles that are widely held and that hold a diversified portfolio of securities.

b. Use of Hybrid Instruments

Until the implementation of ATAD, hybrid instruments were commonly used in Luxembourg, among others for cash repatriation purposes. However, since the implementation of the anti-hybrid measures of ATAD and ATAD 2, these instruments are used less often.

c. Principal/Limited Risk Distribution or Similar Structures

The full range of risk allocation models is possible from principal though to limited risk distributors and commissionaires.

d. Intellectual property (licensing, transfers, etc.)

On 1 January 2018 a new IP regime came into force in Luxembourg, which is compliant with the so called 'modified nexus' approach agreed at OECD and EU level in the course of the BEPS project. In accordance with this new regime, a CIT exemption of 80% applies to income (including capital gains) derived from certain rights on patents and copyrighted software, to the extent that they are not marketing-related IP assets and were created, developed or enhanced after 31 December 2007 as a result of research and development activities. Marketing assets such as trademarks and domain names are expressly excluded from the scope of qualifying assets. The regime applies to all types of Luxembourg taxpayers.

The modified nexus approach aims to ensure that IP regimes only provide benefits to taxpayers that engage in R&D. The reason is that IP tax regimes aim at encouraging R&D activities. As a consequence, according to the nexus approach, a taxpayer is able to benefit from the IP regime to the extent that it can be demonstrated that the taxpayer incurred expenditures, such as R&D which gave rise to the IP income.

The nexus approach which determines what income may receive tax benefits is as follows:

$$\frac{\text{Qualifying expenditures incurred to develop IP asset}}{\text{Overall expenditures incurred to develop IP asset}} \times \text{Adjusted net qualifying income from IP asset} = \text{Income receiving tax benefits}$$

Qualifying IP rights are also exempt from Luxembourg NWT.

e. Special tax regimes

The two following investment tax credits are available for investments in qualifying assets under certain conditions:

- Additional investment tax credit: under certain conditions, companies may credit on the CIT due an amount equal to 13% of the increase in investments carried out during the tax year in qualifying assets–that is, tangible depreciable assets, other than buildings, livestock and mineral and fossil deposits. The amount of "additional investments" corresponds to the difference between the net book value of the qualifying assets at the end of the financial year increased by the depreciation on those qualifying assets acquired and a reference value corresponding to the average value of qualifying assets at the end of the five preceding financial years.
- Global investment tax credit (which may be applied in addition to the first type of credit): under certain conditions, companies may credit on the CIT due an amount equal to 8% of the total acquisition price of investments in qualifying assets acquired during the tax year. The global investment tax credit amounts to 8% for the first tranche of EUR150,000 and 2% for the tranche exceeding EUR150,000. Since 2018, the tax credit also applies to acquisitions of software and amounts to 8% for the first tranche of EUR150,000 and 2% for the tranche exceeding EUR150,000. However, the tax credit may not exceed 10% of the tax due for the tax year during which the operating year is ending during which the acquisition was made.

12. OECD BEPS CONSIDERATIONS

Luxembourg has implemented into its internal law Directive 2014/86/EU of 8 July 2014 which amends the EU Parent Subsidiary regime so as to stop situations of double non-taxation created by the use of certain hybrid instruments and Directive 2015/121 of 27 January 2015 which introduces a de minimis GAAR.

Luxembourg has always been supportive of the implementation of BEPS recommendations and has implemented the following BEPS related EU Directives: Directive EU 2015/2376 on automatic exchange of information on tax rulings, EU Directive 2016/881 of 25 May 2016 which extends administrative cooperation in tax matters to Country-by-Country ("CbC") reporting, Directive EU 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("ATAD"), Directive EU 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ("ATAD 2") and Directive EU 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. Finally, Luxembourg has signed and ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("MLI").

Finally, Luxembourg is actively involved and supportive of the implementation of the two-pillar solution to address the tax challenges arising from the digitalisation of the economy.

13. ACCOUNTING CONSIDERATIONS

Luxembourg companies can choose to apply Luxembourg GAAP or IFRS (mandatory for companies whose securities are admitted to official trading on an EU regulated market). We have not commented on IFRS at this point. Luxembourg GAAP can be summarised as historical cost accounting with some exceptions such as equity accounting for subsidiaries. Most actual accounting principles are based on the EU Directive 2013/34/EU of 26 June 2013 (which aims to merge principles from the Directive 78/660/EEC of 25 July 1978 and from the Directive 83/349/EEC of 13 June 1983) on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. We have not addressed these EU principles here as they are common to all EU Member States. It is worth noting that mandatory consolidation for groups only applies if all entities being part of the consolidation scope meet together 2 of the 3 following requirements: (i) total balance sheet exceeding EUR20 million; (ii) total net turnover of more than EUR40 million; (iii) 250 as average number of full time employees. Exemptions are also available if consolidated accounts are being prepared at another parent level.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

In accordance with Article 97(3) LITL, when a Luxembourg company is considered as having "serious economic reasons" to proceed with a share capital decrease, the amount of capital reimbursed is not subject to Luxembourg withholding tax. However, should the Luxembourg company have retained earnings at the time of the capital reduction, the payment will be treated as a dividend and thus will potentially be subject to Luxembourg withholding tax (if no exemption is available) up to the amount of distributable retained earnings.

b. Substance Requirements for Recipients

There are no specific substance requirements in Luxembourg applicable to foreign recipients of payments made by a Luxembourg taxpayer. However, when Luxembourg is used for holding participations, a sufficient level of substance is required at Luxembourg level in order to make sure that the GAAR of either the EU Parent Subsidiary Directive or the ATAD (as implemented in Luxembourg) will not apply, according to which the tax benefits (e.g. dividend exemption, capital gain exemption or exemption of dividend withholding tax) may be denied in case of arrangement or series of arrangements that, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage which defeats the object or purpose of the tax law, are not genuine having regard to all relevant facts and circumstances. In addition, specific substance requirements apply to Luxembourg companies performing intra-group financing activities. Finally, should the Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes be adopted, minimum substance criteria will be required in order to ensure tax benefits under the EU Parent Subsidiary Directive, the EU Interest and Royalty Directive as well as under double tax treaties.

c. Application of Regional Rules

As a member of the European Union, Luxembourg is subject and has implemented into its internal law all EU Directives in tax matters (e.g. EU Parent Subsidiary Directive, EU Merger Directive, ATAD, ATAD 2, the EU Directives on administrative cooperation in tax matters, so called DAC 1 to 6, etc.).

d. Tax Rulings and Clearances

Luxembourg taxpayers may request an Advance Tax Clearance ("ATC") or an Advance Pricing Agreement ("APA") from the Luxembourg Tax Authorities. Specific information has to be included in the request, including a detailed description of the taxpayer requesting the ATC/APA, details of the other parties involved, a detailed description of the contemplated operation(s), for APAs, a transfer pricing study including a functional analysis and an economic analysis with a benchmarking of the transaction under review and a confirmation that the information provided to analyse the request is complete and accurate. A fee ranging between EUR3,000 and EUR10,000 is levied by the Luxembourg Tax Authority. The amount of the fee depends on the complexity of the request and the amount of work required. In the case of APAs, the fee should in general be at the upper end of the range. The fee is payable within a one-month period. The ATC/APA may be valid for a period of maximum five tax years to the extent that the facts and circumstances described in the request are accurate and remain in line with reality. Where Luxembourg, EU or international tax law changes, the confirmation provided in the ATC/APA may quite naturally no longer be valid.

In practice, APAs have lost much of their relevance over the last few years. This is because when the arm's length nature of a transfer price is properly documented, an APA does not add much reassurance. This is also true for ATCs, where taxpayers now, in most cases, will prefer to rely on the tax opinions prepared by their tax adviser instead of filing an ATC request.

15. MAJOR NON-TAX CONSIDERATIONS

There are no specific Luxembourg considerations that merit noting here.

16. APPENDIX I–TAX TREATY RATES*

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Andorra	0 / 5 / 15	0	0	[A], [B]
Armenia	5 / 15	0	0	[C], [B]
Austria	5 / 15	0	0	[D], [B]
Azerbaijan	5 / 10	0	0	[E], [B]
Bahrain	0 / 10	0	0	[F], [B]
Barbados	0 / 15	0	0	[G], [B]
Belgium	10 / 15	0	0	[H], [B]
Botswana	5 / 10	7.5	7.5	[M]
Brazil	15 / 25	0	0	[I], [B]
Brunei	0 / 10	0	0	[B], [J]
Bulgaria	5 / 15	0	0	[B], [K]
Canada	0 / 5 / 10 / 15	0	0	[B], [L]
China	5 / 10	0	0	[B], [M]
Croatia	5 / 15	0	0	[B], [N]
Cyprus	0 / 5	0	0	[B], [O]
Czech Republic	0 / 10	0	0	[B], [P]
Denmark	5 / 15	0	0	[B], [Q]
Estonia	0 / 10	0	0	[B], [R]
Finland	5 / 15	0	0	[B], [S]
France	5 / 15	0	0	[B], [T]
Georgia	0 / 5 / 10	0	0	[B], [U]
Germany	5 / 15	0	0	[A1], [B1]
Greece	7.5	0	0	[C1], [B1]
Guernsey	5 / 15	0	0	[D1], [B1]
Hong-Kong	0 / 10	0	0	[E1], [B1]
Hungary	0 / 10	0	0	[F1], [B1]
Iceland	5 / 15	0	0	[G1], [B1]
India	10	0	0	[H1], [B1]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Indonesia	10 / 15	0	0	[I1], [B1]
Ireland	5 / 15	0	0	[J1], [B1]
Isle of Man	5 / 15	0	0	[K1], [B1]
Israel	5 / 15	0	0	[L1], [B1]
Italy	15	0	0	[M1], [B1]
Japan	5 / 15	0	0	[N1], [B1]
Jersey	5 / 15	0	0	[O1], [B1]
Kazakhstan	5 / 15	0	0	[P1], [B1]
Korea	10 / 15	0	0	[Q1], [B1]
Kosovo	0 / 10	0	0	[E1], [B1]
Laos	0 / 5 / 15	0	0	[R1], [B1]
Latvia	5 / 10	0	0	[S1], [B1]
Liechtenstein	0 / 5 / 15	0	0	[T1], [B1]
Lithuania	5 / 15	0	0	[U1], [B1]
Macedonia	5 / 15	0	0	[V1], [B1]
Malaysia	0 / 5 / 10	0	0	[A2], [B2]
Malta	5 / 15	0	0	[C2], [B2]
Mauritius	5 / 10	0	0	[D2], [B2]
Mexico	5 / 15	0	0	[E2], [B2]
Moldova	5 / 10	0	0	[F2], [B2]
Monaco	5 / 15	0	0	[G2], [B2]
Morocco	10 / 15	0	0	[H2], [B2]
Netherlands	2.5 / 15	0	0	[I2], [B2]
Norway	5 / 15	0	0	[J2], [B2]
Panama	5 / 15	0	0	[K2], [B2]
Poland	0 / 15	0	0	[L2], [B2]
Portugal	15	0	0	[M2], [B2]
Qatar	0 / 5 / 10	0	0	[N2], [B2]
Romania	5 / 15	0	0	[O2], [B2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Russia	5 / 15	0	0	[P2], [B2]
San Marino	0 / 15	0	0	[Q2], [B2]
Saudi Arabia	5	0	0	[R2], [B2]
Senegal	5 / 15	0	0	[S2], [B2]
Serbia	5 / 10	0	0	[T2], [B2]
Seychelles	0 / 10	0	0	[U2], [B2]
Singapore	0	0	0	[V2], [B2]
Slovak Republic	5 / 15	0	0	[W2], [B2]
Slovenia	5 / 15	0	0	[A3], [B3]
South Africa	5 / 15	0	0	[C3], [B3]
Spain	5 / 15	0	0	[D3], [B3]
Sri Lanka	7.5 / 10	0	0	[E3], [B3]
Sweden	0 / 15	0	0	[F3], [B3]
Switzerland	0 / 5 / 15	0	0	[G3], [B3]
Taiwan	10 / 15	0	0	[H3], [B3]
Tajikistan	0 / 15	0	0	[I3],[B3]
Thailand	5 / 15	0	0	[J3],[B3]
Trinidad & Tobago	5 / 10	0	0	[K3], [B3]
Tunisia	10	0	0	[L3], [B3]
Turkey	5 / 20	0	0	[M3], [B3]
Ukraine	5 / 15	0	0	[N3], [B3]
United Arab Emirates	0 / 5 / 10	0	0	[O3], [B3]
United Kingdom	5 / 15	0	0	[P3], [B3]
United States	0 / 5 / 15	0	0	[Q3], [B3]
Uruguay	5 / 15	0	0	[R3], [B3]
Uzbekistan	5 / 15	0	0	[S3], [B3]
Vietnam	5 / 10 / 15	0	0	[T2], [B3]

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Footnotes:	
[A]	Dividends: 0% if the beneficial owner holds directly and uninterruptedly, for at least 12 months, at least 10% of the capital of the company paying the dividends or a participation with an acquisition cost of at least EUR1.2 million; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[B]	Interest and Royalties – Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.
[C]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[D]	Dividends: 5% if the recipient is a company (excluding a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[E]	Dividends: 5% if the beneficial owner is a company which holds directly or indirectly at least 30% of the capital of the company paying the dividends and has invested at least an amount equal to USD300,000 in the capital of that company at the date on which the dividends are paid; 10% in all other cases.
[F]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[G]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends; 15% in all other cases.
[H]	Dividends: 10% if the recipient is a company (with the exception of private companies, partnerships, limited partnerships and cooperative societies) whose direct holding, since the beginning of its financial year, in the capital of the company (with the exception of private companies, partnerships, limited partnerships and cooperative societies) paying the dividends is at least 25% or has a purchase price of at least LUF/ BEF250 million (EUR6,197,338); 15% in all other cases.
[I]	Dividends: 15% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends; 25% in all other cases.
[J]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[K]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[L]	Dividends: 0% if the Canadian company has owned directly at least 25% of the voting stock in the Luxembourg company for at least two years and the dividends are paid out of profits derived from the active conduct of a trade or business in Luxembourg; 5% if the Canadian company owns at least 10% of the Luxembourg company's voting power; 10% if the dividends are paid by a non-resident-owned investment corporation that is a resident of Canada to a beneficial owner that is a company (other than a partnership) that is a resident of Luxembourg and that owns at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[M]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.
[N]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.

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Footnotes:	
[O]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 5% in all other cases.
[P]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds for an uninterrupted period of at least one year directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[Q]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[R]	Dividends: 0% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[S]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[T]	Dividends: 5% if the recipient is a corporation which has direct control of at least 25% of the capital of the corporation paying the dividends; 15% in all other cases.
[U]	Dividends: 0% if the beneficial owner is a company which holds directly or indirectly at least 50% of the capital of the company paying the dividends and has invested more than EUR2 million or its equivalent in the currency of Georgia, in the capital of the company paying the dividends; 5% if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends and has invested more than EUR100,000 or its equivalent in the currency of Georgia, in the capital of the company paying the dividends; 10% in all other cases.
[A1]	Dividends: 5% if the receiving company, not being a partnership, owns directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[B1]	Interest and Royalties – Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.
[C1]	Dividends: 7.5% of the gross amount of the dividends if the company making the distribution is a resident of Luxembourg.
[D1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[E1]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends or a participation with an acquisition cost of at least EUR1.2 million in the company paying the dividends; 10% in all other cases.
[F1]	Dividends: 0% if the beneficial owner is a company (other than a partnership that is not liable to tax), which holds directly at least 10% of the paying of the company paying the dividends; 10% in all other cases.
[G1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[H1]	Dividends: 10% if the beneficial owner is a resident of the other Contracting State.
[I1]	Dividends: 10% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.

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Footnotes:	
[J1]	Dividends: 5% if the recipient is a company (excluding a partnership) which controls directly at least 25% of the voting power in the company paying the dividends; 15% in all other cases.
[K1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[L1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[M1]	Dividends: 15% if the recipient is the beneficial owner of the dividends.
[N1]	Dividends: 5% if the beneficial owner is a company which owns at least 25% of the voting shares of the company paying the dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place; 15% in all other cases.
[O1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[P1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the company paying the dividends; 15% in all other cases.
[Q1]	Dividends: 10% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% of the gross amount of the dividends in all other cases.
[R1]	Dividends: 0% if the dividend is paid to public bodies; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[S1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.
[T1]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which at the time of the payment of dividends has held for an uninterrupted period of 12 months directly at least 10% of the capital of the company paying the dividends or a capital participation with an acquisition cost of at least EUR1.2 million in the company paying the dividends; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[U1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[V1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[A2]	Dividends: 0% if the Malaysian company has owned directly at least 25% of the capital in the Luxembourg company for at least 12 months and the Luxembourg company is engaged in the active conduct of a trade or business in Luxembourg; 5% if the Malaysian company owns directly at least 10% of the capital in the Luxembourg company; 10% in all other cases.
[B2]	Interest and Royalties: Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.
[C2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.

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Footnotes:	
[D2]	Dividends: 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[E2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[F2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the company paying the dividends; 10% in all other cases.
[G2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[H2]	Dividends: 10% if the beneficial owner of the dividends is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[I2]	Dividends: 2.5% if the recipient is a company the capital of which is, wholly or partly, divided into shares or corporate rights assimilated to shares by the taxation law of the other State, which company controls directly at least 25% of the capital of the company paying the dividends; 15% of the gross amount of the dividends in all other cases.
[J2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[K2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[L2]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which has held directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 24 months prior to the date of payment of the dividends; 15% in all other cases.
[M2]	Dividends: 15% if the recipient is the beneficial owner of the dividends.
[N2]	Dividends: 5% if the beneficial owner is an individual who holds directly at least 10% of the capital of the company paying the dividends and who has been a resident of that other Contracting State for a period of 48 months immediately preceding the year within which the dividends are paid; 10% in all other cases.
[O2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[P2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends and has invested at least EUR80,000 or its equivalent in rouble; 15% in all other cases.
[Q2]	Dividends: 0% if the beneficial owner is a company which has held directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends; 15% in all other cases.
[R2]	Dividends: 5% if the beneficial owner of the dividends is a resident of the other Contracting State.
[S2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the company paying the dividends; 15% in all other cases.
[T2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.

Footnotes:	
[U2]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[V2]	Dividends: 0% if the recipient is the beneficial owner of the dividends.
[W2]	Dividends: 5% if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[A3]	Dividends: 5% if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[B3]	Interest and Royalties–Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.
[C3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[D3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends, if the beneficial owner is a company which has held the capital for a period of at least one year prior to the distribution of the dividends; 15% in all other cases.
[E3]	Dividends: 7.5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.
[F3]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds, during an uninterrupted period of 12 months preceding the date of payment of the dividends, directly at least 10% of the capital of the company paying the dividends. The exemption only applies to dividends attributable to those shares which have been held without interruption by the recipient company during the aforesaid
[G3]	Dividends: 0% if the beneficial owner of the dividends is (i) a company which is a resident of the other Contracting State and which holds, during at least two years, at least 10% of the capital of the company paying the dividends or (ii) any pension fund or pension scheme; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[H3]	Dividends: 15% if the beneficial owner of the dividends is a collective investment vehicle established in the other territory and treated as a body corporate for tax purposes in that other territory; 10% in all other cases.
[I3]	Dividends: 0% if the beneficial owner of the dividends is a company which is a resident of the other Contracting State and which holds, for an uninterrupted period of at least 12 months, shares representing directly at least 10% of the capital of the company paying the dividends; 15% if the beneficial owner of the dividends is a resident of the other Contracting State.
[J3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[K3]	Dividends: 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[L3]	Dividends: 10% if the recipient is the beneficial owner of the dividends.
[M3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 20% in all other cases.

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Footnotes:	
[N3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the company paying the dividends; 15% in all other cases.
[O3]	Dividends: 0% if the beneficial owner of the dividends is that other State itself, a local Government, a local authority or its financial institution thereof, which is a resident of that other State; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[P3]	Dividends: 5% if the beneficial owner is a company the capital of which is wholly or partly divided into shares and it controls directly or indirectly at least 25% of the voting power in the company paying the dividends; 15% in all other cases.
[Q3]	Dividends: 0% if the beneficial owner of the dividends is a company that is a resident of the US and that has had, during an uninterrupted period of two years preceding the date of payment of the dividends, a direct shareholding of at least 25% of the voting stock of the company paying the dividends. This provision only applies to dividends attributable to that part of the shareholding that has been owned without interruption by the beneficial owner during such two-year period. Furthermore, the provisions of this subparagraph shall only apply if the distributed dividend is derived from the active conduct of a trade or business in Luxembourg (other than the business of making or managing investments, unless such business is carried on by a banking or insurance company); 5% if the beneficial owner is a company that owns directly at least 10% of the voting stock of the company paying the dividends; 15% in all other cases.
[R3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[S3]	Dividends: 5% if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[T3]	Dividends: 5% if the beneficial owner is a company which holds directly or indirectly at least 50% of the capital of the company paying the dividends or has invested more than USD10 million, or the equivalent in Luxembourg or Vietnamese currency, in the capital of the company paying the dividends; 10% if the beneficial owner is a company which holds directly or indirectly at least 25% but less than 50% of the capital of the company paying the dividends and has invested not more than USD10 million, or the equivalent in Luxembourg or Vietnamese currency, in the capital of the company paying the dividends; 15% in all other cases.

*On payments out of Luxembourg, in accordance with tax treaties in force as of 1 January 2021.

17. APPENDIX II–GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Current organisation chart of the group including all entities by full legal name and permanent establishments with information on the jurisdiction, date and place of formation and ownership percentages.
2	Tax Due Diligence	General	Details of any activities performed outside of Luxembourg and any related documentation on its tax implications (tax returns and tax assessments in relation to the foreign activities for the tax years under review).
3	Tax Due Diligence	General	Approved annual accounts for the years under review and interim accounts for the current year.
4	Tax Due Diligence	General	General ledger for the years under review.
5	Tax Due Diligence	General	Supporting documentation on any previous reorganisations/change of ownership and on the related tax implications (tax opinion, advance tax clearance from the Luxembourg tax authorities).
6	Tax Due Diligence	Direct taxes	Corporate tax returns for CIT, MBT, NWT for the tax years under review and related appendices.
7	Tax Due Diligence	Direct taxes	Any other tax return filed for all tax years under review (e.g. dividend withholding tax return, tax return on withholding tax for director's fees, subscription tax, etc.).
8	Tax Due Diligence	Direct taxes	CIT, MBT and NWT assessments for the last assessed tax year and all other tax years under review.
9	Tax Due Diligence	Direct taxes	Tax statements on advanced payments or any other tax statement received (invoice/refund) from the tax authorities.
10	Tax Due Diligence	Direct taxes	Copy of any appeal against tax assessments.
11	Tax Due Diligence	VAT	Annual VAT returns for the years under review not yet assessed as well the last assessed VAT return.
12	Tax Due Diligence	VAT	Tax assessments for VAT for the last assessed tax year.
13	Tax Due Diligence	VAT	Tax statements on advanced payments or any other tax statement received (invoice/refund) from the tax authorities.
14	Tax Due Diligence	VAT	Copy of any appeal against tax assessments.
15	Tax Due Diligence	Payroll taxes	Description of the various remuneration systems (salary, lump-sum expenses, fringe benefits, employee option and share schemes, etc.) for the different categories of employees.
16	Tax Due Diligence	Payroll taxes	Information on any recent or on-going audits or investigations in relation to employee taxes.
17	Tax Due Diligence	Other communication with the Luxembourg tax authorities	Copy of any advance tax clearances requests filed with the Luxembourg tax authorities and the related advance tax clearance granted by the Luxembourg tax authorities.
18	Tax Due Diligence	Other communication with the Luxembourg tax authorities	Any communication with the Luxembourg tax authorities.

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Nº	Category	Sub-Category	Description of Request
19	Tax Due Diligence	Transfer Pricing	Names of all related parties that have entered into business transactions with the company.
20	Tax Due Diligence	Transfer Pricing	Copy of any agreements with related parties (e.g. licence agreements, service agreements, working contracts (with shareholders and level of remuneration), loan agreements, R&D contracts.
21	Tax Due Diligence	Transfer Pricing	Any transfer pricing study prepared.

In addition to the general request of information, the following documents should be reviewed in the frame of a tax due diligence of a Luxembourg company: tax assessments issued by the Luxembourg Tax Authorities in order to see whether the tax losses carried forward of the company can be considered as final or whether they are only based on the automatic assessment made by the Tax Authorities upon receipt of the tax return, tax statements issued by the Luxembourg Tax Authorities, any advance tax agreement and/or advance pricing agreement granted by the Luxembourg Tax Authorities, any transfer pricing studies prepared (e.g. for intragroup activities).

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