LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Administration des contributions directes

Memento

Summary of direct taxes levied

Only legislation published in the Memorial is deemed authentic

Situation on 1st January 2014
(last update: 26/09/2014)

45, boulevard Roosevelt
Luxembourg

Tél.: (352) 40.800-1
Fax: (352) 40.800-2022

Adresse postale
L-2982 Luxembourg

e-mail: divleg@co.etat.lu
or secdir@co.etat.lu
www.impotsdirects.public.lu

DIRECT TAXES LEVIED BY THE TAX ADMINISTRATION OF THE GRAND DUCHY OF LUXEMBOURG

Summary

TABLE OF CONTENTS

Personal Income Tax

1. Persons liable to tax

The following persons are liable to income tax:

1. **resident** taxpayers, i.e. physical persons who have their tax domicile or normal place of residence in Luxembourg on their domestic and foreign taxable income.
2. **non-resident** taxpayers, i.e. physical persons who have no tax domicile or normal place of residence in Luxembourg on their domestic taxable income only (see under 8.1 – Delimitation of domestic taxable income).

Physical persons, regardless of their normal place of residence, are in principle deemed to be non-resident taxpayers if they have their **centre of vital interests** abroad, outside of Luxembourg.

2. Joint taxation

2.1 Joint taxation of married taxpayers

Married couples are taxed jointly and classified into tax class 2, provided that:

a) they are resident taxpayers from the beginning of the year and are not living in a state of de facto separation by virtue of a legal dispensation or a judgement;
b) they are resident taxpayers and get married in the course of the year;
c) they become resident taxpayers in the course of the year and are not living in a state of de facto separation by virtue of a legal dispensation or a judgement;
d) they are not living in a state of de facto separation where **one is a resident taxpayer and the other a non-resident** and that they **apply jointly for joint taxation** provided the resident taxpayer is earning at least 90% of the household's professional income (see point 3.2) in Luxembourg during the fiscal year.

2.2 Joint taxation of partners

Upon request, the following persons will be taxed jointly by tax assessment in accordance with tax class 2 at the end of the tax year provided they complete a tax return on form 100 and that they have shared a common domicile or residence during the whole tax year:

a) resident partners in a registered partnership which must have existed throughout the year;
b) non-resident partners who become resident taxpayers during the tax year and whose registered partnership has existed throughout the year.

In terms of direct taxes, partners are excluded from joint taxation with regard to the monthly withholding tax on income and their tax cards are not impacted by the partnership.

(for non-resident partners, see point 8.7. - Equal fiscal treatment of resident and non-resident taxpayers)

2.3 Joint taxation of the taxpayer and his minor children

The taxpayer and his minor children (less than 18 years old on 1 January of the tax year concerned) for whom he receives a child tax allowance and and who are still living in his household are taxed jointly. Joint taxation for the taxpayer and his minor children applies only to resident taxpayers and to spouses who have elected to be taxed jointly in case one taxpayer is a resident and the other person a non-resident taxpayer.

Income earned by children from paid employment is not subject to joint taxation even if the child is employed in the taxpayer's business or company.

3. Taxable income

3.1 "Taxable income" and "total net income"

Income earned by the taxpayer during the tax year, which coincides with the calendar year, is subject to tax.

Taxable income consists in the total net income less special expenses.

Total net income is made up of eight sources of net income which are each calculated separately. Losses arising in one category are set against net income in other categories, if not otherwise determined.

3.2 Categories of net income

Only the following categories of income are taken into account for the determination of total net income:

1. trade and business income;
2. agriculture and forestry income;
3. income from independent professional services;
4. net income from employment;
5. net income from pensions and annuities;
6. net income from capital and investments;
7. net income from rentals and leases;
8. sundry net income.

Categories 1 to 5 are deemed to contain **income from professional activities** only and categories 6 to 8 are concerning **income from property**.

3.2.1 Trade and business income

3.2.1.1 Definition of the trade and business income

The following are regarded as trade and business income:

a) net income from a commercial, industrial, mining or craft undertaking. Independent and permanent for-profit undertakings who participate in the general economic life shall be considered commercial, industrial, mining or craft undertakings provided they are not an agricultural or forestry enterprise, nor exercising a liberal profession. Venture capital investment companies (SICAR) in the legal form of a limited or special limited partnership (*société en commandite simple, société en commandite spéciale*) are not to be considered as commercial undertakings;

b) the share of profits paid to a co-owner in a collective commercial undertaking, (e.g.: general partnership = *société en nom collectif*, limited partnership = *société en commandite simple*, special limited partnership = *société en commandite spéciale*, economic interest groups, European economic interest groups, temporary commercial company, joint ventures and common businesses in general) for
   - their activity in the collective undertaking, or
   - the loans they've granted, or
   - the assets they've made available to the undertaking;

c) the share of profits of an general partner in a partnership limited by shares, as far as this share of profit does not arise as a result of his shareholding in the company, as well as
   - remunerations or indemnities paid to an general partner for his activity in the firm, or
   - for the loans granted by the partner, or
   - the assets made available by him to the company;

d) in the absence of activities as in point a) above, the net income arising from a for-profit activity exercised by a limited partnership, a special limited partnership in which one general partner is a capital company holding at least 5% of the shares, either through a general partnership, an EIG (economic interest group), an EEIG (European economic interest group) or a civil company whose majority shareholder are one or more capital companies. A partnership which undertakes commercial activities as in point a) above or pursuant to the first sentence of this point d) and which has a holding in another partnership, is considered as a capital company in order to determine the type of income realised by said other partnership.

Trade and business income also includes the profit arising from:

- the block sale of a business or of an autonomous part of it;
- the termination of a business or of an autonomous part of it;
- the sale of a fraction of such a business;
- the sale of a partner's or co-owner's share or part of his share in a business as listed under b) and d) above;
- the sale of a general partner's net assets or a share of these assets in a partnership limited by shares, but only as far as it does not concern his shareholding in said partnership.

Any operation that leads to the realisation of all the unrealised reserves of a business, of an autonomous part or of a fraction of such a business is assimilated to a block sale.

3.2.1.2 The determination of trade and business income

Annual profit generally consists in the difference between the net assets invested at the end of the financial year and the net assets invested at the beginning, plus personal drawings and less injections of new capital carried out during the year.

Under certain conditions and within certain limits, a Grand-ducal regulation allows a simplified method of profit calculation by comparing business receipts and business expenses.

3.2.1.3 The financial year

The profit realised during the financial year is taxable in the year in which the financial year ends. The financial year normally corresponds with the calendar year.

3.2.1.4 Various non-deductible business expenses

The following business expenses in particular are non-deductible:

1) interest allocated to the working capital;
2) rent, lease or compensations paid to the contractor or the members of his family taxed jointly with him for goods allocated to the business;
3) wages paid to the contractor or his/her spouse provided they are subject to joint taxation;
4) contributions for life insurances taken out for the benefit of the contractor, his beneficiaries or close relatives;
5) reserves for self-insurance;
6) general provisions for business expenses;
7) contributions, allowances and premiums paid to supplementary pension schemes introduced by the modified law of 8 June 1999 on supplementary pension schemes, provided the beneficiary of the scheme is the operator of an undertaking, the co-trader in a collective undertaking, a partner in a civil company or a member of the board of directors or commissioner in a company liable to corporate income tax.
   However, under certain conditions, these contributions are deductible;
8) retirement pensions, disability pensions and survivor's pensions paid after 1st January 2000 outside of the scope of the modified law of 8 June 1999 on complementary pensions.
   Nevertheless, the part of the capital and the pension, which relates to the period preceding 1st January 2000, remains deductible;
9) retirement pensions, disability pensions and survivor's pensions as far as the expenditure is due to an insufficiency of the provisions in the balance sheet of the company. However, this arrangement only applies if the insufficiency of the provisions is due to the fact that part of the endowments carried out by the undertaking were not deductible;
10) payments made to finance the household of the taxpayer and the subsistence of his family;
11) gifts, donations and grants;

12) personal income tax, net worth tax, inheritance tax, value-added tax on goods taken from the net assets or used for private purposes;
13) fines, confiscations, legal settlements and any other penalties payable by the taxpayer;
14) advantages of any kind and related expenses granted to a civil servant, a government official, a judge, a board member or a manager of a corporation with a view to gaining a pecuniary advantage;
15) the amount of termination indemnities or severance pay paid to employees and exceeding the ceiling of € 300,000. Indemnities paid out in several instalments over several tax years are considered to form a single amount for the determination of the deduction ceiling.

3.2.1.5 Invested net assets

Invested net assets are assets which by their nature form part of the business. Under certain conditions, the invested net assets can also include assets that are not deemed to form part of the business by their nature, but that could be used by the business (assets being part of the business by option).

The invested net assets include:

- the fixed assets, i.e. the assets that the undertaking intends to use on a permanent basis;
- the current and liquid assets and;
- the liabilities.

3.2.1.6 Valuation principles

The valuation of assets must be carried out according to the following principles:

1) the situation on the date the accounts are closed is the decisive factor for the valuation at the end of the financial year; the business operator can take into account facts and circumstances existing at that date even if they were revealed after the closing of the accounts, provided it took place before the balance sheet was drawn up (e.g. the insolvency of a customer is discovered the moment the receivables are valued);
2) each asset of the invested net assets at the end of the financial year must be valued separately; however, assets that are similar in nature and value may be valued jointly;
3) depreciations required by law may not be recovered subsequently, if the trader knowingly omitted to apply said depreciations;
4) the value of assets in the balance sheet at the end of the financial year must be carried over as such in the balance sheet at the beginning of the new financial year;
5) unrealised profits may not be added to the operating result, whereas unrealised losses are likely to affect the result;
6) the values set out in the fiscal balance sheet must be the same as the values in the trading balance sheet, provided these values meet the requirements of the tax law;
7) the business operator must use a constant method of valuation, unless economic considerations call for a modification.

Valuations are principally made on the basis of the cost or purchase price. In clearly defined cases the going concern value may be used instead.

3.2.1.7 The purchase price

The purchase price of an asset consists of the total amount spent on the asset by the business operator at the date of valuation. For single assets, which were acquired by the business operator free of charge, the initial purchase price is represented by their going concern value at the time they were acquired. In the event an asset is modified or extended during its useful life, the purchase price is increased by the costs for the modification or extension of the asset. In the case of an exchange of assets, the acquisition price of the asset received is deemed to have the same value as the asset given in return, increased or decreased by a balancing payment in the event where the traded assets do not have the same value.

As a general rule, input value-added tax is not included in the purchase price.

3.2.1.8 The cost price

The cost price of an asset includes all expenses incurred by the business operator in order to produce the asset.

The following are included in the cost price:

- the purchase price or cost price of materials or supplies used in the production of the asset;
- labour costs;
- special production costs;
- the proportionate share of the general production costs including the depreciation costs of the equipment needed to produce the asset.

The cost price may not include sales expenses and other expenditure which are not deemed to be operating costs, such as the business operators own work. As a general rule, input value-added tax is not included in the cost price.

3.2.1.9 The going concern value

The going concern value of an asset is the price, which someone who purchases the entire undertaking as a going concern would attribute to each asset as part of the whole purchase price.

In the case of commodities, the going concern value equals the replacement costs, including related expenses.

The going concern value of claims towards debtors must be computed by taking into consideration any capital or interest losses.

3.2.1.10 Valuation of depreciable fixed assets

Fixed assets subject to depreciation include all assets, which depreciate through wear and tear as well as assets, which depreciate by being used up (i.e. a decrease in substance).

Depreciable fixed assets are valued at the purchase or cost price, less depreciation. The going concern value can be used provided that it is set at a lower value than the purchase or cost price less the necessary depreciation. An intermediate value may also be used. Items that have already been included in the invested net assets may not be revalued at a higher value than the value shown in the last balance sheet.

Assets, whose manufacture or purchase has been subsidized by the State or a commune, must be shown in the accounts at the price that the taxpayer actually paid. This value is also used to calculate the depreciation.

3.2.1.11 Valuation of non-depreciable fixed assets

Land and holdings in other companies are non-depreciable fixed assets.

In principle, assets that are not subject to depreciation should be valued at their purchase or cost price. The going concern value of the assets can be used provided that it is set at a lower value than the purchase or cost price.

Those non-depreciable assets, which were already part of the business operator’s net assets at the end of the previous financial year, may be valued at their going concern value, even if it is higher than the value shown in the previous balance sheet. However, the value may never exceed the purchase or cost price of the asset.

3.2.1.12 Valuation of current and liquid assets

Stocks, bank deposits and receivables are part of the current and liquid assets.

Valuation rules for current and liquid assets are identical to those applicable to non-depreciable fixed assets. In principle, current and liquid assets should be valued at their cost price. The going concern value of the assets may be shown in the balance sheet, if it is lower than the cost price. In this case, it is also possible to use an intermediate value set between the cost price and the going concern value.

Claims on customers must be valued in accordance with the situation existing at the end of the financial year. Claims on debtors who are in a state of insolvency are to be considered as irrecoverable receivables and must be written down in full. Doubtful debts must be shown in the balance sheet at their estimated recovery value.

3.2.1.13 Valuation of liabilities

Debts are to be entered in the balance sheet at their purchase price. The purchase price of a debt is equivalent to the exchange value made available to the debtor. The going concern value of a debt may be shown in the accounts on condition that it is higher than the purchase price.

Debts, which were part of the liabilities at the end of the previous financial year, may be shown in the balance sheet at their going concern value even if it is lower than the value shown in the previous balance sheet. However, the value entered in the balance sheet may not be lower than the purchase price. Debts in foreign currencies must be shown in the balance sheet at their equivalent amount in Euros. The business operator may not reduce the value of the debt to a lower figure, even in the event of a fall in the exchange rate. In the case of a rise in the exchange rate, the debt may be shown in the balance sheet at the higher exchange rate value.

3.2.1.14 Depreciation

- The depreciation for the normal wear and tear of an asset in a particular financial year is calculated by taking the difference between the book value (purchase or cost price) of the asset and the estimated residual value and dividing it by the number of years of the remaining expected life of the asset (straight line depreciation).
- As regards depreciable tangible fixed assets other than buildings, the law provides, under certain conditions and within certain limits, for depreciation by decreasing annual instalments (declining-balance method).
- An undertaking may change from the declining-balance method to the straight-line depreciation method, but not vice versa.
- In specific cases an extraordinary depreciation is allowed for technical or economic obsolescence. The amount written off must be deducted from the operating results of the financial year concerned.
- Depreciation due to the decrease of substance takes into account the depreciation of the extraction site arising from normal business operation. It is calculated by applying the quantity extracted during the year to the cost price per unit extracted.
- Depreciable assets with a useful life of one year or less, as well as those with a value not exceeding € 870 and which are used by the owner, may be deducted in full from business income in the year of acquisition (early depreciation).
- Within certain limits and under certain conditions, the law provides for a special depreciation for investments for the protection of the environment, the realisation of energy savings and the creation of employment for disabled workers.
- Buildings or part of buildings which are used for rental housing are depreciated at a rate of 6%, under the condition that the buildings were completed no later than 6 years before (accelerated depreciation).

3.2.1.15 80% exemption on net income from certain types of intellectual property

There is an 80% exemption on net positive income from software copyrights, patents, trademarks, service marks, domain names, designs or models. The exemption also applies to net capital gains realised on the transfer of such intellectual property rights.

In case patents developed and used by the owner himself, the 80% exemption is calculated by applying it to the net positive income that would have been generated through the transfer of the rights to a third party.

The exemptions only apply if the rights are acquired or developed after 31 December 2007.

3.2.1.16 Rollover relief for replacement assets

If a fixed asset, such as a building, or a non-depreciable asset held as invested net assets for at least five years is sold, then any capital gain arising may be rolled over to replacement fixed assets which have been acquired or produced with the funds of the sale, provided said assets form part of a permanent establishment located in the Grand Duchy of Luxembourg.

Exceptionally and under certain circumstances, a reinvestment based on a financial year prior to the year the capital gains were realised, is possible.

If an asset invested in an business disappears for reasons beyond human control, or is seized through Government intervention, is sold or in order to avoid such intervention, and the entitlement to compensation is greater than the net book value at the time of its disappearance or disposal, the businessman may, under certain conditions, roll-over the realised capital gain to a replacement asset.

3.2.1.17 Tax credit or tax relief for self-employed persons

Where Luxembourg has a taxation right, a tax credit is allowed to any physical taxpayer who earns income from an independent professional activity (business income, income from agriculture or forestry, liberal profession).

The tax credit is taken into account only once for the total income of all the self-employed activities during the relevant year of taxation. It cannot be cumulated neither with the employees' tax credit nor with the retirees' tax credit.

The tax credit for self-employed persons is fixed at 300 € per year or 25 € per month.

It may be offset and refunded to the taxpayer only within the annual assessment procedure.

The tax credit is deducted from the tax due for the relevant year of taxation. If the tax credit exceeds the tax debt, the difference shall be paid out to the taxpayer by the tax office after the tax assessment procedure.

3.2.1.18 Income tax relief for new investments

Investments in commercial, industrial, mining or craft enterprises located in the Grand Duchy of Luxembourg may generate, upon request, a tax credit. The tax credit is composed of two parts.

1) The first allowance amounts to 13% on the additional investment in tangible depreciable assets, other than buildings, livestock and mineral and fossil seams during the financial year. The additional investment is the difference between the current value of the assets concerned and the reference value allocated to the same type of assets.

   However the following additional investments realised during a given financial year must be excluded:

   - assets depreciable over a period of less than 3 years,
   - assets acquired through the acquisition of an undertaking,
   - second-hand assets,
   - individual assets acquired free of charge and
   - certain motorised vehicles.

   Investments determined in such a way have to be increased by the depreciation applied to the eligible assets acquired during the year.

   The reference value must be at least € 1,850 and is computed as the arithmetic mean (average) of the carrying values of all eligible assets at the close of the preceding five financial years.

   Nevertheless, the additional investment determined in this way cannot exceed the current investment in eligible assets during the current year.

2) The second allowance is granted for new investments made during the financial year. It consists in:

   a) a 7% tax credit on the first € 150,000 of eligible new investments, and a 3% tax credit on the amount exceeding € 150,000 in tangible depreciable assets other than buildings, livestock, mineral and fossil seams, as well as investments in sanitary and central heating installations in hotel buildings and investments in buildings with a social function.
   b) an 8% tax credit on the first € 150,000 and a 4% tax credit on the amount exceeding € 150,000 of investments eligible for special depreciation.

However, the following investments are excluded:

- assets depreciable over a period of less than 3 years,
- assets acquired through the acquisition of an undertaking
- second-hand assets,
- certain motorised vehicles

However, investments in second-hand assets for a maximum of € 250,000 benefit from a tax relief for investments provided it is for the first professional establishment of the taxpayer.

The tax credit is deductible from income tax due in the tax year where the financial year in which the investments were made is closed. The tax credit is not deductible from non-refundable withholding tax. If the tax credit exceeds the amount of income tax of the current year, the difference may be carried forward for ten years.

3.2.1.19 Income tax relief for the recruitment of unemployed persons

Taxpayers can qualify, on request and by producing a certificate issued by the National Employment Administration, for a tax credit for the recruitment of an unemployed person.

The tax credit is available for taxpayers recruiting unemployed persons within the scope of their commercial, industrial, mining or craft activity with the exception of temporary-employment agencies, agricultural or forestry undertakings and, under certain conditions, liberal professions.

The monthly tax credit amounts to 15% of the monthly gross salary paid to each unemployed person hired and can be deducted as an operating expense for the next 36 months as from the month of employment provided the employment contract is uninterrupted during said period.

The tax credit is deductible from income tax due in the tax year where the financial year in which the wage was paid is closed. The tax credit is not deductible from non-refundable withholding tax. If the tax credit exceeds the amount of income tax in a given year, the difference may be carried forward for ten years.

3.2.1.20 Income tax relief for expenses related to continuing vocational training

Upon request and on the condition that the taxpayer has not opted for direct State aid, the taxpayer can obtain a tax relief for expenses related to continuing vocational training as provided for by the law of 22 June 1999 on continuing vocational training. To this effect the taxpayer must produce a certificate issued by the competent Minister.

The income tax credit amounts to 10% of the expenses invested in continuing vocational training.

The tax relief is deducted from income tax in the tax year where the financial year in which the expenses occurred is closed. The tax relief is not deductible from non-refundable withholding tax. If the tax relief exceeds the amount of income tax, the difference may be carried forward for ten years.

3.2.1.21 Tax exemption for investments

A taxpayer who has established a new business or introduced a new manufacturing process, recognized as being particularly suited for contributing to the structural development and improvement of the national economy, to the regional economic development, or to a better geographical distribution of economic activities, may apply for an exemption from income and communal business tax on 25% of the corresponding profits for up to a maximum duration of ten financial years. The total tax relief resulting from this partial exemption of profits may not exceed a fixed percentage of the investments in land, buildings, plants, equipment and intangible assets, nor a fixed percentage of the salary costs related to the creation of permanent positions.

3.2.1.22 Immunity from taxation of the monetary capital gain realised on real estate

If the profit from the sale or termination of a business includes a capital gain on real estate, the monetary capital gain can, upon request, be exempted from tax. The amount to be exempted equals the difference between the adjusted book value and the book value. The adjusted book value is calculated by applying a ratio to the purchase or cost price and to any amortization and deduction for depreciation. The ratios used depend on the financial years during which the building was acquired or constructed, and during which the amortizations and deductions for depreciation were booked.

3.2.1.23 Tax allowance for profits realised by the sale or termination of business

A tax allowance of € 10,000 or a pro rata share of this amount is granted on the profit realised by the sale or termination of an individual or collective undertaking, depending on whether the sale or termination of activity relates to the business as a whole, to an autonomous part of the business or only to a small fraction of it. If the profit from the sale or termination of an activity includes a capital gain on real estate, the tax allowance is increased to € 25,000. The additional allowance may however not exceed the amount of capital gains realised.

3.2.2 Income from agriculture and forestry

3.2.2.1 Definition of income from agriculture and forestry

Income from agriculture and forestry cover:

- income realised by cultivation of the soil, such as agriculture, silviculture, viticulture, horticulture, vegetable and fruit farming, tree nurseries and greenhouses. The possession of woodland alone represents a forestry undertaking. A regular business with the aforementioned products may be seen as a business profit;
- income realised by breeding or fattening animals: If the feed is not obtained from cultivation of the soil, the profits may be deemed to be business profit
- income realised by beekeeping activities or the exploitation of fishponds of a non-industrial nature;
- income realised by hunting or fishery provided these activities are undertaken within the framework of an agricultural or forestry enterprise.
- incidental income from:
    - the sale of products derived from stock breeding (i.e. cheese);
    - leasing and rental of agricultural buildings;
    - rental of the main residence

Income from agriculture and forestry also includes profit arising from:

- the sale of the business as a whole, an autonomous part or a small fraction of it; or
- the permanent termination of the business or of an autonomous part of it.

3.2.2.2 The determination of income from agriculture and forestry

In principle, income from agriculture and forestry is determined by applying generally accepted accounting principles in a simplified form, i.e. by simply comparing income and expenses or by applying a flat-rate scheme.

3.2.2.3 The financial year

The financial year corresponds to the calendar year. Conversely the financial year for farming and forestry covers the period from 01/10/year N to 30/09/year N+1.

3.2.2.4 Invested net assets

Only assets that are a part of the enterprise by their nature belong to the invested net assets.

The fluctuations in value of land which belongs to the fixed assets of the undertaking as well as, fertilizers and seed already disseminated and the unharvested produce are to be disregarded when computing the income from agriculture and forestry.

3.2.2.5 Valuation principles

The invested net assets are valued according to the valuation principles which apply to trade and business income with the following exceptions:

- breeding livestock can be valued at the higher going concern value;
- real estate is brought into or withdrawn from the undertaking at the original purchase price;
- harvested agricultural or forestry products are valued at the year end at their going concern value.

3.2.2.6 80% exemption on net income from certain types of intellectual property

See under 3.2.1.15.

3.2.2.7 Tax credit or tax relief for self-employed persons

See under 3.2.1.17.

3.2.2.8 Deduction of new investments from profits

In order to promote the modernisation of agriculture, farmers, with the exception of those engaged in forestry, can deduct from their profits a share of the purchase or cost price of their production tools and equipment, and of the equipment costs of farm premises, provided that these investments are made in permanent undertakings located in the Grand Duchy of Luxembourg. The tax deduction can not be applied on assets whose purchase or cost price is less than € 870.

The deduction is fixed as follows:

- 30% on the first € 150,000 of investments and
- 20% on the amount exceeding € 150,000.

3.2.2.9 Income tax relief for the recruitment of unemployed persons

See under 3.2.1.19.

3.2.2.10 Income tax relief for expenses related to continuing vocational training

See under 3.2.1.20.

3.2.2.11 Immunity from taxation of the monetary capital gain realised on real estate

The immunisation of the monetary capital gains is allowed under the same conditions as those applicable to the trade and business income.

3.2.2.12 Tax allowance for profits realised by the sale or termination of business

The amount of the allowance is determined in the same way as the trade and business income.

3.2.3 Income from independent professional services

3.2.3.1 Definition of income from independent professional services

The net income from the following activities is regarded as income from independent professional services, provided that the profession is exercised as a self-employed activity:

1) scientific, artistic, literary, teaching or educational activities;
2) the professional activities of
   - doctors, dentists, veterinary surgeons, midwives, physiotherapists, masseurs;
   - barristers, lawyers, bailiffs, executors of a will, asset managers, accounting and tax experts;
   - engineers, architects, chemists, inventors, consultants, journalists, press photographers, interpreters and translators;

   as well as similar professions;
3) the activity of administrators, commissioners and persons with similar functions in a joint-stock company, a limited liability company, a cooperative society or another company within the meaning of the law governing tax on profits of corporations. However, the remuneration of administrators is regarded as income from a salaried activity as it is paid with respect to the day-to-day management of the company or corporation.

Income from independent professional services also includes profit resulting from:

- the sale of the invested net assets required to practice the profession; or
- resulting from the permanent termination of activity.

3.2.3.2 Determination of income and valuation principles

The provisions for the determination of trade and business income, provided they are compatible, are also applied to the determination of income from a self-employed activity.

3.2.3.3 Invested net assets

Only assets, that by their very nature are meant to be used in the exercise of an independent professional undertaking, are deemed to form part of the net assets of such an undertaking.

3.2.3.4 80% exemption on net income from certain types of intellectual property

See under 3.2.1.15.

3.2.3.5 Tax credit or tax relief for self-employed persons

See under 3.2.1.17.

3.2.3.6 Income tax relief for the recruitment of unemployed persons

See under 3.2.1.19.

3.2.3.7 Income tax relief for expenses related to continuing vocational training

See under 3.2.1.20.

3.2.3.8 Immunity from taxation of the monetary capital gain realised on real estate

A tax exemption of monetary capital gain on the sale or transfer of real estate is allowed under the same conditions as those applicable for the trade and business income.

3.2.3.9 Tax allowance for profits realised by the sale or termination of business

The determination of the tax allowance is calculated according to the rules that apply to the trade and business income.

3.2.4 Net income from employment

3.2.4.1 Definition of the net income from employment

The following is regarded as income from employment:

1) salaries and benefits received by virtue of an employment and pensions granted by the employer, before the end of the employment contract;
2) arrears of salaries and wages or severance pay received after a dismissal, although the severance pay may be partly or fully tax exempt under certain conditions;
3) unemployment benefits, sickness and maternity benefits received instead of a salary;
4) allowances, contributions and insurance premiums paid to supplementary pension schemes introduced by the law of 8 June 1999 on supplementary pensions as amended, endowments made by the employer to an inhouse pension scheme as referred to by the law of 8 June 1999 on supplementary pensions as amended, as well as, in cases where the employee or his beneficiaries have received a lump-sum payment from such a scheme, the positive difference between the lump-sum paid and the corresponding provision recorded in the balance sheet of the financial year preceding the financial year in which the payment occurred.

   These advantages are subject to a withholding tax payable by the employer. The withholding tax rate is set at 20%.

   During the annual assessment or adjustment of payroll taxes withheld, allowances, contributions, benefits or premiums taxed on a lump sum basis and the flat rate taxation are not taken into account to neither compute the net income or deductible special expenses nor to determine the amount of taxes creditable or already withheld.

3.2.4.2 Determination of net income from employment

Net income from employment is made up of the excess of income over professional expenses. Professional expenses are defined as expenses needed to obtain, secure and retain the income.

The professional expenses include a lump sum of € 540 which can be deducted each tax year in addition to the travel expenses.

The deductible travel expenses depend between on the distance between the main town in the commune of the taxpayer's domicile and his working place.

The distance is measured in units, each representing a fixed number of kilometres, in a straight line between the main town in each of the 2 communes. The flat allowance per unit is set at € 99 per tax year.

From 2013, the first four units at € 99 (i.e. € 396) are no longer taken into consideration to compute the tax due. The maximum deductible allowance is set at 26 units (i.e. € 2,574) per tax year.

The annual taxable income is reduced by a lump sum of € 480 for special expenses. This lump sum is in principle doubled for spouses or partners taxed jointly and who both receive income from employment.

The mandatory legal social security contributions (health insurance and pensions) paid by employees to the administrations located in the Grand Duchy of Luxembourg or to social security establishments abroad under a bi-or multilateral agreement are deductible as special expenses.

3.2.4.3 Tax credit for employees

Any taxpayer earning income from employment falling under Luxembourg tax and being in possession of a withholding tax card is granted a tax credit for employees (CIS). The tax credit is taken into account only once for the total earnings from all salaried activities during the relevant year of taxation.

The tax credit for employees is fixed at € 300 per year, i.e. € 25 per month, i.e. € 1 per day.

It is paid out by the employer in the course of the relevant year of taxation. The tax credit is not granted if the income is less than € 936 per year, € 78 per month or € 3.12 per day.

The tax credit for employees can only be offset and refunded within the framework of withholding tax on salaries and wages based on the employee’s withholding tax card. Each employee or retired worker with a Luxembourg withholding tax card will be credited € 300 per year (or € 25 per month) by their employer.

3.2.5 Net income from pensions or annuities

3.2.5.1 Definition of the net income from pensions or annuities

Net income from pensions or annuities includes:

a) any payment received by virtue of a previous employment, or paid by an independent retirement fund which is financed wholly or partly by insurance contributions as well as the flat rate education allowance and certain annuities received to replace the loss of income;
b) any other annuity or periodical payment to which the taxpayer is entitled or which is paid voluntarily.

3.2.5.2 Determination of the net income from pensions or annuities

Net income from pensions or annuities is computed as the difference between the income and the professional expenses. Professional expenses are defined as expenses needed to obtain, secure and retain said income.

A minimum annual allowance of € 300 can be deducted from the taxable income per year.

Under certain conditions, only 50% of the net amount received from arrears of life annuities in the form of capital payments or compensatory allowances in return for a global compensation is subject to tax.

3.2.5.3 Tax credit for retirees

Any taxpayer earning income from pensions or annuities, as defined under 3.2.5.1 a), falling under Luxembourg tax and being in possession of a withholding tax card is granted a tax credit for retirees (CIP). The tax credit is taken into account only once for the total earnings from all retirement schemes during the relevant year of taxation.

The tax credit for retirees is fixed at € 300 per year, i.e. € 25 per month.

The tax credit is paid out by the retirement or pension office/fund or any other debtor of the pension during the relevant year of taxation. The tax credit is not granted if the income is less than € 300 per year or € 25 per month.

The tax credit for retirees can only be offset and refunded within the framework of the withholding tax on salaries and wages based on the withholding tax card and performed by the retirement office / pension fund or any other debtor of the pension.

3.2.6 Net income from financial investments

3.2.6.1 Definition of net income from financial investments

The following income is regarded as income from financial investments:

a) dividends, shares of profit and other returns on shares, stocks and other holdings in collective entities, notably public limited companies, partnerships limited by shares, limited liability companies and cooperative societies (under certain conditions, half of this income is exempted from income tax and, where applicable, from communal business tax;
b) the share of profit in a commercial, industrial, mining or craft undertaking, paid to a lender for a capital investment remunerated in proportion to the profit realised;
c) arrears and interests on bonds and similar securities, including shares of profit and redemption premiums;
d) interests of any kind not listed under b) or c), namely of mortgages, loans, credits, deposits, savings and current accounts;
e) discounts on negotiable papers;
f) special allowances or benefits granted in addition to or instead of those listed from a) to e) above;
g) proceeds from the disposal before maturity of dividend or interest coupons or similar instruments if the relevant share or bond are not simultaneously disposed of;
h) the compensation received when selling fixed-interest securities, for the interest, which has accrued but not matured, if said compensation is accounted for separately.

If the income described under a) to h) is included in the trade and business income, in the income from agriculture and forestry or in the income from independent professional services, it is taxable in the pertaining category of net income.

The following does not constitute income from financial investments:

1) stocks or shares distributed either wholly or partly free of charge by companies with a share capital including the related assignment and subscription rights, if the issue of the stocks or shares lead to a dilution of the issued capital represented by the shareholder's original holding;

2) sums allocated as capital distributions by a collective entity, subject to the rules applicable to the sale of shares (see under 3.2.8 Sundry net income);

3) allocations which constitute the counterpart of a reduction of capital and reserves and which are granted on the occasion of a redemption of shares by a SEPCAV pensions vehicle within the meaning of the law on institutions for occupational retirement provision in the form of a pension savings company with variable capital (*société d'épargne-pension à capital variable* - sepcav) or a pension savings association (*association d'épargne-pension* - assep).

3.2.6.2 Determination of net income from financial investments

Interest payments from a savings account with a home loan and savings institution are exempt from income tax if the savings are assigned to the financing of a construction, the acquisition or transformation of a house or apartment to be used for the personal residence, to the purchase of the land and the repayment of loans taken up for the same purposes.

The first € 1.500 of net income from financial investments are tax exempt. This amount is doubled for spouses or partners who are taxed jointly.

Net income from financial investments is computed as the difference between the income and any professional expenses. Professional expenses are expenses needed to obtain, secure and retain said income.

A minimum annual allowance of € 25 is deducted from the income from financial investments. This amount is doubled for spouses or partners who are taxed jointly.

If the professional expenses exceed the income, the net loss may not be offset against other categories of net income. This restriction does not apply to income referred to under 3.2.6.1. a), if the taxpayer has an important stake in the undertaking and gets more than 50% of his professional income from an employment in the undertaking.

3.2.6.3 Tax relief for venture capital investment

Taxpayers who hold a venture capital certificate may, upon request, benefit from a deduction on their taxable income, also known as tax relief for venture capital investment.

3.2.7 Net income from rentals and leases

3.2.7.1 Definition of net income from rentals and leases

The following is regarded as income from rentals and leases:

1) income arising from the letting and leasing of movable and immovable property, provided the income does not fall under b) or c) below;
2) income arising from the granting of mineral rights for the development or extraction of mineral or fossil resources existing under the ground or on the surface. The disposal of such substances is assimilated to the granting of development or extraction rights, unless it is relating to a delimited deposit, is not a temporary activity and the selling price or a part of it has not been fixed in accordance with the level of extraction;
3) income from the payment of royalties for the use, or the right to use, the owner's rights in a literary, artistic or scientific work including cinematographic films, a patent, registered trademark or brand name, drawing or design, plan, secret formula or process, or any analogous right, and for the use or right to use industrial, commercial or scientific equipment and for information relating to experience acquired in an industrial, commercial or scientific area;
4) the proceeds of the disposal of receivables relating to rentals or leases, even if the receivable is relating to a time prior to the disposal of the real estate is included in the selling price;
5) the rental value of the real estate and its dependences occupied by the owner. This value is determined by a standard procedure.

If the income described under a) to e) above belongs to the trade and business income,income from agriculture and forestry activities or independent professional services, it is taxed in the pertaining category of net income.

3.2.7.2 Determination of the net income from rentals and leases

Net income from rentals or leases is determined by comparing the income and the expenses. Professional expenses are defined as expenses needed to obtain, secure and and retain said income.

3.2.8 Sundry net income

3.2.8.1 Definition and determination of the sundry net income

Sundry net income includes:

a) profits resulting from the speculative operations as specified below provided they are not taxable in another category of income:
   1) the sale of assets recently acquired for a valuable consideration. Assets are deemed recently acquired when the interval between acquisition or establishment and realisation does not exceed 2 years for real estate and 6 months for other assets;
   2) disposal of assets when disposal precedes acquisition.

   Profits from speculation are not taxable if the total annual profit does not exceed € 500.

   However, the following profits from speculative operations are always taxable:

   1) carried interest in a profit-sharing plan for natural persons, employees of alternative investment fund managers or management companies which gives rise to different rights on the net assets or the profits of said fund – with the exclusion of the proceeds from the realisation of their units, shares or rights in the alternative investment fund and referred to under point 2. below. In addition, the profit-sharing rights which are based on the quality of their person and the performance of their investment must have been granted on the express condition that the shareholders or unitholders must first have recovered the totality of their investment in the alternative investment fund or the underlying assets;

2) speculative profits from the realisation of shares, stocks or other securities in alternative investment funds by the transferor, natural person and employee of an alternative investment fund manager or a management company, and where the securities held entitle the holder to a profit-sharing plan as provided for in point 1. above. However, if the interval between the acquisition or creation of such shares, stocks or securities and their realisation exceeds 6 months, the speculative profit resulting from this realisation is not taxable income, unless the provisions of article 100 (sale of a large stake) will produce their effects.

b) the income from the sale more than two years after the purchase or constitution of real estate which does not form part of the invested net assets of a business or of the assets used within the scope of independent professional activities. Real estate, with the exception of land, forming part of an agricultural and forestry undertaking is excluded.

Income under a) and b) is determined by the difference between the selling price and the purchase or cost price plus professional expenses. The purchase or cost price of assets indicated under b) is, where applicable, to be revalued by multiplying the ratio stipulated by law to take into account the currency depreciation.

The provisions under a) and b) are not applicable if the sale concerns the taxpayer's main place of residence.

c) the income from the sale of a substantial share in a corporate entity more than six months after its acquisition. Net income is equal to the selling price less the expenses for the sale and the re-valued purchase price.

When all or part of the corporate assets are distributed, the proceeds paid to important shareholders are taxable provided their value exceeds the re-valued purchase price.

A shareholding is deemed to be substantial if the taxpayer, alone or together with their spouse, partner or minor children, has held directly or indirectly, at any time during the five years preceding the sale, more than 10% of the company's share capital.

Under certain conditions, the exchange of shares does not automatically lead to the realisation of capital gains.

If the income from the sale of a substantial shareholding forms part of trade and business income, income from agriculture and forestry or independent professional services, it is taxed in the pertaining category of net income.

Total income as under b) and c) is reduced by a tax allowance of € 50,000, provided that this does not result in an overall loss. The allowance is increased to € 100,000 for married couples or partners who are taxed jointly. This allowance will be reduced by the amount of any previous allowances that were granted during the last 10 years.

The income arising from the sale of real estate acquired by way of direct succession and previously used by the parents as their main residence may be reduced under certain conditions by additional tax allowances.

Moreover, the net profit realised by the sale of real estate may under certain conditions be rolled over into real estate acquired in its place.

d) the income from services that are not taxable in any other category of income, such as income from casual labour. However, this income is not taxable if its annual amount is less than € 500.

e) the repayment of the capital of certain pension insurance contracts and the distribution of the accrued savings to the beneficiaries of the contract holder.

f) the early repayment of the capital and the accrued savings of a pension insurance scheme as indicated under point e).

3.3 Special expenses

The following costs and expenses, called special expenses, may be deducted from the total net income insofar as these costs and expenses do not represent business expenses or professional expenses:

1) **payments of annuities and permanent expenses due by virtue of a special obligation**, insofar as these annuities are not economically linked to exempt income.

   However, payments made to persons who, if in case of need, would be entitled under civil law to claim maintenance from the taxpayer, are not to be regarded as special expenses, unless they are:

   a) stipulated at the time of the transfer of property and are not excessive in relation to the value of the property transferred;
   b) decided by court order in a **divorce** case on specific grounds after 31/12/1997;
   c) decided by court order in a **divorce** case after 1 January **1998** provided the debtor and the beneficiary of the annuity file a joint application.

   The maintenance payments agreed upon in a case of **divorce** by mutual agreement as well as the annuities listed under b) and c) are only deductible up to an annual amount of € 24,000 per divorced partner.

   Payments which are not tax deductible by the payer are not taxable in the hands of the payee.

   Only 50% of the net amount received from arrears of life annuities in the form of capital payments or compensatory allowances in return for a global compensation is subject to tax.

2) **debt interest (which must be in relation to consumer loans, the financing of cars, movable goods, etc.)** up to a limit of € 336 for the taxpayer, increased by the same amount for the jointly taxable spouse and also for each of the taxpayer's children who gives rise to a tax allowance for children, provided there is no economic relationship to exempt income. However, this limitation is not applicable to debt interest related to debt contracted in order to finance the buy-out of co-heirs - within the framework of a distribution of estate - of a commercial undertaking or an agricultural undertaking.

   Note: the financing costs for the acquisition or construction of the taxpayer's personal residence or of a residence to let are deemed to be deductible professional expenses in the category of net income from rented property.

3) certain contributions and insurance premiums, namely:

   a) **mandatory employee contributions** for sickness and pension insurance in Luxembourg as well as mandatory employee contributions paid into a public social security institution abroad, in accordance with a bi- or multilateral social security agreement;

   b) **mandatory contributions** for sickness, accident and pension insurance paid by self-employed persons for affiliation with a social security scheme in Luxembourg or abroad in accordance with a bi- or multilateral social security agreement;

   c) the deductions from wages or salaries on account of an **supplementary pension scheme introduced by the law of 8 June 1999 on supplementary pension schemes, as amended**, up to an annual amount of € 1,200;

   d) **personal non-mandatory insurance contributions** to a voluntary or optional continued sickness and pension scheme and the purchase of sickness and pension insurance periods from a Luxembourg or foreign social security fund, in accordance with a bi- or multilateral social security agreement;

   e) **premiums paid to approved companies in the Grand Duchy of Luxembourg or that are approved and have their registered office in another Member State of the European Union for voluntary life, death, accident, invalidity, sickness or civil liability insurance as well as contributions paid to approved mutual societies**, whose aim it is to help their members or members of their families in case of sickness, accident, incapacity to work, disability, unemployment, old age or death. Premiums and contributions, which are economically linked to the granting of a loan, are only deductible under certain conditions. Premiums and contributions paid for life insurances which grant certain advantages in case of life at maturity are only deductible if the contract is signed for an effective period of at least ten years and if the premiums and contributions are actuarially calculated and based on the contract holders life elements. Premiums and contributions are only deductible up to a limit of € 672 for the taxpayer, which is increased by the same amount for the jointly taxable spouse and also for each of the taxpayer's children who gives rise to a tax allowance. The payment of a **single premium (Prime unique)** for a temporary decreasing-capital life insurance as a guarantee for a loan to finance personal living expenses or the acquisition of professional equipment gives rise to an increase in deductible special expenses (please see our website under section "A à Z", letter "P", under "Prime unique");

f) **contributions paid to recognised home loan and savings institutions in Luxembourg or in another Member State of the European Union** in order to finance the construction, acquisition or transformation of a flat or house to be occupied by the owner. The premiums and contributions are only deductible up to the limit of € 672 for the taxpayer, increased by the same amount for the jointly taxable spouse and also for each of the taxpayer's children subject to a tax allowance for children;

g) annual premiums, up to a certain limit, paid for a **private pension insurance contract with an insurance company or credit establishment and which provides a monthly pension payable at the earliest after a contribution period of 10 years but no sooner than from the age of 60 and no later than from the age of 75**. The benefit of the contract can specify either a life annuity with monthly payments or the direct payment of a lump sum of 50% of the accumulated principal, plus a life annuity with monthly payments on the remaining amount. The annual deductible amount depends on the age of the policy holder at the beginning of the tax year (please see our website under section "A à Z", letter "P", under "Prévoyance-vieillesse").

A minimum annual lump sum of € 480 may be deducted in lieu of the special expenses as listed under 1), 2), 3.d), 3.e), 3.f) and 3.g) above. In the case of married taxpayers or partners who are taxed jointly and who both receive income from employment, the minimum deductible amount corresponds to the sum of deductible lump sums which would be applicable if the couple was not taxed jointly;

4) certain donations, provided they do not exceed either 20% of the total net income or € 1,000,000; amounts above this limit may be carried forward for two subsequent tax years and deducted within the same limits;
5) losses incurred over the preceding tax years for commercial, industrial, mining or craft undertakings, agriculture and forestry undertakings or self-employed persons, as far as these losses could neither be set off against other net income during the tax year in which they occurred nor be deducted as special expenses during any subsequent tax year.

(for non-resident partners, see point 8.7. - Equal fiscal treatment of resident and non-resident taxpayers)

4. Adjusted taxable income

Taxable income which is determined as being the sum of all the different categories of net income less special expenses is still likely to be adjusted by the following allowances:

1) an allowance for extraordinary expenses:

   the taxpayer can apply for a tax allowance for unavoidable extraordinary expenses which reduce his financial capacity in a considerable way;
2) a tax allowance for children who are not living in the taxpayer's household:

   the taxpayer can apply for a tax allowance for extraordinary expenses for children who do not live in his household but who are financially supported and educated by the taxpayer;
3) extraprofessional allowance:

   jointly taxed spouses or partners receive an extraprofessional allowance of € 4,500 per year or € 375 per full month where they are subject to tax:

   - if both of them realise either a trade and business income, an income from agriculture and forestry, an income from a self-employed activity or if they receive income from employment;
   - if one of them realises a trade and business income or an income from self-employed and the spouse/partner is affiliated with the Social Security Centre as an assisting spouse or partner;

- upon request, if one of them realises a trade and business income, an income from agriculture and forestry, an income from a self-employed activity or if they receive income from employment and if the spouse/partner has been receiving a retirement pension for less than three years.

5. Tax base and collection of tax

5.1 Assessment of the tax base

In general, the tax base is assessed annually on the basis of a tax return:

The taxpayer, whose taxable income is composed wholly or partly of income subject to withholding tax on wages and salaries, on income from movable assets or directors' fees, is taxed by assessment if:

1) the annual taxable income exceeds € 100,000;
2) the taxable income includes net income not subject to withholding tax exceeding € 600;
3) the taxable net income from capital and investments exceeds € 1,500 subject to withholding tax;
4) in case of joint taxation, one spouse is a resident taxpayer and the other is a non-resident;
5) the taxable income includes income from directors' fees which exceeds € 1,500 subject to withholding tax;
6) the income is taxed at the level of the partners who have chosen to be taxed jointly.

In cases of several sources of income subject to withholding tax on salaries and pensions, the amount of taxable income requiring the assessment and a tax return is reduced to € 36,000 for taxpayers in tax classes 1 and 2 and to € 30,000 for taxpayers in class 1a.

The tax year is the same as the calendar year and it covers all the profit and net income in a given year. However, operators of commercial, industrial, craft or mining businesses with proper accountancy procedures may choose financial year-end dates which are not on 31 December; in such a case, the tax year takes into account the profit realised during the financial year or years that end during the given tax year.

5.2 Withholding tax

N.B. Please see chapter 7 below with regard to withholding tax on certain interest income.

Taxpayers must make advance payments every quarter and are subject to tax withheld at source (withholding tax) as follows:

1) withholding tax on income from salaries and wages;
2) withholding tax on income from pensions and annuities received by virtue of previous employment or from an independent retirement fund financed wholly or partly by insurance contributions and from the flat-rate education allowance;
3) withholding tax on income from the following investments:
   a) dividends and other returns on shares, stocks, founder's shares and other holdings in collective entities (e.g. capital companies and cooperative societies);
   b) the investor's share of the profit in a commercial, industrial, mining or craft undertaking, paid proportionally to his capital investment and the profits realised;
   c) interest and payments on bonds, where, over and above the fixed rate of interest, a right to a supplementary interest which varies according to the distributed profits is granted.

      This tax on investment income is set at 15%. The tax is withheld on the gross amount payable, free from any deductions.

   The income mentioned under a) to c) is considered to be Luxembourg sourced income, if the debtor is the Grand Duchy of Luxembourg, a municipality, a public Luxembourg establishment, a private corporation that has its registered office or central administration in Luxembourg or a physical person with his tax residence in Luxembourg;

4) the withholding tax on directors' fees and similar benefits paid to administrators of Luxembourg companies in return for their supervisory functions. The tax rate of 20% is withheld on the gross amount paid, free from any deductions.

   For a non-resident, the withholding tax on directors' fees is considered to be a final and definitive tax provided the gross fees do not exceed € 100,000 per tax year.

   The withholding tax on directors' fees has to be withheld by the debtor of the revenue.

5.3 Tax deductions on tax determined by annual assessment

The following are some of the items which are taken into account for the annual tax assessment:

- the withholding tax on income from employment or pensions;
- the child tax allowance or child tax relief (see point 6.2);
- quarterly advance payments already paid;

Any excess amounts paid in the form of withholding tax or quarterly advance payments may be refunded to the taxpayer.

5.4 Tax credit for single parents

Upon request unmarried taxpayers benefitting from a child tax allowance are granted a tax credit called single parents' tax credit.

It is fixed at € 750 per year. If the taxpayer was not liable for tax throughout the whole year, the tax credit is set at € 62.,5 per entire month where the taxpayer was subject to tax. The single parents' tax credit is refunded to the taxpayer where it exceeds the tax debt.

It is reduced by 50% of the amount of all other allowances granted to the child if said allowances exceed € 1,920 per year or € 160 per month. Examples of allowances are alimony payments, childcare expenses, custody and professional training or tuition costs. Child benefits and orphans' pensions are not concerned by this measure. If each parent supports the child or children directly, the single parent tax credit (*credit d'impôt monoparental* - CIM) is reset to zero. In the presence of more children and related allowances, the lowest allowance per child will be taken into consideration for the reduction of the tax credit where applicable.

(for non-resident partners, see point 8.7. - Equal fiscal treatment of resident and non-resident taxpayers)

6. Tax calculation

6.1 Tax classes

Taxpayers are classified into three classes:

1) class 1 is applies to all persons who do not fall under class 1a and class 2;
2) class 1a applies to the following persons provided they do not belong to class 2:
   a) widowed persons;
   b) persons who receive a child tax allowance for a child living in their household in the form of a cash bonus paid by www.cnpf.lu, a part of a financial allowance for higher education from www.CEDIES.lu, a financial allowance for voluntary workers from www.SNJ.lu or a tax relief granted by the tax administration ACD (see point 6.2);
   c) persons having passed the age of 64 at the beginning of the tax year;
3) class 2 is for:
   a) married persons and partners taxed jointly;
   b) widowed persons whose marriage was dissolved by the spouse's death in the course of the three years preceding the tax year;

c) divorced persons and de facto separated persons by virtue of a legal exemption or a court judgement, who were divorced or separated in the course of the three years preceding the tax year.

6.2 Child tax allowance and tax relief

As from the tax year 2008, the tax classes are limited to class 1, 1a and 2.

The tax **allowance** for children is granted either as a cash bonus paid by www.cnpf.lu, or as part of a financial allowance for higher education from www.CEDIES.lu or as a financial allowance for voluntary workers from www.SNJ.lu.

A taxpayer with a child living in their household who is:

- less than 21 years old at the beginning of the tax year, or
- at least 21 years old at the beginning of the tax year and pursuing professional education, or
- at least 21 years old and physically or mentally disabled at the beginning of the tax year

and who has not benefitted from any form of tax relief, either as a cash bonus or a financial or voluntary support may, upon request to the tax administration (ACD) after the end of the tax year concerned, benefit from a child tax allowance in the form of tax relief which will be credited against the tax due.

In the event cohabiting unmarried couples living together with their child, the child is deemed to form part of the taxpayer's household who received the first annual cash bonus in the form of a child tax allowance. If during the tax year the tax relief was directly linked to the child, in whatever form, the tax class 1a and the increase of certain tax deduction limits will be granted to the mother who is free to renounce her rights in favour of the father who is taxed separately (tax form 104). For a given tax year, a child can only form part of one household.

The taxpayer may benefit, upon request, from a tax **relief** for children even if his child tax allowance rights expired at the end of one of the two tax years preceding the tax year concerned. This measure is applicable to taxable adjusted income which does not exceed € 76,600 (see other terms on our website under the section "A à Z", letter "B", "Bonification d'impôt pour enfants").

6.3 Employment fund

A 7% surcharge is levied on personal income tax to finance the employment fund.

The same tax is increased by 9% on the income bracket for the adjusted taxable income in excess of € 150,000 for tax classes 1 and 1a and € 300,000 for tax class 2.

6.4 Tax exempt minimum income

As from the tax year 2009, the tax exempt minimum income is set at € 11,265. As a consequence, the amount of exempt income for the various tax classes as from 2009 is:

- € 11,265 for tax class 1;
- € 22,530 for tax classes 1a and 2.

6.5 Tax rates

In principle, the tax rate is the same for all income, whatever its nature and whatever the method of collection.

The rates of withholding tax on wages and salaries and on pensions and annuities are based on the withholding tax rate on income even though these rates take into account the specificities of tax collection methods and the categories of income concerned, and they include a surcharge which varies between 7 and 9% for the unemployment fund (between 4 and 6% in 2012 and 2011 and 2.5% before 2011).

Furthermore any remuneration paid by an employer within the scope of his private life to an employee hired for the purpose of housework, child care or care and support services due to the employer's state of dependency, are in principle taxed at a flat rate in opposition to the normal tax scheme. The tax rate is set at 10% of the net salary paid and must be borne by the employer. The tax is levied by the Joint Social Security Center (Centre commun de la sécurité sociale) on behalf of the tax administration.

At the end of the tax year, the employee is entitled to request a tax assessment in accordance with the rules in place for the standard tax scheme.

6.6 Extraordinary income

6.6.1 Definition of extraordinary income

If the taxable income includes extraordinary income, the extraordinary income is taxed at a special, more favourable rate.

The following types of income are deemed to be extraordinary income:

1) income from a self-employed activity which is clearly distinct from the usual professional occupation, and which runs over several years, or the full income from an ordinary professional activity carried out exclusively over several years within the scope of a self-employed professional activity, provided all income becomes taxable in a single year;
2) extraordinary income from a salaried occupation, economically linked to a period of more than one year and which becomes taxable for reasons beyond the control of the payer and the payee, in a single tax year;
3) periodical remuneration for a salaried occupation relative to a pay period before or after the tax year, and which becomes taxable, for reasons beyond the control of the payer and the payee, in a single tax year;
4) indemnities paid for losses incurred or for income forfeited by giving up or not exercising an activity or by waiving a share in profits or the expectation of such a share in profits, insofar as such indemnities replace income relating to a period other than the tax year;
5) additional pension claims, with the exception of the portion related to the tax year,
6) profits from the disposal or termination of a commercial undertaking, an agricultural and forestry undertaking or of a self-employed activity;
7) pension capital, promised from the beginning by the employer and payable as a retirement, disability or survivor's pension;
8) income from the sale of real estate with the exception of income from speculative transactions;
9) income from the sale of a substantial shareholding;
10) income from exceptional felling of trees;
11) indemnities as described under 4), which are granted for physical damage;
12) reimbursement in the form of capital of a pension insurance contract and of accumulated savings of such contracts. Early repayment of accumulated savings of such contracts in the event of serious illness or disablement is also concerned;
13) income from exceptional felling of trees in a forestry exploitation resulting from a case of force majeure.

6.6.2 Tax on extraordinary income

6.6.2.1 Flat-rate taxation scheme

The tax on income described under 1) to 5) above is equal to four times the extra tax due at normal rates on all ordinary income plus one quarter of the aforementioned extraordinary income, as compared to the tax at normal rates due on all ordinary income. The tax rate on extraordinary income cannot be higher than 24%.

6.6.2.2 Taxation at a quarter of the global rate

The tax rate on income described under point 13) above is equal to one quarter of the global rate chargeable on adjusted taxable income.

6.6.2.3 Taxation at half of the global rate

The tax rate on income described under 6) to 12) is equal to half of the global rate chargeable on adjusted taxable income.

6.7 Tax on income from agriculture

The portion of profit from agriculture that exceeds the average amount of profit in the tax year concerned and the three preceding years is subject to tax at the global tax rate applicable to the ordinary income, but which cannot exceed the rate of 27% and where the tax reduction cannot be higher than € 5,000.

6.8 Tax on income from artistic activities

The portion of the profit from artistic activities that exceeds the average amount of profit in the tax year and the three preceding years is charged based on a special flat rate taxation with a maximum of 24%.

6.9 Foreign income and foreign tax

6.9.1 International tax treaties

Double taxation of foreign income is eliminated by either the exemption or the credit method.

6.9.1.1 Exemption method

When a resident taxpayer has income which is exempted by an international treaty to avoid double taxation, the said income is nevertheless included in a fictitious tax base in order to determine the global tax rate which will be applied to the taxable adjusted income.

Exempted extraordinary income is ignored for the calculation of the global tax rate.

6.9.1.2 Credit method

When a resident taxpayer has foreign income which is exempted from double taxation by the tax credit method under a tax treaty, the foreign income is included in the taxpayer's tax base but the amount of income tax paid in the foreign country is deducted from the income tax due in Luxembourg.

The above provisions apply individually for each State in which income arises. In the case of foreign income from capital and investments, the allocation of the foreign tax credit may, under certain conditions and within certain limits, be applied globally.

In the event where the foreign tax exceeds the Luxembourg tax levied on the foreign income, the excess part of foreign tax is deductible from the income. The method used to determine the amount of attributable and deductible foreign tax is set by the Grand Ducal regulation of 26 May 1979.

6.9.2 Absence of international tax treaties

If a resident taxpayer receives income in a country with which the Grand Duchy has not concluded a tax treaty to avoid double taxation, and if the income is subject to tax which corresponds to the Luxembourg income tax, double taxation is eliminated by the tax credit method (see 6.9.1.2 above).

6.9.3 Withholding tax on income retained by a paying agent (in accordance with EU Directive 2003/48/EC and the relevant tax treaties)

The withholding tax retained by a paying agent in accordance with EU Directive 2003/48/EC or a relevant tax treaty on interest income (see point 9 hereafter) paid to a taxable natural person is deducted from the income tax due by this person in his country of residence. In case the withholding tax exceeds the income tax due, the excess amount is in principle to be refunded to the beneficial owner in his country of residence.

7. Withholding tax on certain interest payments from fixed savings paid to Luxembourg resident persons

As from 1 January 2006, each paying agent established in Luxembourg will retain a withholding tax of 10% on savings interest paid to resident natural persons in Luxembourg. The withholding tax applies to accrued interest since 1 July 2005 and paid after 1 January 2006.

A paying agent is any economic operator established in Luxembourg who, within the framework of his profession or normal economic activity, pays interest to or secures the payment of interest for the beneficiaries, resident natural persons, whether the operator is the debtor of the claim that produces the interest or the operator entrusted by the debtor or the beneficial owner with paying interest or securing the payment of interest. As an example, banks and credit institutions would be typical paying agents.

Withholding tax is applied to interest paid or credited to an account, related to debt claims of every kind, notably interests received on bank accounts, income from government securities, income from bonds and debentures, income from bond certificates and interest accrued or capitalised at the sale, refund or redemption of the debt claims. Actual beneficiaries of said interests paid out by a paying agent established outside of Luxembourg may opt for a final 10% tax by means of a special form (model 931 F). The withdrawal is applied to the amounts that would have been subject to withholding tax if the paying agent had been established in Luxembourg.

Current income and income deriving from the sale, refund or redemption of shares or units in undertakings for collective investment (UCI) are exempt from withholding tax and do not falling under the provisions concerning the taxation of savings income of non-residents as described in point 9. hereafter. Interest income and other advantages credited on banking current accounts are also exempt if the interest rate is below 0.75%. Interest payments from savings accounts with home loan and savings institutions duly recognized to operate in Luxembourg or in another EU Member State or in a Member State of the European Economic Area are also excluded from the withholding tax provision.

Interest payments from savings accounts paid or credited once a year and which are not exceeding € 250 per person and paying agent are exempt from the withholding tax provision even though they theoretically fall under its scope of application.

In principle, withholding tax is in full discharge of income tax and paid to Luxembourg taxpayers, resident natural persons who are exempted from having to declare said interest income in their income tax return. Nevertheless when a taxpayer generates interest income subject to withholding tax as part of their commercial, agricultural or self-employed activity, the income is liable to tax under the common law regime. In other words, the withholding tax is credited against a possible tax liability and any surplus tax will be refunded.

Net income from financial investments which is not covered by the domestic withholding tax, notably interest paid or credited by a paying agent outside of Luxembourg, and for which no option for a final 10% withholding tax has been required by the actual beneficiary, current income generated by a investments in an undertaking for collective investment (UCI) by dividends or profit shares will be taxed by assessment under common law. Income from the sale, refund or redemption of shares in a UCI is taxed if it qualifies as sundry income (cf. point 3.2.8 above).

8. Taxation of non-resident taxpayers

8.1 Delimitation of domestic taxable income

The following income is regarded as domestic income of non-resident taxpayers:

1) trade and business income generated:
   a) directly or indirectly by a permanent establishment or by a permanent representative in the Grand Duchy of Luxembourg, unless the permanent representative is an independent wholesaler, commission agent or sales representative;
   b) by a non-resident taxpayer whose activity is regulated by the law on doorstep selling and itinerant trades and requires a special licence;
   c) by professionals in performing arts or professional sportsmen in the Grand Duchy of Luxembourg;
2) profit from agriculture and forestry activities if they are carried out by an agricultural or forestry undertaking established in Luxembourg;
3) profit from independent professional services provided the profession was or is carried out in Luxembourg;
4) income from employment:
   a) if the employment is or was in Luxembourg;

b) if the employment is or was in Luxembourg, unless the employee is/was working for a wholesaler, an industrial undertaking or a transport company and can prove that his domestic income (in the Grand Duchy of Luxembourg) is subject to a foreign tax equivalent to Luxembourg income tax;

c) if the income is paid by a national public treasury or by the Société Nationale des Chemins de Fer Luxembourgeois;

5) income from pensions and annuities:

a) paid by virtue of previous employment in the Grand Duchy of Luxembourg;

b) paid by a national public treasury fund;

c) paid by the Société Nationale des Chemins de Fer Luxembourgeois;

d) paid by an independent national pension fund in Luxembourg, financed wholly or partly by insurance contributions;

e) paid by pension funds incorporated in the form of a pension savings association (*association d'épargne pension* - assep), provided that the contributions that generated the income were deducted from taxable income in Luxembourg;

6) the following income from capital and investments, if the debtor is the Grand Duchy of Luxembourg, a commune, a public Luxembourg institute, a private corporation whose registered office or central administration is in Luxembourg, or a natural person having his tax residence in Luxembourg.

- dividends, shares of profit and other returns in whatever form on shares, capital shares, profit shares or any other holding in collective entities (e.g.. capital companies and cooperative societies;
- shares in profits received by an investor by virtue of his capital outlay in a commercial, industrial, mining or craft undertaking paid proportionally to the profits;
- interest and payments on debentures participating in profits.

Income which is not subject to withholding tax is excluded.

7) income from rentals and leases of property, if the property is located in Luxembourg;

8) the following sundry income:

a) income from the sale of real estate located in the Grand Duchy of Luxembourg and income from the sale of a substantial shareholding (in a corporation whose registered office or central administration is in Luxembourg), within 6 months after their acquisition;

b) income from the sale of a substantial shareholding in a corporation whose registered office or central administration is in the Grand Duchy of Luxembourg, if the shareholder had been a resident taxpayer for more than 15 years and became non-resident taxpayer less than 5 years before the realisation of the income and the sale occurred more than 6 months after the acquisition.

Income from the sale of shareholdings in an investment company in risk capital (*société d'investissement en capital à risque* – SICAR) or in a private wealth management company (*société de gestion de patrimoine familial* -SPF) is excluded.

8.2 Special regulations for the determination of domestic income

Non-resident taxpayers are entitled to deduct business expenses or professional expenses only if these costs are in direct economic relation with their domestic income.

In principle, the deduction of special expenses is limited in the case of non-resident taxpayers. Compulsory contributions to a social security institution are deductible. The minimum annual amount of € 480 is granted to taxpayers receiving professional income. Losses of former financial years are deductible, if they are in direct economic relation with domestic income.

In principle, non-resident taxpayers are not entitled to the allowance for extraordinary expenses and the single parent's tax credit.

For non-resident taxpayers, the rules governing the assessment and collection of tax are similar to those applicable to resident taxpayers, with the restriction that they only apply to domestic income.

8.3 Withholding tax

In addition to the cases, where income tax is withheld at source for resident taxpayers (withholding tax on salaries and wages, pensions, director's fees and certain income from capital and investments), withholding tax is also applied to the following domestic income for non-resident taxpayers:

1) income from independent literary or artistic activities where these activities are or were carried out and/or developed in Luxembourg;
2) income from professional sports activities where these activities are or were carried out in Luxembourg.

The tax withheld is 10% of the income without deductions. The withholding tax is set at 11.11% where the debtor of the allowance is paying the withholding tax.

In cases were the income of non-resident taxpayers is not subject to withholding tax, the tax administration may nevertheless apply withholding tax if this seems necessary to guarantee the payment of the tax debt. The amount withheld, which represents an advance payment, is determined by the tax administration.

8.4 Flat-rate taxation of non-resident seamen

The wages of non-resident seamen employed by a certified shipping company active in international maritime transport are taxed at a flat rate. The withholding tax amounts to 10% of the gross wages after a 10% deduction and a tax allowance of € 1,800 per month, or € 72 per day without considering the tax class that would have applied if the taxpayer hadn't been subject to flat-rate taxation.

8.5 Tax assessment

Non-resident taxpayers working as employees on a continuous basis in the Grand Duchy of Luxembourg during at least 9 months of the year as well as non-resident married taxpayers who are taxed in Luxembourg on more than 50% of the professional income of their household in Luxembourg (see point 3.2) are subject to a tax assessment under the same terms and conditions as resident taxpayers.

8.6 Tax classes

As a general rule, non-resident taxpayers, who realise a taxable income in the Grand Duchy of Luxembourg which is not subject to withholding tax, are listed in tax class 1 and the tax rate cannot be less than 15%. The amount of tax determined cannot exceed the amount of tax levied on the same taxable amount in tax class 1 increased by the amount in the first tax bracket of exempted income.

Non-resident married taxpayers however, who are not de facto separated and where the spouse realises a professional income in Luxembourg, as well as widowed persons, persons benefitting from a child tax allowance as well as persons who have completed their 64th year at the beginning of the tax year are listed in tax class 1a.

However non-resident married taxpayers, who are not de facto separated, are listed in tax class 2, if more than 50% of the professional income of their household is realised and taxed in Luxembourg. If both spouses realise their taxable professional income in the Grand Duchy of Luxembourg, their taxation in tax class 2 incurs the joint taxation of the couple.

Non-resident taxpayers, whose marriage has been dissolved by death within the 3 years preceding the tax year, as well as non-resident taxpayers divorced or de facto separated by virtue of a legal dispensation or a judgement in the course of the 3 years preceding the tax year, are listed in tax class 2.

8.7 Equal fiscal treatment of resident and non-resident taxpayers

Non-resident taxpayers whose income in Luxembourg represents at least 90% of their total domestic and foreign income (professional income until 2009) are, upon request, treated as resident taxpayers.

Belgian residents who are taxable in Luxembourg on more than 50% of their household's professional income can also request to be treated as resident taxpayers.

In both cases and in order to be valid, the application must be submitted on form 100 and box 313 on page 3 must be checked. The application will lead to taxation by assessment for the taxpayers concerned, in accordance with article 157ter LIR or in accordance with paragraph 24§4a of the tax treaty between Luxembourg and Belgium.

In this context, foreign and domestic income will be taken into account for the determination of the applicable tax rate, as will the deductions for **special expenses**, the **loss of rental income in relation to the personal residence** or **the allowance for extraordinary expenses**.

Non resident taxpayers who are treated as resident taxpayers may also benefit from **the single parent tax credit** (*crédit d'impôt monoparental* – CIM).

In order to be treated as resident taxpayers, non-resident married taxpayers or taxpayers in a partnership who choose to be taxed jointly, will be taxed in accordance with tax class 2. In this context, domestic and foreign income of both spouses or partners are taken into consideration for the calculation of the tax rate to be applied.

The 90% limit concerning income is determined annually in accordance with the individual situation of each of the spouses/partners.

The Luxembourg tax administration cannot act as an independent tax consultant in matters of tax rates that apply to the personal situation of the taxpayer.

9. **Withholding tax on savings income in the form of interest payments** (in application of Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and subsequent tax treaties with associated and dependent territories)

As from 1 July 2005, a paying agent established in Luxembourg must apply a withholding tax on interest payments to the beneficiaries, natural persons, who are tax residents in another Member State of the European Union or in one of the following territories: the Netherlands Antilles, Aruba, Jersey, Guernsey, Isle of Man, Montserrat and the British Virgin Islands. The withholding tax is currently set at 35%.

A paying agent is any economic operator established in Luxembourg who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest. Banks and credit institutions often operate as paying agent.

Interest payment means interest paid or credited to an account, related to debt claims of every kind, notably interests received on bank accounts, income from government securities, income from bonds and debentures, income from bond certificates and interest accrued or capitalised at the sale, refund or redemption of debt claims of any nature. Interest also means income deriving from interest payments distributed by undertakings in collective investments (UCI) and income realised upon the sale, refund or redemption of holdings in said undertakings. Although withholding tax in principle applies to interest payments to beneficial owners as from 1 July 2005, accrued interest should only be taken into account as from that date.

The initial withholding tax rate of 15% was increased to 20% from 1 July 2008 to 30 June 2011 and increased to 35% from 1 July 2011. The tax withheld by a paying agent is generally credited against the tax liability in the country of residence of the beneficial owner. In case withholding tax exceeds income tax due, the excess amount is in principle refunded to the beneficial owner in his country of residence.

No withholding tax is levied if

- the paying agent is authorised by the beneficial owner to report his identity and address, the name and address of the paying agent and the identification of the debt claim giving rise to interest payment and the total amount of interest or income to the Luxembourg tax administration., who will forward this information to the competent authorities in the Member State or territory of residence of the beneficial owner or

- the beneficial owner provides the paying agent with a certificate of exemption drawn up in his name by the competent authority in his country of residence.

The paying agent has to offer the beneficial owner with at least one of the two solutions described above in order to be exempted from withholding tax.

10. Note concerning the long-term care insurance

On 1 January 1999, Luxembourg introduced the long-term care insurance. In this context, the Joint Social Security Center (*Centre Commun de la Sécurité Sociale* – CCSS) was given the responsibility to determine and to collect the care contributions on professional and alternative income.

The tax administration determines and collects the care contributions on income from property (see point 3.2) as well as on income from certain pensions paid to resident taxpayers subject to personal income tax, on behalf of the managing body of the long-term care insurance scheme.

Resident taxpayers are only liable for care contributions on income from property, pensions and annuities if they form part of the beneficiaries of the long-term care insurance.

The rate of the care contribution is 1.4%.

The care contribution is not an income tax and it does not represent a business expense, a professional expense or a special expense.

11. Crisis tax, repealed since 1 January 2012

As from the tax year 2012, the crisis contribution tax of 0.8% is abolished (see our webpage, section “A à Z”, letter “C”, “Contribution de crise”).

Corporate Income Tax

12. Taxable corporations

The legal form of a corporation (legal person) is not the decisive factor for taxation. In general, any economic entity realising income that is not directly taxable in the hands of the partners or members is subject to corporation tax.

The law has specifically listed the following collective entities:

1) capital companies, i.e. public limited companies, private limited companies, partnerships limited by shares and European companies;
2) cooperative societies, cooperative societies in the form of a limited company, European Cooperative Societies and agricultural associations;
3) religious congregations and associations, whether they are recognized or not by the government, regardless of their legal form;
4) mutual insurance associations, pension savings associations (*association d'épargne-pension* - assep) and pension funds within the meaning of the law of 6 December 1991 on the insurance sector, as amended;
5) institutes of public interest and other public utility foundations;
6) not for profit associations;
7) other private collective entities whose income is not directly taxable in the hands of other taxpayers;
8) specially assigned assets, and intestacies;
9) commercial, industrial or mining undertakings owned by the State, local authorities (communes) or associations of local authorities, public establishments and other public law legal entities.

13. Tax-exempt corporations

Under certain conditions, the entities described under 2) and under 4) to 9) above are tax-exempt. The entities described under 4) to 9) are exempt from income tax, if, by the terms of their statutes, contract of association or activity, they limit themselves solely and directly to cultural or charitable activities, or activities of general public interest. They remain subject to tax if they are involved in an industrial or commercial activity.

By decision of the government in council, upon advice from the Minister of Finance, certain activities of non-profit associations are not considered to be of commercial or industrial nature if the association's object is deemed to be of particular public interest and the association is not aiming to offer a material gain to its members.

General partnerships, limited partnerships, economic interest groups, European economic interest groupings and civil companies are, in general, not liable to corporate income tax. According to tax law, the legal personality of these companies or associations is not considered to be distinct from that of the partners and corporate tax does not apply for this reason. But the partners in these companies or associations are liable to income tax on their share of the total income realised by the company or association. However non-resident collective entities under article 2 of the Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended, or by article 3 of the Council Directive of 23 July 1990 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 (European Society) or SCE (European Cooperative Society), between Member States, as amended, are also considered as a taxable entities in Luxembourg.

14. Registered office or central administration

For tax purposes a distinction is made between:

1) corporations whose registered office or central administration is located in Luxembourg and
2) corporations whose registered office or central administration is not located in Luxembourg.

The former are taxable on their worldwide income (domestic and foreign income), the latter are only taxable on income in Luxembourg.

15. Taxable income

The taxable income of corporations is the same as the taxable income of natural persons with certain exceptions resulting from the nature of a corporation.

The taxable income consists of both distributed and retained earnings. It also includes any payments made to members of the board of directors or to commissioners, as far as these fees do not represent remuneration for the daily business management.

15.1 Parent company and subsidiaries regime

The income of:

- certain resident fully taxable collective entities, in particular resident taxable capital companies;
- a resident permanent establishment of a collective entity under article 2 of the Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended;
- a resident permanent establishment of a capital company resident in a State, with whom the Grand Duchy of Luxembourg has concluded a double tax treaty;
- a resident permanent establishment of a capital company or a cooperative society resident in an European Economic Area (EEA) country other than a EU Member State;

from a direct shareholding in:

- a collective entity under article 2 of the Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended,
- a resident fully taxable capital company,
- a non-resident capital company fully liable to a tax corresponding to the Luxembourg corporate income tax,

is tax exempt, if the beneficiary has held or commits himself to hold during an uninterrupted period of at least 12 months, a direct or indirect shareholding in the registered capital of at least 10% or of a purchase price of at least € 1,200,000.

In the present case, the distributing company is, under certain conditions, exempted from having to deduct a withholding tax of 15% on the distributed dividends.

If:

- certain resident fully taxable collective entities, in particular resident fully taxable capital companies,
- a resident permanent establishment of a collective entity under article 2 of the Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended,
- a resident permanent establishment of a capital company resident in a State, with whom the Grand Duchy has concluded a double tax treaty,
- a resident permanent establishment of a capital company or a cooperative society resident in an European Economic Area (EEA) country other than a EU Member State,

sell shares from their direct holding in the share capital of:

- a collective entity under article 2 of the Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended,
- a resident fully taxable capital company,
- a non-resident capital company fully liable to a tax corresponding to the Luxembourg corporate income tax,

then the capital gains realised on the sale of the share are tax-exempt, provided that the seller has held or commits himself to hold during a period of at least 12 months a shareholding representing at least 10% of the registered capital of the company, or that was purchased for at least € 6,000,000.

In the case where the provisions concerning the minimum uninterrupted holding period of 12 months with the minimum shareholding capital are not complied with, the tax exemption for the dividend payment or the capital gains from the sale of the shares will be cancelled by a corrective tax reassessment.

The holding of shares through a transparent company (a partnership, a limited partnership, a special limited partnership, an economic interest group, a European economic interest group, a civil company, a temporary commercial company or a joint venture) is deemed to be a direct holding in proportion to the shares held in the invested net assets of the entity concerned.

15.2 Fiscal unity

The optional fiscal unity regime allows for the taxation of the consolidated profits of a corporate group. To this end, fully taxable resident capital companies where at least 95% of the capital is held directly or indirectly by another resident fully taxable capital company or by a permanent resident establishment of a non-resident capital company fully liable to a tax similar to corporate income tax, are allowed to consolidate their tax result with the parent company or the permanent resident establishment.

The holding of shares through a general partnership, a limited partnership, an economic interest group, a European economic interest group or a civil company is deemed to be a direct holding in proportion to the shares held in the invested net assets of the entity concerned.

Where the shareholding is indirect, the companies through which the parent company or the resident permanent establishment are holding 95% of the subsidiary, must be capital companies which are subject to a tax that corresponds to corporate income tax.

The fiscal unity regime is subject to a joint written request submitted by both the parent company or the resident permanent establishment and the subsidiaries concerned. The application must be submitted to the tax authorities before the end of the first financial year for which the fiscal unity is requested. The companies have to consolidate their tax results for at least 5 financial years. During this period of time, the minimum shareholding rates must be complied with at all times.

In the event where the shareholding rate is at least 75% but below 95%, the fiscal unity regime may exceptionally be granted to the corporate group by the Minister of Finance provided the shareholding rate is particularly important for the promotion and structural development of the national economy.

Some capital companies are excluded from the fiscal unity regime

15.3 Non deductible particular expenses

The following items are not deductible:

- expenses related to statutory commitments;
- corporate income tax, net worth tax and communal business tax;
- directors' fees for their supervisory tasks.

15.4 Income tax relief for new investments

See 3.2.1.18.

15.5 Income tax relief for the recruitment of unemployed persons

See 3.2.1.19.

15.6 Income tax relief for expenses related to continuing vocational training

See 3.2.1.20.

15.7 Tax exemption for investments

See 3.2.1.21.

15.8 Immunity from taxation of the monetary capital gain on real estate

See 3.2.1.22.

15.9 Tax relief for audiovisual investments

Capital companies and cooperative societies holding an audiovisual investment certificate may benefit, upon request, from income tax relief in the form of a tax relief for audiovisual investments.

15.10 Tax relief for venture capital investments

See 3.2.6.3.

16. Assessment and collection of tax

In general, corporate income tax is assessed and collected in the same manner as personal income tax. Income from financial investments of corporations is also subject to withholding tax.

All corporations are subject to an annual, individual assessment regardless of the amount or nature of their income.

17. Tax calculation

17.1 Tax rates for resident and non-resident corporations

Corporate income tax is determined as follows:

- 20%, if the taxable income does not exceed € 15,000;
- 21%, if the income exceeds € 15,000.

Tax is reduced to one-half the normal rate for religious congregations and associations, and to one third for cooperative credit societies and agricultural credit associations, whose activities only consist in raising funds and lending to their members.

Non-resident taxable collective entities are not assessed annually and individually on income subject to a withholding tax in Luxembourg, if said income is included in the profits realised of a domestic, commercial, industrial, agricultural or forestry undertaking.

By derogation, the corporate income tax is fixed at a minimum of € 3,000 for collective enterprises who have their registered office or central administration in Luxembourg and whose amount of financial assets exceeds 90% of the of the balance sheet amount. Said financial assets are defined as being assets that are or will be recorded in the accounts n° 23, 41, 50 and 51 of the standard chart of accounts. Shares in collective enterprises are usually to be recorded in the accounts 231 and 233 of the standard chart of accounts.

For all other collective enterprises who have their registered office or central administration in Luxembourg, the minimum tax is:

- € 500 at least if the total balance sheet is below or equal to € 350,000,
- € 1,500 at least if the total balance sheet is higher than € 350,000 but below or equal to € 2,000,000,
- € 5,000 at least if the total balance sheet is higher than € 2,000,000 but below or equal to € 10,000,000,

- € 10,000 at least if the total balance sheet is higher than € 10,000,000 but below or equal to € 15,000,000,
- € 15,000 at least if the total balance sheet is higher than € 15,000,000 but below or equal to € 20,000,000,
- € 20,000 at least if the total balance sheet is higher than € 20,000,000.

The minimum tax amount as listed is to be considered as advance payment for the following years on corporate income tax for the collective enterprise in the event where the minimum amount exceeds the actual tax due in the given tax year. Minimum tax amounts are not reimbursed to the taxpayer.

In the event of fiscal unity, the tax due by the parent company or the permanent domestic establishment is increased by the minimum tax due by each of the group’s companies but cannot exceed € 20,000.

The tax relief for investments, tax relief for the hiring of unemployed persons and the tax relief for continuing vocational training in accordance with the law of 31 July 2006 introducing a labour code, as amended, and the tax relief for venture capital investments in accordance with article VI of the law of 22 December 1993 on re-launching investment in favour of economic development, as amended, are not taken into account for the minimum tax due for a given tax year.

17.2 Employment fund

A surcharge of 7% is levied on final corporate tax due in order to finance the employment fund.

Net Worth Tax

18. Taxable persons

As from 2006, only corporations subject to corporate income tax are subject to wealth tax (net worth tax).

Corporations whose registered office or central administration is located in Luxembourg (resident taxpayers) are taxable on their worldwide wealth (domestic and foreign wealth); corporations whose registered office or central administration is not located in Luxembourg (non-resident taxpayers) are only taxable on their Luxembourg wealth.

19. Definition of the taxable wealth

Taxable wealth includes:

1) investments in agricultural and forestry undertakings;
2) developed and undeveloped real estate which does not form part of an undertaking mentioned under 1) above or 3) below;
3) the net assets invested in a commercial, industrial, mining or skilled craft undertaking as well as the net assets used within the scope of an independent professional activity (liberal profession);
4) any movable property, which does not belong to point 1) to 3) above and which is not tax exempt by a special provision.

Domestic real estate is valued at its unit value (*valeur unitaire*), which is determined in accordance with the provisions of the law on the valuation of property and assets, at the prices prevailing on 1 January 1941 where unit values of real estate were fixed. Thus, these unit values represent only a fraction of the present day values.

Debts are deducted from total gross wealth, provided that they were not deducted when the capital invested in accordance with point 3) above was determined.

20. Exemption of certain intellectual property rights

Copyrights on computer software, patents, applications for patents, trade names and trademarks, domain names, designs and models are tax exempt, if the conditions listed in section 3.2.1.15. are met in the course of the tax year preceding the wealth assessment date,.

21. Taxable net worth of non-resident corporations

Corporations whose registered office or central administration is not in Luxembourg are taxable on the wealth described under point 1) to 3) above, if the real estate, undertakings or companies are located in Luxembourg. They are also taxable on their capital outlay in a domestic company as a “sleeping partner” who is remunerated in proportion to the profit earned.

22. Parent company and subsidiary regime

If the following types of establishment:

- certain resident fully taxable collective entities, in particular resident fully taxable capital companies,
- a resident permanent establishment of a collective entity under article 2 of the Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended,
- a resident permanent establishment of a capital company resident in a State with whom the Grand Duchy has concluded a double tax treaty,
- a domestic permanent establishment of a stock company or a cooperative society resident in an European Economic Area (EEA) country other than a EU Member State,

have a direct holding in the share capital of

- a collective entity under article 2 of the Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended, or
- a resident fully taxable capital company, or
- a non-resident capital company fully liable to a tax corresponding to the Luxembourg corporate income tax,

then their holding is tax-exempt provided the establishment has a shareholding in the share capital of at least 10% or has purchased a holding of at least € 1,200,000.

The shareholding through a general partnership, a limited partnership, an economic interest group, a European economic interest group or a civil company is considered as a proportional direct holding in the net asset value of the entity.

23. Assessment and collection of net worth tax

Net worth tax is determined by assessment every 3 years. If the wealth of a taxpayer rises or falls beyond certain limits during this period, a new assessment is made before the end of the 3-year period.

Net worth tax is collected directly from the taxpayer.

24. Tax rate

The annual net worth tax is 0.5% of the taxable wealth.

25. Minimum taxation

For resident taxable capital companies, the minimum taxable net worth is:

- € 12,500 for public limited companies, partnerships limited by shares, European companies (SE) and
- € 5,000 for private limited companies.

26. Net worth tax relief for corporations

Taxpayers who are subject to corporate income tax, may on request at the time they submit their tax return, apply for a tax deduction on net worth tax for a given year. To benefit from the tax relief, the taxpayer must commit to enter, before the end of the following year, in a reserve account an amount equivalent to 5 times the deduction requested and to maintain the reserve in question on their balance sheet for the 5 years following that of the request for a deduction.

The tax deduction is limited to the amount of corporate income tax due, including the employment fund contributions which were due the same year before the tax was levied.

If the fiscal unity regime is applied, the global wealth tax deduction at the level of each company in the group cannot exceed the amount of tax due before the deductions were applied for the tax year concerned.

The tax deduction is not granted for the amount equivalent to the minimum tax due, increased by the contributions for the employment fund (by each of the companies under fiscal unity in the group)

If the company distributes whole or part of the reserve before the end of the 5-year period, the corporate income tax of the concerned tax year is increased by 1/5 of the distributed reserve.

The above provisions also apply to domestic permanent establishments of non-resident companies subject to corporation tax and that maintain separate accounts.

Communal Business Tax

27. Persons liable to tax

Communal business tax is only levied on income from commercial, industrial, mining and skilled craft undertakings established in Luxembourg.

An activity is always deemed to be a commercial undertaking in its entirety, if it is carried out by:

1) general partnerships, limited partnerships, special limited partnerships, economic interest groups, European economic interest groups, temporary commercial companies, collective undertakings and common businesses in general if the partners are deemed to be co-managers;
2) capital companies, cooperative societies including in the form of public limited companies, European Cooperative Societies and mutual insurance associations;
3) a for profit undertaking such as limited partnerships or special limited partnerships of which at least one of the general partners is a capital company with at least a 5% shareholding, or general partnerships, economic interest groups, European economic interest groups or civil law companies, if the majority share is held by one or more capital companies. A commercial partnership holding capital interests in another partnership is assimilated to a capital company in order to determine the type of income realised by the other partnership.

   However, a venture capital investment company (SICAR) in the form of a limited partnership is not considered as a commercial undertaking.

Communal business tax is levied by the State on behalf of the communes.

28. Impact of communal business tax

The communal business tax does not take into account expenses in relation to the taxpayer's family members and is deductible as an expense for taxpayers not subject to corporate income tax.

29. Calculation of communal business tax

Communal business tax is based on commercial income.

29.1 Communal business tax on income

The amount of income subject to communal business tax is determined as with personal income tax, with the exception of certain additions and deductions which are due to its nature.

29.1.1 Additions

Profits are increased by the following amounts if they were deducted at the time the profit was determined:

- profit shares and salaries to general partners for their management of a limited partnership by shares, and
- losses incurred by a partnership.

29.1.2 Deductions

The cumulated amount of profit plus additions is decreased by the following amounts if they were taken into account to determine the profit:

- profit shares in a partnership,
- the dividend income or profit shares distributed by resident fully taxable capital companies or a non-resident capital company subject to a corporate income tax corresponding to the corporate income tax in Luxembourg, provided there was a holding of at least 10% in the share capital since the beginning of the tax year. A holding through a general partnership, a limited partnership, an economic interest group, a European economic interest group or a civil company is considered as a direct holding in proportion to the shares held in such an undertaking;

- profit shares and salaries paid to general partners for their management of a partnership limited by shares, if these amounts have been added to the trade and business income of the partnership limited by shares and provided that they are included in the commercial profit as determined by the provisions that apply to corporate income tax;
- the share of profits allocated to a foreign permanent establishment;
- certain donations, provided they do not exceed neither 20% of the trade and business income increased by the additions referred to under point 29.1.1. nor € 1,000,000; any amounts above these limits may be carried forward for two subsequent financial years and deducted under the same conditions and limits.

Dividends exempted under the parent-subsidiary regime are not included in the profits subject to communal business tax, thus no special deduction is needed.

The taxable income is also reduced by the compulsory personal contributions paid by the individual operator and their partners of a partnership to a Luxembourg social security institution and by the losses incurred from 1991 onwards, provided that the losses have been determined through generally accepted accounting principles and that they have not been deducted during at tax year after said date.

29.1.3 Basic communal business tax rate

The applicable base rate is fixed at 3% of the adjusted trade and business income, previously reduced by an allowance of € 17,500 for taxpayers liable to corporate income tax and € 40,000 for the other taxpayers.

29.2 Global tax base

The global tax base is determined according to the amount of the trade and business income only.

The global tax base is then multiplied by the communal tax rate in order to determine the amount of communal business tax due. The communal business tax rates are set by the communal council in accordance with their financial requirements, and currently vary between 225% and 400%.

30. Assessment and collection of communal business tax

The assessment and collection of communal business tax is carried out by the tax administration on behalf of the communal treasury.