

This report provides helpful information on the current business environment in Luxembourg. It is designed to assist companies in doing business and establishing effective banking arrangements. This is one of a series of reports on countries around the world.



Global Banking Service

Report on the Grand Duchy of Luxembourg

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Important to Know

Official languages

- › Luxembourgish/French/
German

Currency

- › Euro (EUR)

Bank holidays

| 2011 | |
|----------|-----------|
| January | 1 |
| April | 22, 25 |
| May | 1 |
| June | 2, 13, 23 |
| August | 15 |
| November | 1 |
| December | 25, 26 |
| 2012 | |
| January | 1 |
| April | 6, 9 |
| May | 1, 17, 28 |
| June | 23 |
| August | 15 |
| November | 1 |
| December | 25, 26 |

Source: www.goodbusinessday.com.

Types of Business Structure

Under domestic law, there are several business structures available. Some require a minimum amount of share capital to be paid up before the business can be established.

Public limited liability company

SA (*Société anonyme*). This is a public or joint-stock company with its own trade name and with a predetermined amount of capital divided into shares of equal value. A shareholder's liability is limited to their capital. These companies must have at least two shareholders. A minimum subscribed share capital of EUR 31,000 is required, of which EUR 7,750 must be paid up. An SA must have at least three board members.

Private limited liability company

SARL (*Société à responsabilité limitée*). This is a company whose shares are registered to their owners and are not publicly tradable. Shareholders own a percentage of its capital. A shareholder's liability is limited to their financial contribution. These companies can have between two and 40 shareholders. A minimum paid up share capital of EUR 12,500 is required.

General partnership

SENC (*Société en nom collectif*). In a general partnership, all partners have full and joint liability. This requires no minimum share capital. Shares may not usually be sold.

Limited partnership

SECS (*Société en commandite simple*). In a limited partnership, some partners enjoy limited liability (silent partners), although they are not permitted to exercise managerial control. Other partners are considered general partners and have unlimited liability. This requires no minimum share capital. Shares may not usually be sold.

Partnership limited by shares

SECA (*Société en commandite par actions*). A partnership limited by shares allows some partners to limit their liability to the amount invested in the partnership (similar to a shareholder in a limited liability company), while general partners are fully liable. The silent partners may freely sell their shares.

Cooperatives

SC (*Société coopérative*). A cooperative is a registered legal entity which is owned and controlled by its members, who have equal voting rights. An Sc must have at least seven members. The shareholders cannot sell their shares to third parties.

Other organizational types

Luxembourg companies are entitled to form unlimited liability European Economic Interest Groupings (EEIGs) with companies based in other European Union (EU)*

member states. An EEIG performs particular activities on behalf of its member owners. It is also permitted to perform these activities with entities outside the EU. An EEIG has unlimited liability.

*The EU is an economic and political union of 27 countries (including all members of its forerunner, the European Community, as well as other countries in Central and Eastern Europe), 16 of which use the euro as a common currency.

A *Societas Europaea* (SE) is a European public limited company, which can be established in any European Economic Area (EEA)* member state. It must maintain its registered office and head office in the same country, and it is subject to the company law in that country.

*EEA countries include those of the EU and three of the four European Free Trade Association (EFTA) member countries (Iceland, Liechtenstein and Norway).

Branches and representative offices

Foreign companies are entitled to establish a branch or a representative office in Luxembourg. A branch's activities are subject to domestic company law, although it is considered part of the company's head office and therefore not a separate legal entity. It requires no minimum share capital. To open a branch, a company must file a number of documents, including head office accounts. While branches are permitted to make sales, representative offices may not sell directly in Luxembourg.

Opening and Operating Bank Accounts

Residency

To be considered resident, a company must have a statutory branch or head office located in Luxembourg.

Domestic and foreign currency account restrictions

Residents are permitted to hold local currency (EUR) accounts outside Luxembourg and foreign currency accounts both within and outside Luxembourg.

Non-residents are permitted to hold local currency and foreign currency accounts.

All local currency accounts are fully convertible into foreign currency.

Anti-money laundering and counter-terrorist financing rules

- › Account opening procedures require formal identification of the account holder, including beneficial owners.
- › When customer identity is being established, financial institutions must require customers to supply them with a statement to the effect that they are, or are not, operating on their own behalf. This information must be regularly updated.
- › All credit and financial institutions have to identify occasional customers for transactions amounting to or exceeding EUR 15,000.
- › The identification requirement does not apply if the client is a national or foreign financial institution subject to equivalent identification requirements.

Supplied by BCL Burton Copeland (www.bcl.com). Data as at May 2010.

Special purpose accounts required by local regulation

None.

Value-added tax (VAT) on banking services

In Luxembourg, core financial services, including the provision of bank accounts and payment transfer services, are exempt from VAT.

Payment and Collection Instruments

Electronic funds transfers are the most common payment instrument for both domestic and cross-border payments in the EEA. They can be initiated using Internet and other electronic banking facilities. Non-urgent credit transfers are the primary payment method used to make payroll payments, with a number of enterprises using third-party payroll agencies. They are also the most common method of payment for business-to-business (B2B) transactions. Card payments are commonly used for consumer transactions, with debit cards much more popular than credit cards. Direct debits are increasingly being used, notably by utility and insurance companies to collect domestic payments. Cheque use is uncommon and continues to decline.

Payment Instrument Use (domestic)

| Payment instrument | Transactions (million) | | % change 2008/2007 | Traffic (value) (EUR billion) | | % change 2008/2007 |
|------------------------------------|------------------------|--------------|-----------------------|----------------------------------|----------------|-----------------------|
| | 2007 | 2008 | | 2007 | 2008 | |
| Cheques | 0.2 | 0.2 | - 12.5 | N/A | N/A | - |
| Credit transfers | 59.7 | 63.0 | 5.4 | 695.3 | 1,130.0 | 62.5 |
| Direct debits | 12.9 | 14.1 | 9.2 | 5.4 | 6.9 | 28.7 |
| Debit cards | 27.7 | 31.0 | 12.0 | 1.8 | 2.0 | 11.7 |
| Credit cards | 17.7 | 19.2 | 8.3 | 1.8 | 1.9 | 8.4 |
| Card-based electronic money | 2.4 | 2.2 | - 9.2 | 0.01 | 0.01 | - |
| Total | 120.7 | 129.6 | 7.4 | 704.3 | 1,140.8 | 62.0 |

Source: ECB Payment Statistics, December 2009.

Single Euro Payment Area (SEPA)

SEPA payment instruments allow enterprises to make and receive EUR-denominated credit transfers, direct debits and debit card payments from a single bank account, to and from other parties located anywhere within the EEA and Switzerland. The use of International Bank Account Numbers (IBANs) and Bank Identifier Codes (BICs) is compulsory for transfers denominated in EUR between bank accounts in the EU.

International Payments

International payments, including foreign currency payments and payments to and from parties located outside the EEA, are processed through same-bank networks, through multibank alliances or by using traditional correspondent banking techniques.

Payment Processing Times

| Transactions processed (EUR-denominated) | Value dating rules | Cut-off time(s) in local Central European Time (CET) |
|--|--|--|
| High-value and urgent domestic and intra-EEA transfers | Real-time settlement, immediate finality | 17:00 CET |
| Non-urgent domestic credit transfers and intra-EEA funds transfers | Settlement either same-day or next-day | Bulk credit transfers with a maximum value of EUR 50,000 = 22:00 CET for next-day settlement Individual credit transfers = 14:30 CET for same-day settlement SEPA credit transfers = 13:00 CET for same-day settlement or 01:00 CET for overnight/next-day settlement SEPA consumer direct debits = 11:00 CET for same-day settlement SEPA B2B direct debits = 12:00 CET for same-day settlement |

Central Bank Reporting

The Banque Centrale du Luxembourg (BCL) requires that all transactions between resident and non-resident bank accounts with a value above EUR 50,000 must be reported within five days. Reports must be accompanied by written justification for all reported outgoing transactions and all incoming transactions with a value above EUR 625,000.

Financial intermediaries will usually submit reports on behalf of their clients, who must provide details of the economic transaction. If a transaction is not made through a financial intermediary, the resident entity must report the information directly to the Luxembourg statistics agency (STATEC) or the BCL within five working days of the end of the month in which the transaction took place.

Exchange Arrangements and Controls

Luxembourg applies no currency exchange controls.

Cash and Liquidity Management

Although the Luxembourg Business Coordination Centre regime has been phased out under EU tax harmonization rules, a number of multinational companies still consider Luxembourg to be an attractive location from which to manage their group cash and liquidity on a cross-border basis. This is due to a range of factors, including the absence of exchange controls, the presence of a large number of international banks and Luxembourg's extensive network of double taxation treaties.

Physical Cash Concentration

Physical cash concentration is available from international cash management banks with a presence in Luxembourg. Resident and non-resident companies can participate in the same domestic cash concentration structure, although central bank reporting requirements and lifting fees will apply.

Pools can be denominated in local currency (EUR) and some foreign currencies. A number of banks offer cross-border, cross-currency physical cash concentration.

Notional Cash Pooling

Notional cash pooling is available from most international cash management banks with a presence in Luxembourg. Resident and non-resident companies can participate in the same notional cash pooling structure.

Short-term Investment

Bank instruments

Interest-bearing current accounts are generally available. Banks offer time deposits in a range of currencies for terms from one month to one year. Banks also issue certificates of deposit (CDs), usually for terms ranging from one week to a year.

Non-bank instruments

Some companies issue commercial paper (CP); investors have access to the wider euro commercial paper (ECP) market as well. In both cases, the maximum maturity of the paper is one year.

The Luxembourg government does not issue Treasury bills.

Luxembourg companies have access to European-based money market funds, many of which are based in Luxembourg. *Sociétés d'investissement à capital variable* (SICAVs) are open-ended investment companies and are popular with Luxembourg investors.

Short-term Borrowing

Bank

Overdrafts, bank lines of credit and bank loans are usually all available in Luxembourg to both resident and non-resident companies. Banks will usually charge a margin over Euribor (the Euro Interbank Offered Rate) for EUR-denominated facilities. Other commitment and arrangement fees will also be charged.

Non-bank

Larger companies issue CP into both the domestic and the ECP market. Issues into the ECP market require a rating. ECP can be issued for periods from a week to one year, depending on borrowing requirements and investor appetite.

Trade bills and invoices can be discounted, and factoring (with or without recourse) is available.

Taxation

Corporate Taxation

- › Resident companies are subject to taxation on their worldwide income. Non-resident companies are subject to taxation only on their income sourced in Luxembourg.
- › Since January 1, 2009, for companies whose taxable income exceeds EUR 15,000, corporation tax is levied at a flat rate of 21% and a 4% surcharge is levied for the employment fund. The corporate income tax rate is therefore 21.84%.
- › The Luxembourg government has announced that the employment fund contribution should be increased from 4% to 5%, but no draft legislation has been issued as yet. The corporate income tax remains unchanged, but the effective corporate income tax rate will increase from 21.84% to 22.05%. For companies whose taxable income does not exceed EUR 15,000, the basic flat rate is 20%.
- › A municipal business tax is levied at an effective rate of 6.75% for companies operating in the city of Luxembourg. The combined corporate income tax rate therefore is 28.59% (being 21.84% + 6.75%). In other municipalities, the effective rate of business tax varies from 6% to 12%. There is a basis deduction of EUR 17,500 from the municipal business tax base.
- › Losses may be carried forward indefinitely. No carry back is allowed.
- › An annual net worth tax of 0.5% (with a minimum amount of EUR 25 for limited liability companies and EUR 62.5 for joint-stock companies) is levied on all resident companies. A reduction of the net worth tax may apply if the company creates and maintains, for a period of five years, a specific reserve amounting to five times the amount of net worth tax charge per the accounts. The reduction of the net worth tax is limited to a maximum amount equal to the corporate income tax of the year (before any credits).

Financial instruments

- › There are no specific rules to determine the tax treatment of financial instruments. Tax rules in principle follow accounting treatment.

Interest and financing costs

- › Interest costs are generally tax deductible. However, expenses that have been incurred by a Luxembourg company and which are economically linked to the payment of a dividend in the same year are not tax deductible.
- › Under the recapture rules, any tax exempt capital gain realized upon the disposal of a qualifying participation is reduced by the total amount of the related expenses previously deducted (e.g. interest incurred on debt to fund the shareholding). As a result, the capital gain is taxable to the extent that costs and reductions in value have previously been deducted from the taxable basis. In practice, these rules ensure tax neutrality of the holding activities and do not give rise to an actual tax liability on income from qualifying participations.
- › Interest in excess of an appropriate debt/equity ratio may be re-characterized (see Thin Capitalization below).

Foreign exchange

- › Taxation of foreign exchange gains or losses in principle follows Luxembourg GAAP accounting principles (realized exchange gains are taxed while realized and unrealized exchange losses are tax deductible).
- › In Luxembourg, the capital of entities could be contributed in a currency other than EUR and the accounts could also be maintained in the entity's currency capital. Under certain conditions and upon request from the taxpayer to the tax authorities, the tax law allows the neutralization of the exchange gains on the investment of the equity of an entity. Only companies which predominantly generate their income from financial assets may benefit from the neutralization of exchange gains (through the constitution of a specific provision in the fiscal balance sheet expressed in EUR). This will temporarily defer the taxation of realized exchange gains.

Advance Tax Ruling Availability

- › The administrative practice in Luxembourg allows (without obligation) tax inspectors to give binding confirmation within the scope of the law, regulation and case law of the tax treatment that would be applicable in the specific case submitted by a taxpayer or their representatives. This binding information is based on bona fide principles, meaning that the facts and tax law on which it is based do not change.

Withholding Tax (subject to tax treaties and other exemptions)

- › A withholding tax of 15% is levied on dividends (except liquidation payments) paid to resident and non-resident companies. Double taxation treaty exemption or reductions may apply. Additionally, an exemption may apply if the parent company is located in a country, including Luxembourg, covered by the EU Parent–Subsidiary Directive. Since 2009, an exemption is also granted for dividends paid to fully taxable companies resident in a state with which Luxembourg has concluded a double tax treaty.
- › A withholding tax of 15% is levied on interest paid to both resident and non-resident companies derived from profit-sharing bonds (subject to tax treaty reduction). All other interest is exempt to the extent that the rate and conditions are at arm’s length.
- › Domestic law in Luxembourg does not levy withholding tax on royalty payments to resident/non-resident companies (whether an EU member or not).
- › A tax credit is available under tax law in Luxembourg for any tax withheld. The credit allowed is limited to the amount of Luxembourg income tax due on the net income from the foreign country concerned (alternatively, a global method is also available). If effective, foreign taxes cannot be fully credited because they exceed the limit, the excess may be deducted as an expense from taxable income. Double taxation treaties may contain more favourable tax credits.

Capital Gains Tax

- › Luxembourg does not distinguish between income and capital gains, with capital losses eligible for relief in the same way as operating losses. A gain or loss is computed as the difference between sale price and book value of the assets. Some relief for inflation is given on real estate disposed of during a liquidation carried out for genuine business reasons.
- › Taxation of certain gains on fixed assets (e.g. real estate and non-depreciable fixed assets) that have been held for at least five years may be deferred by reinvestment in other fixed assets. The reinvestment has to be made within a period of two years following the realization of the capital gains.
- › Under the “participation exemption,” capital gains from the disposal of domestic or foreign shareholdings are exempt

from corporate income tax provided there is a minimum 10% shareholding or the acquisition cost is at least EUR 6 million. To qualify for the capital gains exemption, the holding must have been owned for 12 months consecutively and the subsidiary must be subject to an income tax similar to the Luxembourg income tax. See the Corporate Taxation section regarding the application of the recapture rules.

Capital Duty

- › Proportional 0.5% capital duty has been abolished since January 1, 2009 and replaced with a fixed duty of EUR 75 due upon each modification of the bylaws.
- › The contribution of immovable property in exchange for shares of a Luxembourg company is subject to a specific registration duty of 0.6% (plus transcription tax of 0.5%). However, the transfer will be free of any proportional duty in the case of a corporate reorganization.

Stamp Duty

- › Loan agreements which are not concluded through a notary deed do not need to be registered.
- › If there is voluntary registration or an agreement is to be used before a court in Luxembourg, registration tax will apply ad valorem at a rate of 0.24%.

Thin Capitalization

- › There are no specific regulations in Luxembourg on thin capitalization. However, the general principle of “dealing at arm’s length” applies. If a loan is provided in circumstances where an independent party would not have loaned the funds, the debt, or part of the debt, could be reclassified as capital. Consequently, interest payments may be regarded as hidden profit distributions.
- › In practice, the tax administration generally applies a debt-to-equity ratio of 85:15 for the holding of participations. Where this ratio is exceeded, the surplus may be considered a contribution to capital. Interest on this surplus may be deemed non-deductible and treated as a dividend distribution potentially subject to a withholding tax of 15% (which may be reduced under the provision of the relevant double tax treaty).

Transfer Pricing

- › Luxembourg has no specific legislation regarding transfer pricing. The tax authorities generally refer to the arm's length principle and follow the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines.

Sales Taxes / VAT

- › VAT is levied on the supply of goods and the provision of services. The standard rate is 15%. (Services rendered by liberal professions, which include, among others, lawyers, consultants, architects, notaries, accountants and translators, are now taxable at 15%.) There is also an intermediate rate of 12% for certain types of wines, management and safekeeping of securities, publicity and marketing goods (publicity and marketing services are subject to the standard rate of 15%), a reduced rate of 6% on gas and electricity, as well as a super-reduced rate of 3% on books, water, pharmaceutical products, most food products, etc.
- › Some financial services benefit from a VAT exemption. Services and financial transactions which are exempt from VAT include the following:
 - › services related to credit, loans and deposit, including the granting, negotiation and management of credit;
 - › dealing in, and negotiation and management of, credit guarantees or any other security for money;
 - › transactions concerning deposits, current accounts, payments, transfers, debts, cheques and credit card services; and
 - › services regarding money, including transactions concerning currency, bank notes and coins as legal tender (excluding collectors' items).

- › Services relating to shares and securities that include the negotiation are exempt from VAT, but this general rule must be interpreted narrowly. The VAT law in Luxembourg does not provide for an option either to tax or to exempt financial services. Services other than core financial services, including safekeeping, advisory services, factoring activities and management and data processing services, are generally subject to VAT.

Financial Transactions / Banking Services Tax

- › There are no specific tax rules relating to financial transactions or banking services.
- › The government is currently considering the implementation of a ceiling for bonuses and severance payments. Every payment over this ceiling would be a non-deductible expense for the company.

Payroll and Social Security Taxes

- › Social security contributions are payable by the employer at rates of 10.95% and 10.70% for salary and non-periodic payments respectively. The employer must also pay accident insurance at rates of 0.45% to 6.00% depending on the degree of risk inherent in the activity, as well as health at work insurance at a rate of 0.11%. For mutual insurance, rates vary between 0.88% and 2.01% depending on the risk class of the business. (The four risk classes are determined based on the average rate of absenteeism of the employee for each company.)
- › Contributions are payable by the employer on gross remuneration up to a current ceiling of EUR 102,226.98 per annum (as it is tied to changes in a cost-of-living index which stood at 719.84 in April 2010) and are deductible for corporate tax purposes.

All tax information supplied by Deloitte Touche Tohmatsu (www.deloitte.com).
Data as at May 19, 2010.

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