LEGALINK

INTERNATIONAL BUT PERSONAL

FIVE ADVANTAGES OF DOING BUSINESS IN...

FOR PRIVATE CLIENTS
AND CORPORATE ENTITIES

INTRODUCTION

The Legalink Companies, Trust and Taxation Practice Group has compiled this guide by asking its members to give 5 reasons why an investor would want to do business within their jurisdictions. It makes interesting reading, giving an "on the ground" picture of the positive aspects of the business environment in 34 jurisdictions giving information that is true to the hallmark of Legalink… **"International but Personal".**

This guide would also allow members to identify legal synergies or "best friends" jurisdictions in order to propose to their private or corporate clients solutions "beyond the borders".

This presentation will be periodically updated and jurisdictions will be added.

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LUXEMBOURG
BRUCHER THIELTGEN & PARTNERS, AVOCATS À LA COUR

Although one of the smallest states of the European Union, Luxembourg has one of the most performing economies of the Euro zone.

One major reason for this achievement consists in the constant concern of its public authorities to offer investors the most progressive legislative environment which combines flexibility and security.

Depending on your needs, Luxembourg offers various investment or tax savings solutions as well as innovative and efficient financial products and services to meet expectation of both individual and corporate clients.

1. Investment Funds:

The success of Luxembourg in attracting investment funds, and becoming a major financial center, is based above all on investor preference which may be attributed to a number of factors such as:

- Reputation of the Luxembourg brand in the investment fund industry;
- Attractive range of investment fund solutions;
- Regulatory environment including accessibility, knowledge and responsiveness of the regulator;
- Stability ;
- Political, economic and social environment ;
- Legal and tax environment ;
- Ability to achieve tax neutral efficiency for products by considering direct and indirect taxation implications at fund and investor levels ;

- Operational factors such as relocation costs, local infrastructure, and the qualifications and knowledge of the multicultural, multilingual international workforce ;

- Service provider considerations such as their expertise and ability to meet specific local distribution market requirements from Luxembourg ;

- Central location at the heart of Europe with easy access to other financial centers UCIs, except for Reserved Alternative Investment Funds (RAIF), are authorized and supervised by the Commission for the Supervision of the Financial Sector (Commission de Surveillance du Secteur Financier — CSSF).

  The Luxembourg fund industry has, since 1988, been successfully represented and promoted by the Association of the Luxembourg Fund Industry (Association Luxembourgeoise des Fonds d'Investissement— ALFI) and, since 2008, by the agency for the development of the financial center Luxembourg for Finance.

- Are you active in the private equity field? Think about the SICAR

  The SICAR (Société d'investissement en capital à risque) is tailor -made for private equity and venture capital investments. It elegantly combines the advantages of a regulated yet flexible entity with the tax efficiency of a multiple choice of corporate forms or tax transparent partnerships.

  A SICAR may be set-up as a public limited company, a private limited company, a partnership limited by shares, a cooperative company organised as a public limited company, a common limited partnership, or a special limited partnership. The minimum capital of a SICAR, which can be variable or fixed, is set at EUR 1.000.000.-. This capital level has to be reached within a period of 12 months.

  Its shareholders shall be well-informed investors, which means: an institutional investor, a professional investor or any other investor who meets the following conditions: (1) he has confirmed in writing that he adheres to the status of well-informed investor and (2) he invests a minimum of EUR 125.000- in the SICAR, or (3) he has been subject to an assessment made by a credit institution, by an investment firm or by a management company, certifying his expertise, his experience and his knowledge in adequately appraising an investment in risk capital.

The object of a SICAR is investment in venture capital and private equity. Such investment is defined very broadly to include any investment either directly or indirectly in an entity in order to finance its launch, development or listing on a stock exchange.

Any SICAR must be authorised and supervised by the CSSF (Commission de surveillance du secteur financier), which will in particular check the provisions of its articles of incorporation or partnership agreement, and the Luxembourg credit institution chosen to act as custodian bank.

Under some conditions, a SICAR may benefit from the AIFMD passport.

Taxation

Contrary to other Luxembourg investment funds (UCITS, UCIs or SIFS), a SICAR is fully subject to corporate income tax and municipal business tax on income, but it is exempted from wealth tax.

The revenues earned by a SICAR from participations in securities representing risk capital and profits on the sale, redemption, or liquidation of these securities are excluded from the taxable base. As such a SICAR may be completely tax neutral. Income arising from assets held pending the investment in risk capital (i.e. liquid assets) does not constitute taxable income provided such assets are invested in risk capital assets within 6 months. Please note however, that a SICAR is subject to a minimum fixed advance corporate income tax of EUR 3.210.- per year.

There is no withholding tax on dividends distributed by the SICAR and there is no taxation in Luxembourg on capital gains realised by non-residents on the redemption of shares in the SICAR (except if the Saving Directive applies).

As for UCIs, the management services performed to the benefit of a SICAR are exempted from VAT.

A SICAR may benefit from double tax treaties (to be ascertained on a case by case basis), as well as its investors in the case where the SICAR is under the form of a tax transparent partnership.

• Are you a hedge fund manager? Think about the SIF

The SIF (Specialised investment fund) is a regulated, operationally flexible and fiscally efficient multipurpose investment fund regime for international, institutional and/or well-informed investors. It has become an attractive alternative to non-resident private investment funds based in foreign jurisdictions. The SIF regime combines the advantages of a regulated yet flexible entity with the tax efficiency of a multiple choice of corporate forms or tax transparent partnerships or common funds.

A SIF may be set-up as an investment company (SICAV – SICAF) or a common fund (FCP). Investment companies may be set-up under the form of a public limited company, a private limited company, a partnership limited by shares, a cooperative company organised as a public limited company, a common limited partnership, or a special limited partnership. The minimum capital of a SIF, which can be variable or fixed, is set at EUR 1.250.000.-. This capital level has to be reached within a period of 12 monthAs for the SICAR shareholders of the SIF shall be well-informed investors.

The SIF law allows full flexibility with regard to the assets in which a SIF may invest or the investment strategies followed, to the extent that it complies with the principle of risk spreading.

Any SIF shall be authorised and supervised by the CSSF (Commission de surveillance du secteur financier), which will in particular check the provisions of its articles of incorporation or partnership agreement, and the Luxembourg credit institution chosen to act as custodian bank.

Under some conditions, a SIF may benefit from the AIFMD passport.

Taxation

The SIF is exempted from corporate income tax, municipal business tax on income and wealth tax.

The SIF is instead subject to an annual subscription tax of 0.01%, based on the total net assets valued at the end of each calendar quarter. The SIF Law exempts from this tax the

portion of assets invested in other Luxembourg UCIs subject to this annual subscription tax.

Dividends paid by a SIF to resident or non-resident investors are exempted from withholding tax, and capital gains made by non-residents are exempted from any Luxembourg tax (except if the Saving Directive applies).

The management services performed to the benefit of a SIF are exempted from VAT.

The SIF may benefit from double tax treaties (to be ascertained on a case by case basis), as well as its investors in the case where the SIF is under the form of a tax transparent partnership or common fund.

2. Are you a high net worth individual? Think about the SPF.

The SPF (Société de gestion de patrimoine familiale) is a private asset management company particularly designed for private investors and individuals that seek an efficient vehicle to manage family wealth.

A SPF may be set-up as a public limited company, a private limited company, a partnership limited by shares or a cooperative company organised as a public limited company.

Its shareholders shall be eligible investors, which means:

(1) private persons, whether resident or non – resident, acting in their capacity as managers of their private patrimony;
(2) wealth management entities (i.e. trusts or foundations…), resident or non-resident, acting exclusively in the interest of a private patrimony of one or several private persons;

(3) intermediaries acting for the account and on behalf of the investors enumerated under a) or b) above.
Its object is strictly limited to the acquisition, holding, management and sale of financial assets: i.e. securities of any kind such as shares, bonds, notes, structured products, derivatives options, warrants, indices and other negotiable securities, as well as cash, precious metals, currencies and any kind of assets held in a bank account.

The SPF is also authorised to contract debts, either with its shareholders or with third parties like banks or other entities, whether resident or non-resident. Please note that there is no

maximum debt equity ratio. However, if the total amount of debts contracted by the SPF exceeds 8 times the paid up capital of the company, a subscription tax of 0.25% will be due each year on the part of the debts which exceed the capital.

The SPF cannot carry out any commercial activity, neither hold buildings or intellectual rights, or carry out an activity of management, trade or financial service.

Taxation

The SPF is exempted from corporate income tax, municipal business tax on income and wealth tax.

The SPF is instead subject to an annual subscription tax of 0.25% calculated on the paid-up capital, the capital premium and the debts exceeding 8 times the aggregate amount of paid-up capital and share premium. Such subscription tax may not exceed the amount of EUR 125.000.-.

The SPF is submitted to a registration duty of EUR 75.- at its incorporation and at any amendment of its articles of association.

Dividends paid by a SPF to resident or non -resident shareholders are exempted from withholding tax, and capital gains made by non-resident shareholders are exempted from any Luxembourg tax (except if the Saving Directive applies).

The SPF does not benefit from double tax treaties.

3. Favourable Luxembourg regimes:

Does your company invest in R&D? Think about the new favourable Luxembourg tax regime for IP

A new IP Box Law has been set up recently in Luxembourg. Nevertheless, previously-qualifying IP assets can continue to benefit from the old regime until 30 June 2021.

The new regime will allow a Luxembourg resident company, a Luxembourg permanent establishment of a foreign company or an individual to benefit from a partial exemption of **80% on the net income derived from eligible IP assets** as well as a **100% exemption from net wealth tax**.

Therefore, for a corporate taxpayer based in Luxembourg city with eligible net income, the new IP Box Law leads to an effective tax rate of 5,202% in accordance with the rate of the corporate income tax applicable as from 2018 (19,26%) and municipal business tax in Luxembourg city (6,75%) for companies with a registered office in Luxembourg city.
The partial tax exemption is notably subject to the following specific conditions :

The benefits of the IP regime are limited to the following assets:

- patents;
- utility models;
- copyrights on computer software;
- supplementary protection certificates for medicinal and plant-protection products; orphan drug designations; and
- extensions of supplementary protection certificates for paediatric medicine.

The new IP Box Law provides that the above-mentioned assets are eligible for the preferential tax regime only if they result from a research and development ("R&D") activity performed by the taxpayers themselves.

The expenditures eligible for the exemption provided for by the new IP Box Law, shall only be the expenditure necessary for R&D activities directly related to the constitution, development or improvement of an eligible asset that is made by the taxpayer for R&D activities carried out by the taxpayer or for payments made by the taxpayer to an entity other than a related entity. The IP Box Law specifies the types of income which may be taken into consideration for partial exemption:

- remuneration for the use, or the granting of the use of an eligible asset (royalties);
- income in relation to the eligible asset that is included in the sale price of a product or service;
- income arising due to the disposal of the eligible asset; and
- indemnities obtained in connection with a judicial or arbitration proceeding relating to the eligible asset.

We will be obviously pleased to to provide you with more details if you are interested in.

• Are you a philanthropist? Think about the Luxembourg regime for philanthropy

Luxembourg has developed a tailor-made framework for philanthropy. The umbrella foundation "Fondation de Luxembourg", created in January 2009 acts as an intermediary between donors and beneficiaries with the aim of promoting private philanthropic commitments. The Foundation can also simplify the process by hosting dedicated funds, which are set up and managed in accordance with the wishes of the donors, but which as a result do not have to set up their own legal structure. The Foundation is a member of the Transnational Giving Europe for Cross-border Giving.

Taxation

The Luxembourg Government and Parliament have taken into consideration the growing demand for philanthropy services in Europe and the trend to enhance the tax benefits of gifts made, to non-profit making organizations.

For instance the registration tax rate on formal bequests and donations to non-profit making associations and foundations has been reduced from 6 to 4% and the registration tax on formal bequests and donations made in favour of foundations regarding university grants and public education bodies has been supressed.

Furthermore, the maximum tax deductible amount for gifts to non-profit making organizations or foundations of public utility, as bee doubled up to a maximum of EUR 1.000.000.- and of 20 % of the net income of the donor. Donors are also allowed to carry forward the tax deduction of special expenses up to 2 years after the gift in case the annual limit is exceeded.

Finally, the initial endowment in cash to a foundation of public utility by its founder is explicitly qualified as a tax deductible expense.

These legislative amendments and reforms have seriously improved, the conditions for charity in Luxembourg and place our country on a level playing field with many other top player countries.

4. Corporate environment

Whether your business is operating across multi-jurisdictions or is Luxembourg focused, you may decide to set-up an entity in Luxembourg due to its exceptional toolbox in terms of entities and instruments.

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Very recently, the Luxembourg company law has been radically modernized. This modernization confirms and reinforces the "business friendly" climate for which Luxembourg is well- known to investors around the globe and bring more flexibility in the Luxembourg corporate environment.

A wide range of companies

Luxembourg offers a wide range of commercial companies with legal personality:

- The société en nom collectif (general corporate partnership/unlimited company),
- The société en commandite simple (common limited partnership),
- The société anonyme (public company limited by shares),
- The société par actions simplifiée (simplified joint-stock company),
- The société en commandite par actions (corporate partnership limited by shares),
- The société à responsabilité limitée (private limited liability company),
- The société coopérative (co-operative company),
- The société européenne (European company),

or which shall not constitute a legal person separate from that of their members :

- The société commerciale momentanée (temporary commercial company),
- The société commerciale en participation (commercial company by participation),
- The société en commandite spéciale (special limited partnership).

Therefore, you will always find the type of company adapted to your needs or have the possibility to choose a company you are used to working with in your home country. For instance the société par actions simplifiée (simplified joint-stock company) was copied from French law, and the société en commandite spéciale (special limited partnership) is similar to well-known and commonly used Anglo-Saxon Limited Partnership.

Flexible rule to organize management and voting rights

Luxembourg law and corporate practice provide for many mechanism in order to organize management of companies or to carry out shareholders' rights (depending of the type of company incorporated). For instance:

- the articles of association may authorize the management body to suspend the voting rights of shareholders not complying with their obligations,
- shareholders may waive permanently or temporarily the exercise of their voting rights,
- voting agreements, as well as time-limited lock-up clauses providing for restrictions on the transferability of shares, are formally recognized,
- recognition of the possibility to create committees and ability for the management body to delegate a large portion of its powers to a general director or a management committee ,
- possibility to create various classes of shares with different rights, non-voting shares or beneficiary units,
- possibility for companies to redeem their own shares under specific conditions,…

Furthermore, shareholders agreements are common practice in Luxembourg, notably in major (e.g. private equity or joint-venture) transactions where the regulation of the parties' respective rights and duties with respect to their interests in a company is key.

A wide choice of very flexible instruments

The following instruments nay notably be issued by Luxembourg companies:

- Tracking shares,
- Non voting shares,
- Free shares to be allocated to employees or directors,
- The very flexible "beneficiary units" (parts bénéficiaires), which do not form part of the share capital, and whose rights, including in relation to voting and profit sharing, are exclusively determined by the articles, for maximum flexibility,
- Redeemable shares,…

Furthermore, rules on the issuance of bonds and other debt instruments have been recently extended by Luxembourg company law thereby providing greater flexibility for the issuers of such instruments.
For instance, all types of Luxembourg companies may now issue bonds and it is possible to derogate from some or all of these rules in the issue document, for instance by submitting the bonds to a foreign law.

These flexible rules may also apply in whole or in part to the issuance by Luxembourg or foreign companies of securities including debt instruments (e.g. CPECs or PECs) and other convertible securities.

Finally, Luxembourg companies are also frequently used by corporate groups to structure their incentive plans through employee share schemes, management packages, warrants/stock option plans,...

5. Real estate

The Luxembourg real estate market undoubtably represents an investment with high potential and unquestionable resilience to crisis situations, which may be explained by:

- Prosperous economy within the European Union: with a GDP growth forecast of 4%/year, Luxembourg's economic development surpasses the forecasts of its neighbors;

- An ever-growing population: with an annual growth of 2.2%, the increase in the resident population of Luxembourg generates a growing demand for real estate;

- A market which has shown resilience in time of crisis: prices were little impacted by the 2008 financial crisis (down 1% in 2009 followed by a continuous increase of around 5% / year since 2010).

- The current volume of office space for rent is not sufficient to meet the growing demand.

- The number of foreigners in Luxembourg City and its close neighbourhood has never stopped increasing, and the residential rental market will continue to expand in this area;

- The Grand-Duchy has favourable fiscal regime for property owners.

- The economic stability of the country is key to the real estate sector growth and has already attracted new arrivals, especially high-net-worth individuals and investors.

In the third quarter of 2017, dwellings prices rose by 4,9% in one year; on that same reference period, the average prices specifically for new apartments, have known a considerable increase of 6,1%!

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Incentives

- **Limited transaction costs:** when purchasing a property in Luxembourg, notarial deeds are in principle subject to a fee of 7% of the price of the property, including 6% registration fees and 1% transcription rights.

However, in order to promote the acquisition of personal property, these expenses are reduced (Bëllegen Akt) for the first purchase of the main residence in Luxembourg. This represents a tax gift of up to 20,000 euros per head or 40,000 euros for a couple, provided you live more than 2 years in your new home. But nothing prevents you to rent this property beyond these 2 years!.

Finally, notary fees are also relatively limited for transfer of ownership.

- **Almost non-existent property tax:** in comparison with some neighboring countries, property taxes are extremely low in Luxembourg (<100 EUR/year).

- **Real-estate capital gains are not taxable on the primary residence:** the potential capital gain realized on the resale of one's principal residence is not taxable, regardless of the amount.

- **Interests on mortgages are tax deductible:** a couple can receive up to 10,000 EUR of deductible loan interest (+ EUR 2,000/child) annually on the acquisition of real estate, whatever the use of the dwelling.

- **Impatriate tax regime:** the aim of this favourable tax regime is to attract foreign, skilled workers to Luxembourg by providing significant tax savings for both impatriates and employers. The regime applies to impatriates coming to Luxembourg, i.e.

  - Employees who are part of an international group and who are assigned to a Luxembourg office of the group.
  - Employees directly recruited abroad.

If the conditions of the impatriate tax regime are met, it is possible to obtain tax relief for certain expenses such as relocation, rent/utilities, home leave trips, tax equalisation, school fees, lump sum for recurring expenses…

- **Inheritance tax regime:** Luxembourg legislation is very favourable for transferring inheritance.

- If the deceased is a resident of Luxembourg, the inheritance is taxed in Luxembourg, with the exception of real estate located abroad.

- If the deceased is not a resident of Luxembourg, the inheritance is not taxed in Luxembourg, with the exception of real estate located in Luxembourg.

- Direct line inheritance ab intestat (i.e. one in which the deceased does not have a last will and testament) is exempt from inheritance tax for Luxembourg residents. The inheritance is then distributed by operation of law.

- The inheritance collected by the surviving spouse who had children with the deceased, is exempt for Luxembourg residents.

Attractiveness for institutional and high-net-worth individuals

Institutional investors are increasingly investigating and entering the Luxembourg real estate market. The stability of the country, its positive economic perspective and its proven resilience to the crisis, together with attractive yields offered by office properties, have now become the main drivers for further foreign institutional investment to arrive.

In addition, the quality of the tenants in Luxembourg and the current low vacancy rates are additional positive aspects that institutional investors private bankers and family offices may consider.

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