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Luxembourg: Law & Practice

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Loyens & Loeff

LUXEMBOURG

Law and Practice

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Loyens & Loeff has a private wealth team in Luxembourg that is part of a fully integrated (tax and legal) firm with home markets in the Benelux countries and Switzerland, and with offices in all major financial centres. To meet the increasing demand for expertise in all tax and legal aspects relating to the structuring of inbound or outbound investments into or through Benelux and Switzerland, Loyens & Loeff also has various regional teams in Asia-Pacific, Latin America, Canada, Central and Eastern Europe, the Middle East and North Africa, France, Germany, Italy, Spain, Portugal, the Nordic countries and Russia/CIS. Most of them operate from local representative offices and provide face-to-face advice on aspects of law that could impact on clients' businesses. The firm's lawyers are immersed in the local markets, keep abreast of the constantly evolving legal and business environment in Luxembourg, and identify opportunities for their clients.

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1. Tax

1.1 Tax Regimes

Concept of Residence/Income Subject to Tax

An individual is considered a tax resident of Luxembourg if they have their tax domicile in Luxembourg (ie, a permanent place of residence in Luxembourg that they actually use and intend to maintain) or their "usual abode" there (a usual abode is deemed to exist after a continuous presence in Luxembourg of six months, which may be spread over two calendar years).

A resident taxpayer is subject to Luxembourg income tax based on their worldwide income (such as employment income, dividends, interest and rental income). A non-resident taxpayer is subject to income tax based on their Luxembourg-source income only.

Tax rates applicable for individuals range from 0% to 45.78% (including the surcharge for the employment fund). Luxembourg does not apply a wealth tax for individuals.

Treatment of Capital Gains

Non-resident shareholders without a Luxembourg permanent establishment to which the shares in a Luxembourg company are allocable are only taxable on the realisation of a capital gain in respect of more than a 10% shareholding in such company if they realise that capital gain within six months after acquisition, or if they became non-resident taxpayers less than five years before the disposal took place and have been resident taxpayers for more than 15 years. However, shareholders that are resident in a country with which Luxembourg has concluded a tax treaty are generally not taxable on such capital gains.

For Luxembourg-resident shareholders, capital gains on movable assets (such as shares) are only taxable if they are realised within six months following acquisition or (after six months) if they concern a substantial shareholding (more than 10%). Capital gains realised after six months on substantial shareholdings benefit from a rate reduction of 50%. In addition, the taxable gain may be reduced by an allowance of EUR50,000 (or EUR100,000 jointly).

Treatment of Capital Gains on Real Estate

Capital gains realised on the sale of an individual's principal residence benefit from an exemption. Capital gains realised on real estate within two years after acquisition are taxed as ordinary income (at progressive rates up to 45.78%). However, after two years a 50% rate reduction would apply leading to a maximum tax rate of

22.89%. For 2024, the tax rate for such non-speculative capital gains is temporarily reduced to a maximum tax rate of 11.45%. In addition, as from 2025, the term within which a real estate alienation is considered as speculative will become five years instead of two.

A new tax neutral regime was introduced for non-speculative capital gains transferred to accommodation used for social rental management or which belongs to energy performance class A+. Capital gains realised by individuals upon the sale of real estate property to the Luxembourg State, municipalities, local authority associations or to the housing fund are tax exempt. As from 2024, the exemption for net income from social rental management has increased from 75% to 90%.

Emigration to Luxembourg/Step-Up in Basis

An individual that has a substantial interest (more than 10%) in a company (or shares in their own private or public limited company) and is considering emigrating to Luxembourg (from any country) can legally claim an increased acquisition price for their substantial interest. This is also called "step-up".

Under this scheme, the acquisition price of the substantial participation is set at the market value at the time of emigration. As a result, at the time of disposal (for example, if the interest is sold), Luxembourg will not tax capital gains on the substantial interest that accumulated in the period prior to emigration (deferred tax assets).

VAT Treatment of Directors' Fees

Directors' fees are not subject to value added tax (VAT at a rate of 17% in 2024) to the extent that the director cannot be considered as acting independently, ie, the director does not act on their behalf nor assume any personal economic risks in relation to their position on the board.

Gift Tax

Gift tax is levied when a gift is registered in Luxembourg in a notarial deed. Such registration is not always obligatory (unless the gift concerns Luxembourg real estate) so it may be possible to make a gift without gift tax by means of a gift by hand (*don manuel*).

Inheritance Tax

When a Luxembourg-resident taxpayer dies, there is no inheritance tax to pay in Luxembourg on bequests to direct descendants, provided that the statutory distribution to each descendant under Luxembourg law has been respected. It does not matter where the direct descendants live. However, if one child receives more than another, Luxembourg levies up to 5% inheritance tax on the difference. Moreover, a surviving spouse is also exempt from inheritance tax under certain conditions.

1.2 Exemptions

Luxembourg law provides for an exemption (which is limited to the legal part of the inheritance) for inheritance in a direct line between ascendants and descendants and vice versa, and between spouses and partners.

Gifts by hand (*don manuel*) can be made free of Luxembourg gift tax if the gift is not registered in Luxembourg in a notarial deed.

1.3 Income Tax Planning

The principle of the choice of the least taxed option remains valid in Luxembourg – ie, a taxpayer may freely organise their estate or business in the most appropriate and least costly way from a tax perspective. In this respect, Luxembourg offers a toolbox that is suitable for

international wealth structuring. Subject to an analysis of the specific needs that result from the requirements in each relevant jurisdiction, Luxembourg may offer solutions as diverse as:

- the *société de participation financières* (SOPARFI);
- the family private wealth management company (SPF);
- the specialised investment fund (SIF);
- the investment company in risk capital (SICAR); or
- to a lesser extent, reserved alternative investment funds (RAIFs).

Management incentive plans, fiduciary agreements and insurance products are also options.

1.4 Taxation of Real Estate Owned by Non-residents

Capital gains with respect to real estate located in Luxembourg realised by a non-resident company (ie, an incorporated body enjoying legal personality) are subject to corporate income tax (including the surcharge for the employment fund) at a rate of 18.19% (in 2024), while such gains realised by a non-resident individual are subject to personal income tax at progressive rates.

Furthermore, the sale of real estate through an asset deal is subject to a registration duty of 6%, plus a 1% transcription tax, while commercial property located within the municipality of Luxembourg City is subject to a combined maximum rate of 10%.

Consequently, Luxembourg real estate investments are typically structured as a share deal whereby the shares of a Luxembourg tax-opaque vehicle holding the real estate assets are transferred. Such transfer is not subject to registration duty since the share deal does not result in a change of the owner of the property. Furthermore, Luxembourg only taxes capital gains of a non-resident investor when there is a disposal of a significant shareholding (ie, more than 10%) in a Luxembourg tax-opaque company within six months of the acquisition of the shareholding (subject to tax treaty protection).

In addition, Luxembourg investment funds are becoming increasingly important on the Luxembourg real estate market. Notably, the SIF and the RAIF offer attractive solutions for structuring Luxembourg real estate.

Since 1 January 2021, certain tax-transparent investment funds (ie, UCIs, SIFs and RAIFs) are subject to a new real estate tax, at a flat rate of 20%. This tax will be levied on an annual basis, on income derived from a real estate asset situated in Luxembourg. Targeted real estate income includes:

- gross rental income realised by the investment vehicle directly, or via a transparent entity or a *Fonds Commun de Placement* (FCP);
- capital gains on Luxembourg real estate assets; and
- capital gains derived upon a transfer of interest in transparent entities or FCPs, to the extent these hold real estate assets located in Luxembourg.

On 20 January 2022, the Luxembourg tax authorities issued a circular providing details on reporting obligations in respect of the Luxembourg real estate levy. While the real estate levy applies only to the revenues derived from Luxembourg-based real estate, the circular reiterates that all “non-transparent” Luxembourg

investment vehicles are subject to specific notification obligations, even if they do not own Luxembourg real estate.

Faced with a housing crisis, the Budget Law for 2023 limits the benefit of the tax system for depreciation of construction to two real estates or part of real estates used for rental housing. This measure aims at limiting speculation and pricing pressure due to excessive demand. On the same subject, in the Bill of 10 October 2022, No 8082, a property tax reform was proposed to reform the current land tax with an update of the land value, introducing a land mobilisation tax with an incentive for construction of buildings on land earmarked for urbanisation and a tax on the non-occupation of housing which taxes buildings constructed for residential purposes that remain unoccupied.

1.5 Stability of Tax Laws

Luxembourg is considered one of the most stable jurisdictions in the world from legal, political and financial points of view, and is thus very attractive for clients wishing to manage their private wealth in the most optimal way possible.

More specifically, rules related to estate and transfer tax laws can be considered very stable since the basic principles have not changed drastically over the years, but have only adapted to the evolving needs of high net worth individuals. For instance, the Law on registration fees dates back to December 1798.

1.6 Transparency and Increased Global Reporting

As an EU member state, Luxembourg is committed to participating in EU and international initiatives that aim to combat money laundering and terrorism financing through increased transparency and exchange of information between tax authorities. Luxembourg has notably adopted legislation to implement the Common Reporting Standard (CRS) and the US Foreign Account Tax Compliance Act (FATCA). In accordance with the EU anti-money laundering directives, it has set up a national register of the ultimate beneficial owners (UBOs) of companies and other legal entities that are registered with the Luxembourg register of trade and companies, and a separate national UBO register for trusts and *fiducies*.

Following the judgment dated 22 November 2022 by the CJEU in Joined Cases C-37/20 and C-601/20, the Ministry of Justice, the supervisory authority of Luxembourg Business Registers (LBR), has decided to suspend public access to the Register of Beneficial Owners (RBO). While this access was restored in December 2022 to professionals subject to the amended Law of 12 November 2004 on the fight against money laundering and terrorist financing, the LBR is now allowing registered entities to consult their own data entered in the RBO.

Since 31 March 2022, all natural persons recorded in the *Registre de Commerce et des Sociétés* (RCS) in connection with the file of any legal entity registered therein (manager, director, shareholder, partner, auditor, authorised representative, etc) must provide their Luxembourg national identification number (LNIN) to the RCS either through the process of a required filing by completing the form field dedicated to the LNIN or on a voluntary basis by updating their registered information on the RCS online portal. As an exception, no number must be communicated for natural persons who are judicial representatives appointed for a procedure registered in the RCS or for agents of a company that is governed by foreign law and has opened a Luxembourg branch.

Luxembourg has also implemented Directive 2011/16/EU (DAC 6), requiring intermediaries to report potentially aggressive tax planning arrangements with a cross-border dimension, as well as arrangements designed to circumvent reporting requirements such as CRS and UBO reporting. According to the Luxembourg law implementing DAC 6, lawyers, accountants and auditors acting within the boundaries of their profession and subject to the Luxembourg laws governing these professions are excused from the reporting obligation.

On 8 December 2022, the European Commission released a proposal for new tax transparency rules for service providers facilitating transactions in crypto-assets for customers resident in the EU. These complement the Markets in Crypto-Assets Regulation and anti-money laundering rules. They take the form of an amendment to the EU Directive for Administrative Co-operation and follow the OECD Crypto-Asset Reporting Framework and the amendments to the OECD CRS. The Commission opened a public consultation until 7 February 2023. The rules' entry into force is currently expected on 1 January 2026.

2. Succession

2.1 Cultural Considerations in Succession Planning

Inheritance

Luxembourg applies the situs principle, which means that the inheritance is opened in the last state of residence of the deceased person for Luxembourg tax consideration. However, Luxembourg also levies duties on the transfer of real estate located in Luxembourg upon death.

The inheritance duties in Luxembourg are, in principle, levied at a rate of 0% in direct ascending line and between spouses and partners (for the part inherited corresponding to the heirship law). The base rate applicable to other heirs can vary up to a maximum of 15%, notwithstanding possible surcharges.

Duty on Gifts

Luxembourg only levies a duty on gifts to the extent that the gift is registered in Luxembourg. The rate varies between 1.8% and 14.4%. Following this principle, gifts that are not affected before a notary should not be subject to this duty.

Luxembourg also does not levy gift tax on real estate located abroad, regardless of whether the act was registered in Luxembourg. Luxembourg gift and inheritance tax are levied on the fair market value of the assets.

In Luxembourg, gifts are not often used to anticipate inheritance because of the existence of gift tax even in direct line; whereas inheritance in direct line is exempted from inheritance tax.

2.2 International Planning

Luxembourg has not signed any double tax treaty regarding inheritance tax. However, as mentioned in **2.1 Cultural Considerations in Succession Planning**, the ascending direct line and inheritance between spouses and partners are subject to a 0% rate, so there is no risk of double taxation in such situations.

Concerning the civil law applicable to inheritance, Luxembourg must apply the EU Succession Regulation, which simplifies European cross-border inheritance (except for the United Kingdom, Ireland and Denmark). In principle, the applicable law will be the law of

the last state of residence, unless the deceased opts for the law of the state of their nationality or of one of their nationalities. The European Commission provides some recommendations in order to utilise the unilateral relief measures of the member states to avoid double taxation upon inheritance.

2.3 Forced Heirship Laws

There are four categories of heirs:

- descendants;
- the surviving spouse;
- ascendants; and
- collateral heirs.

Descendants

The descendants are the deceased's privileged heirs. They supersede all other heirs except for the surviving spouse.

The deceased can freely dispose (via a testamentary provision) of a portion of their estate (the disposable portion) despite the protection of the descendants' inheritance rights. The rate of the disposable portion depends on the number of children left by the deceased or represented in their estate. The following ratios apply:

- if the deceased has one child (alive or represented), the disposable portion is one half of their estate;
- if the deceased has two children, the disposable portion is one third of their estate; and
- if the deceased has three or more children, the disposable portion is one quarter of their estate.

In the absence of testamentary provisions, the estate is devolved equally (division per capita) among the closest relatives.

Surviving Spouse

If the deceased leaves descendants, the surviving spouse can choose between a share equal to that of the legitimate child who receives the smallest share (which may not be lower than a quarter of the estate) and the usufruct of the matrimonial home and the related furniture, provided that said building belonged to the deceased in its entirety or together with the surviving spouse.

The descendants' due portion of inheritance is reduced in proportion to the rights of the surviving spouse.

Representation allows descendants of different degrees of kinship to compete for the estate, in so far as it allows representatives to take the place and degree of – and to be entitled to the rights of – the represented person who had a title to inheritance but who died before the deceased. If there are no descendants, the surviving spouse inherits and comes to own the freehold estate.

Ascendants and Collateral Heirs

Ascendants and collateral heirs only have inheritance rights where there are no descendants and no surviving spouse. The surviving spouse, as well as ascendants or collateral heirs, can be disinherited by the deceased through their will.

2.4 Marital Property

Prenuptial and Postnuptial Agreements

Luxembourg allows for matrimonial agreements, under which the future spouses choose their matrimonial regime and any other advantages (it being understood that some elements are subject to public order rules, such as maintenance obligations or any compensatory benefits). If there is an international element (for example, if at least one of the spouses is a foreign national), the matrimonial agreements

may be subject to foreign law. For that purpose, the agreements must:

- be in writing;
- be signed and dated by the spouses; and
- comply with the form prescribed for marriage contracts, either by the law chosen by the spouses or by the law of the place where they were entered into.

Matrimonial Regimes

The Luxembourg Civil Code distinguishes between the primary and the secondary regime.

The primary regime sets forth rules of public order, such as the prohibition of the sale of the common residence, even if it is part of the personal patrimony of one of the spouses, or the duty to contribute to the needs of the household. Those obligations may not be derogated from.

The secondary regime provides supplementary rules on marital assets. It provides for three community regimes:

- the community property regime, where the spouses each have a patrimony and, in addition, a common patrimony composed essentially of their professional revenues as well as all the property acquired with said revenues;
- the separation of property regime; and
- the joint ownership of acquired properties regime, which provides for a kind of equal distribution of the assets at the time of the dissolution of the marriage.

These matrimonial regimes can be modified by the spouses as they see fit.

2.5 Transfer of Property

In principle, for direct tax purposes, the transfer of property upon death or gift is valued at the historical acquisition costs for subsequent disposal. However, there is an exemption for substantial participation (more than 10% held for more than 12 months), which is considered to be a realisation even without consideration.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

Luxembourg inheritance taxes are limited and do not require specific structuring in the case of traditional inheritance to the spouse or children. In any case, good planning can consist of using the manual gift, which is not taxed in Luxembourg for assets potentially allowed to be transferred without notarial deed (eg, not for real estate).

2.7 Transfer of Assets: Digital Assets

Luxembourg inheritance law does not include any special provision for digital assets, which are considered movable and intangible properties for the purposes of tax and succession.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations or Similar Entities

There is no such thing as a Luxembourg trust, since the legislature has never introduced that type of structure. However, Luxembourg recognises foreign trusts (see **3.2 Recognition of Trusts**), which still makes the country attractive for investment structures involving a trust.

A new bill introducing a private foundation (*fondation patrimoniale*) in Luxembourg legislation was drafted in 2013 and was about to be voted on by parliament in November 2014.

However, the legislative process was suddenly stopped and has not since been re-launched. Although the bill was returned to the Finance Commission for re-examination in 2023, there is currently no sign that the bill will be voted on.

However, foreign forms of private foundations such as the *fondation privée* in Belgium can be used in combination with a Luxembourg company for private wealth purposes.

3.2 Recognition of Trusts

Trusts are recognised in Luxembourg as the country has ratified the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition (the "Hague Convention") through the Law of 27 July 2003 (the "2003 Law"). That ratification facilitates the use of all forms of trusts governed by foreign jurisdictions.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

Based on the general Luxembourg tax law (*Steueranpassungsgesetz*), taxation follows economic ownership rather than legal ownership. As such, if a foreign trust or foundation owns assets on behalf of a Luxembourg individual, the proceeds from such assets would be allocable to the individual and taxed accordingly. The analysis may be different for certain discretionary and irrevocable trusts whereby no clear beneficiaries can be identified. In other words, the characteristics of a foreign trust or foundation would need to be analysed on a case-by-case basis.

A fiduciary based in Luxembourg would be taxed based on the same principles of economic ownership versus legal ownership – ie, in the opposite way. If the fiduciary is not the economic owner of the assets, any proceeds derived therefrom would not be taxable for the fiduciary. However, based on the arm's length principle included in Luxembourg tax law, the fiduciary should earn an arm's length remuneration for its activities.

Such remuneration could be in the form of a service fee or as part of the return from the assets.

3.4 Exercising Control Over Irrevocable Planning Vehicles

In the absence of structures such as Luxembourg trusts, Luxembourg has not taken any step towards allowing settlors to retain extensive powers over irrevocable planning vehicles.

4. Family Business Planning

4.1 Asset Protection

To structure the transmission of a family business, Luxembourg offers an arsenal of vehicles that ensure asset protection and provide for succession planning; depending on the assets and the amount to be transmitted, family members can choose between transparent arrangements, non-regulated vehicles and regulated vehicles.

Structuring via Transparent Arrangements

Since Luxembourg has not yet designed an instrument comparable to a trust, due to the different legal background dominated by the Civil Code introduced by Napoleon I, it has adopted specific legislation in relation to fiduciary arrangements that deviates slightly from the legislation applicable to the common UK trusts. Aside from the fiduciary agreement, the Luxembourg Civil Code allows the splitting of ownership of assets between the usufruct and the bare ownership.

Fiduciary agreement

The Luxembourg *fiducie,* is a contract whereby a person (the principal or *fiduciant*) agrees with another person (the agent or *fiduciaire*) that, subject to the obligations set forth by the parties, the *fiduciaire* becomes the owner of assets that shall form a *fiducie,* estate. As an agreement, the *fiducie,* will be subject to all conditions generally required for the validity of an agreement under Luxembourg law. The *fiducie,* contract and the transfer of assets, including receivables, are effective towards third parties from the moment the agreement is entered into.

However, the debtor is validly discharged from its obligations by payment to the *fiduciant* as long as it is not aware of the transfer. No other specific requirement is necessary to make the agreement or the transfer of the underlying assets enforceable against third parties unless the transfer of assets that are the subject matter of the *fiducie,* must be made public in a certain form.

Differences to trusts

A first major difference to a trust is that, from a civil law standpoint, the *fiduciaire* becomes the full owner of the assets that have been assigned, which it operates in its own name under the *fiducie,* contract. No division between legal and equitable ownership is thus created and, subject to the personal recourses that are developed below, the *fiduciaire* will have full powers of management, use and divestment that, as a rule, are afforded to owners under Article 544 of the Civil Code.

The second major difference is that the *fiducie,* is not established unilaterally, without the agent's approval. The Luxembourg position and its concepts included in the 2003 Law are nonetheless quite similar to trusts, which will allow the *fiducie,* to be recognised as a similar instrument to a trust for the purpose of the Hague Convention.

The fiduciaire

The *fiduciaire* must be:

- a credit institution;
- an investment firm;
- an investment company with variable or fixed share capital;
- a securitisation company;
- a *fiducie,* representative acting in the context of a securitisation transaction;
- a management company of common funds or of securitisation funds;
- a pension fund;
- an insurance or reinsurance undertaking; or
- a national or international public body operating in the financial sector.

It is also possible for an agent to be a foreign entity subject to regulatory supervision and located in the EU or the European Economic Area, without the need to operate out of or via a permanent establishment or place of business in Luxembourg.

The fiducie

The *fiducie,* entails the creation of a *fiducie,* estate (a *patrimoine fiduciaire*), which is separated from the personal estate of the *fiduciaire*, as well as from any other *fiducie,* estate managed by the *fiduciaire*. It implies, on the one hand, that its assets may only be seized by creditors whose rights have arisen in connection with this separate *fiducie,* estate. On the other hand, in the case of the liquidation or bankruptcy of the *fiduciaire*, or in any other situation of the *fiduciaire* generally affecting the rights of its personal creditors, the assets comprising the *fiducie,* estate are not affected by these procedures.

The *fiduciaire* will be obliged to manage the assets in accordance with the rules set forth for the mandate agreement, which are established under Articles 1984–2010 of the Civil Code.

Usufruct

A common way to structure assets under Luxembourg law is to divide the property of assets between bare ownership and usufruct. Usufruct is the right of a person (the usufructuary) to use and enjoy in its entirety an asset that is owned by another person (the bare owner), and to assume the obligation to conserve and maintain the asset in its form and substance, in particular to pay the taxes. Upon the usufructuary's death, all rights of the ownership will automatically be consolidated to the person carrying the bare property. In this way, the full property is reconstituted to the bare owner without an actual transfer.

This is often used in a context where the current owner of an asset wants to donate an asset ahead of their death but wishes to keep the possibility to enjoy the asset. The value of such a gift results from official tables that estimate the value of the portion of the property depending on the age of the owner of the usufruct.

Structuring via Non-regulated Vehicles

SOPARFI

Most taxable holding companies in Luxembourg are SOPARFIs, which is the abbreviation for the French *société de participations financières*. A SOPARFI is fully subject to Luxembourg corporate income tax (*impôt sur le revenu des collectivités* – IRC) and municipal business tax (*impôt commercial communal*). There is a surcharge for the employment fund calculated on the IRC. The total combined tax rate (inclusive of surcharge) is therefore 24.94% (for 2024).

A SOPARFI is also subject to an annual net wealth tax, which is levied at a rate of 0.5% on the company's worldwide net wealth on 1 January, but if the net wealth is above EUR500 million, the excess value will be charged with a reduced rate of 0.05%. As such, a SOPARFI is entitled to take advantage of the exemption regimes, such as the Parent Subsidiary regime. Dividends (including liquidation proceeds) and capital gains (including currency exchange gains) may thus be exempt from profit taxes. Moreover, as an ordinary commercial company, a SOPARFI benefits from the tax treaties concluded between Luxembourg and other countries, as well as from the EU Directives.

Common limited partnerships and special limited partnerships

To transfer a family business to the next generation, family members commonly use Luxembourg limited partnerships, of which there are two different kinds.

The common limited partnership (*société en commandite simple* – SCS) is a partnership established by contract, for a limited or unlimited duration, between one or more general partners with unlimited joint and several liability for all obligations of the partnership and one or more limited partners with limited liability, who commit to contribute a certain amount, constituting partnership interests, represented or not by a security instrument, in accordance with the provisions of the limited partnership agreement. The contractual freedom in this flexible vehicle allows the partners to draw up the contract to ensure the best possible way for the transmission of the inheritance.

However, more recently, the special limited partnership has been successfully introduced into Luxembourg law (*société en commandite*

spéciale – SCSp). The main specificity of the SCSp is that it does not have legal personality, although the assets can be registered in the name of the partnership.

From a Luxembourg perspective, the SCS and SCSp have similar tax and corporate treatment. They are both characterised by a corporate flexibility that goes beyond the competing forms of Anglo-Saxon limited partnerships (contractual freedom, protection for the anonymity of the limited partners, limited liability, security in the case of distributions, etc) while ensuring legal certainty at the same time. In addition, the vehicles are exempt from Luxembourg corporate income or net worth tax.

Luxembourg resident partners are subject to income and net worth tax on the partnership's income and net worth in proportion to their partnership interests. That said, some investors would prefer a tax-opaque vehicle with access to double taxation treaties.

SPF

In 2007, Luxembourg decided to introduce a family wealth management company (also known as a *société de gestion de patrimoine familial* – SPF) with a specific commercial purpose, which essentially consists of acquiring, holding and selling financial assets in the framework of wealth management and without entrepreneurial activity. Being a passive investment vehicle, an SPF is prohibited from undertaking any commercial activities. Consequently, this entity cannot interfere in the management of its participation, meaning that an SPF cannot exercise any function in the governing bodies or render any services the company holds itself, although additional structuring may be implemented to achieve this.

The main interest of using such an entity lies in its very favourable tax regime: SPFs are exempt from Luxembourg corporate income tax, municipal business tax and net wealth tax. They also benefit from not being subject to any Luxembourg withholding taxes over dividend distributions to their qualifying shareholders.

SPFs are subject to an annual subscription tax of 0.25%, with a minimum annual amount of EUR100 and a maximum amount of EUR125,000. This annual tax is levied on the share capital, grossed up with the share premium and the component of the debt that is eight times more than the share capital and share premium as of 1 January. Because of these exemptions, an SPF cannot generally take advantage of double tax treaties or EU Directives.

Structuring via Regulated or Supervised Entities – the SIF

The SIF is frequently used for structuring private assets.

Eligible investors

The SIF regime is reserved for well-informed investors, meaning institutional investors, professional investors or any other investor that has confirmed in writing that it adheres to the status of well-informed investor and either:

- invests a minimum of EUR100,000 in the SIF; or
- has obtained an assessment.

Such an assessment must certify its expertise, experience and knowledge in adequately appraising an investment in the SIF, made by:

- a credit institution within the meaning of Regulation (EU) No 575/2013;

- an investment firm within the meaning of Directive 2014/65/EU;
- a management company within the meaning of Directive 2009/65/EC; or
- an authorised alternative investment fund manager within the meaning of Directive 2011/61/EU.

A SIF must establish procedures ensuring that its investors are well-informed investors within the meaning of the SIF Law. The managers/directors (*dirigeants*) and other persons who are involved in the management of the SIF, including the management of the assets of the SIF (ie, the personnel of an appointed investment manager or investment adviser), do not need to be certified as "well informed" as a result of their involvement in the management of the SIF or its assets.

On 11 July 2023, Luxembourg adopted the Bill of Law No 8183 (the "Bill") bringing substantial improvements to, inter alia, the SIF Law. The law adopted pursuant to the Bill (the "Amending Law") was published in the Official Journal on 24 July 2023 and entered into force on 28 July 2023. The Amending Law lowers the eligibility threshold for well-informed investors from the current EUR125,000 to EUR100,000, thus increasing the attractiveness of the SIF regime for structuring private assets.

Legal forms

A SIF may be structured in several ways.

- As an FCP (*fonds commun de placement* – common fund) governed by a contractual arrangement and managed by a (regulated) management company.
- As a SICAV (*société d'investissement à capital variable* – investment company with variable capital) opting for the corporate form of a:
  - (a) private limited liability company (*société à responsabilité limitée*);
  - (b) public limited liability company (*société anonyme*);
  - (c) corporate partnership limited by shares (*société en commandite par actions*); or
  - (d) co-operative company in the form of a public limited liability company (*société co-opérative sous forme de société anonyme*).
- Under any other legal regime available under Luxembourg law, such as a simple or special limited partnership (*société en commandite simple ou spéciale*).

A SIF may thus, among other functions, replicate the operational and legal flexibility typically associated with Anglo-Saxon limited partnerships. Depending on the choice of fund vehicle, there will usually be a high degree of structuring flexibility, including for the organisation of subscriptions, redemptions or distributions, the valuation methodology, or the compartmentalisation of assets, liabilities or investors.

The minimum capitalisation of a SIF (share capital and premium included) is EUR1.25 million, which, further to the Amending Law, must be reached within 24 months of its approval by the Commission for the Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier* – CSSF). At least 5% of each share must be paid up (in cash or in kind) at subscription. A SIF may opt for variable or fixed share capital. The distribution policy is freely determined in the constitutional documents.

Compartments

SIFs may be constituted with multiple compartments, with each compartment corresponding to a distinct part of the assets and liabilities of

the SIF. Some families allow each of their members to personalise the management of their assets. Unless otherwise provided for in the constitutional documents of the SIF, the rights of investors and of creditors relating to a specific compartment or that have arisen in connection with the creation, operation or liquidation of that compartment are limited to the assets of that compartment.

Consequently, the assets of that compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of creditors whose claims have arisen in connection with the creation, operation or liquidation of that compartment.

Unless the constitutional documents provide otherwise, for the purpose of the relationship between investors, each compartment will be deemed to be a separate entity. Compartments may be separately liquidated, and the liquidation of a compartment will not result in the liquidation of any other compartment of the SIF. Likewise, the withdrawal of CSSF authorisation of a compartment has no impact on the other compartments of the same SIF, which remain registered on the official list of SIFs.

A compartment is able to invest in one or more other compartments of the same SIF, subject to:

- a prohibition on reciprocal cross-compartmental investments (ie, where the latter, in turn, also holds interests in the former);
- the suspension of voting rights attaching to interests held by the former in the latter compartment; and
- the value of the holding of the interest held by the former in the latter not being taken into account for the purpose of calculating whether the minimum capitalisation required by the SIF Law has been reached.

Management

The CSSF devotes special attention to the qualification of the managers/directors of a SIF. The representatives of a SIF need to submit proof of their professional qualifications and experience, good standing and honourability. The managers/directors are not subject to any residency requirement.

In practice, the appraisal of the CSSF will consider the qualifications and experience of the management team in its entirety.

Investment concentration and leverage restrictions

The absence of pre-set or statutory investment restrictions represents another important feature of the SIF regime. Although the principle of risk spreading applies, there are no pre-set quantitative, qualitative or other investment restrictions.

However, a CSSF circular provides for certain "safe harbour" diversification rules. The SIF initiator may thus freely determine the investment policies, architecture (eg, a single or multi-compartment (umbrella) SIF), investment restrictions or limitations, provided that the investment policies are based on the principle of risk spreading. The default risk spreading rule is a maximum 30% exposure to a single asset. A SIF may operate as a feeder fund or a fund of funds, in which case the 30% limit does not apply provided that the underlying fund is subject to risk-spreading requirements at least comparable to those of a SIF (irrespective of the country of establishment of the underlying fund).

Where a SIF has been constituted with multiple compartments, the principle of risk spreading

applies to each compartment separately. SIFs are furthermore not bound by any pre-set or statutory leverage restrictions.

Where a SIF operates under the European Long-Term Investment Fund (ELTIF) label, introduced by Regulation (EU) 2015/760 and amended by Regulation (EU) 2023/606, it must comply with ELTIF investment restrictions.

Depositary

As is the case for all Luxembourg fund vehicles, the assets of a SIF must be safeguarded and/or monitored by a Luxembourg-established depositary bank. The depositary is liable vis-à-vis the investors for any damage they may suffer as a result of failure to perform its obligations or improper performance thereof.

Supervision

The setting up and launching of a SIF requires prior authorisation from the CSSF. Such authorisation is granted upon the CSSF approving the SIF's constitutional documents and its choice of depository bank, and after considering the suitability of the managers/directors of the SIF. A SIF approved by the CSSF must notify the CSSF fully in writing of any change relating to information that the CSSF used to grant its approval, and any such change is subject to the CSSF's prior approval.

This applies to changes in both the documentation and material information, such as a change of service provider.

The fees charged by the CSSF for the initial examination of an application as well as the applicable annual fees are set out in the Grand-ducal Regulation of 23 December 2022 relating to the fees to be levied by the *Commission de Surveillance du Secteur Financier*.

Similar to all the other Luxembourg investment funds, a SIF is subject to stringent anti-money laundering and counter-terrorism financing regulations, applicable at both the investor and asset levels, and to the CSSF's supervision as competent AML/CFT supervisory authority.

Disclosure and reporting obligations

Each SIF must establish an issuing document, which may be labelled as a private placement memorandum, offering memorandum or prospectus. No minimum content is prescribed, but such document must include all information necessary for prospective investors to make an informed investment decision. Any change to the essential elements of the issuing document is subject to CSSF approval.

A SIF is required to produce an annual report following a pre-set reporting template providing for a minimum level of disclosure. This annual report must be audited and provided to investors and the CSSF within six months of the end of the period to which it relates.

A SIF is not obliged to publish a net asset value (subject to it being included in the annual report of the SIF).

Taxation

Save for the application of the Savings Tax Directive, a SIF is exempt from income and net wealth taxes. Distributions are generally exempt from withholding tax. A SIF is subject to an annual subscription tax (*taxe d'abonnement*) of 0.01% assessed on the total net assets of the SIF as valued on the last day of each quarter. The subscription tax does not apply to:

- a SIF that invests in other undertakings for collective investment that have already been subject to an annual subscription tax;

- a SIF that invests in certain money market instruments only;
- a SIF implementing pension pooling schemes;
- a SIF which qualifies as European long-term investment fund under ELTIF 2.0;
- a SIF which is reserved to individual investors acting through a Personal Pension Product.

More than 80 double tax agreements concluded by Luxembourg are currently in force, some of which do not extend their benefits to Luxembourg undertakings for collective investment (UCI). However, many jurisdictions grant treaty protection to Luxembourg SICAVs/ SICARs under the UCI law and may extend it to (corporate) SIFs (application to be confirmed by foreign counsel on a case-by-case basis).

4.2 Succession Planning

The same set of vehicles that ensure asset protection are used to provide for succession planning. The strategies depend on the purpose for which they are developed and on the factual aspects of each family business. See **4.1 Asset Protection**.

4.3 Transfer of Partial Interest

Luxembourg does not levy transfer duties when a partial interest in an entity is transferred.

5. Wealth Disputes

5.1 Trends Driving Disputes

There are no specific trends currently driving wealth disputes in Luxembourg.

5.2 Mechanism for Compensation

Luxembourg has not developed specific mechanisms for compensating aggrieved parties in wealth disputes. The general principles of compensation apply – ie, where execution in kind is not possible, the aggrieved party will receive financial compensation that is supposed to make up for the complete damage (material and moral) suffered (*principe de la réparation intégrale*).

6. Roles and Responsibilities of Fiduciaries

6.1 Prevalence of Corporate Fiduciaries

The application of the 2003 Law is limited to a certain number of entities, so that an individual cannot proceed as agent under the 2003 Law, contrary to common law trusts. Only the following institutions may act as a *fiduciaire*:

- a credit institution;
- an investment firm;
- an investment company with variable or fixed share capital;
- a securitisation company;
- a *fiducie,* representative acting in the context of a securitisation transaction;
- a management company of common funds or of securitisation funds;
- a pension fund;
- an insurance or reinsurance undertaking; or
- a national or international public body operating in the financial sector.

The 2003 Law also recognises the possibility for an agent to be a foreign entity subject to regulatory supervision and located in the EU or the European Economic Area, without the need to operate out of or via a permanent establishment or place of business in Luxembourg.

6.2 Fiduciary Liabilities

The *fiducie,* estate is separated from the personal estate of the *fiduciaire*, as well as from any

other *fiducie,* estate managed by the *fiduciaire*. It implies, on the one hand, that its assets may only be seized by creditors whose rights have arisen in connection with this separate *fiducie,* estate. On the other hand, in the case of the liquidation or bankruptcy of the *fiduciaire*, or in any other situation of the *fiduciaire* generally affecting the rights of its personal creditors, the assets comprising the *fiducie,* estate are not affected by these procedures.

In the absence of any official publication of the *fiducie*, it is possible that third parties having recourse on the *fiduciaire* acting on its own behalf or on behalf of other *fiducie,* estates may seize assets that form part of a *fiducie,* estate other that on which their claim arose. In such cases, it will be possible to obtain the release of the seizure by injunction.

The *fiduciaire* is obliged to keep a separate accounting of its personal estate and each of the other *fiducie,* estates. This is essential for the *fiduciaires*, which are all regulated entities, and some of which are subject to capital adequacy rules that would have potentially damaging consequences if they considered the assets and liabilities attached to the *fiducie,* estates.

The Fiducie, Agreement

In principle, the *fiducie,* agreement has effect towards third parties by its mere execution, with the only exceptions being as indicated above. The extent and measure of this effect can, however, give rise to subtle distinctions. The 2003 Law sets forth that restrictions on the powers of the agent under the *fiducie,* agreement are only binding upon third parties who are aware of them.

A third party that is unaware that assets are the subject matter of a *fiducie,* arrangement would thus not be bound by the terms of it, while other parties made aware of the terms of the *fiducie,* agreement would be subject to its limitation. A question may, of course, arise as to whether mere awareness that assets are the subject matter of a *fiducie,* arrangement would be sufficient to impose the limitations of the *fiducie,* on the third parties. This may be imposed based on the general principles of law under which a party may not participate in the infringement of a contract by another party if they knew or should have known that they helped in the infringement of a contract.

In the case of a *fiducie,* arrangement, a third party who is aware that the assets are the subject of a *fiducie,* agreement could be under the obligation to request a copy of the *fiducie,* arrangement to ensure that they do not participate in its infringement.

In principle, clauses limiting a *fiduciaire*'s liability are permitted under Luxembourg law. However, no limitation of liability is possible for gross negligence and wilful misconduct.

6.3 Fiduciary Regulation

In the absence of derogation by agreement between the *fiduciant* and the *fiduciaire*, or by a provision of the 2003 Law, the rules of the mandate agreement established in the Civil Code are applicable to the *fiducie,* agreement. A major carve-out is the exclusion of any rule thereof that relates to representation by the agent; in other words, the *fiduciaire* may not represent – and create obligations on behalf of – the *fiduciant*.

If the *fiduciaire* contemplates representing the *fiduciant* in any other transaction, it is assumed that they will do so based on other contractual arrangements, since there is no reason for the *fiduciaire* to mix the capacities in which they act.

This implies that neither the *fiduciant* nor the third-party contractor may invoke the existence of a direct contractual relationship between themselves.

Other principles of the mandate agreement remain applicable. For example, the *fiducie,* is rendered gratuitously if no specific provision sets forth the right to compensation. If any compensation is envisaged, the *fiduciaire* will be liable for mere negligence. The *fiduciaire* will be under an obligation to inform the *fiduciant* (or the third-party beneficiary) of the fulfilment of their duties at the end of the agreement at the latest.

6.4 Fiduciary Investment

There are no specific investment rules or diversification requirements.

7. Citizenship and Residency

7.1 Requirements for Domicile, Residency and Citizenship

Residents that have been living in Luxembourg for at least five years may acquire Luxembourgish nationality by naturalisation under certain conditions. The acquisition of Luxembourgish nationality by naturalisation confers the status of Luxembourger, with all attached rights and duties. The applicant is not obliged to give up their nationality of origin owing to the principle of dual nationality, provided this is allowed by the law of their nationality of origin.

Luxembourg applies the second-generation jus soli: a child born in Luxembourg, one of whose parents or adopting parents was already born in Luxembourg, is automatically a Luxembourgish national.

Residency

Nationals from the EU and Iceland, Norway, Switzerland and Liechtenstein do not need a prior residency/work permit to reside/work in Luxembourg. However, if their residency exceeds a period of 90 days, they need a subsequent registration certificate.

Nationals from third countries need to apply for a prior work/residence permit, which must be done before arriving in Luxembourg in most cases. The first work/residence permit is valid for a year, after which it can be renewed. After five years of residence in Luxembourg, third-country nationals can apply for a long-term residence permit.

A special residency permit for investors has been introduced, with three possibilities:

- the investor may invest at least EUR500,000 in a company that already exists or in one that is to be created in Luxembourg;
- the investor may invest at least EUR3 million in a Luxembourg management and investment structure that already exists or in one that is to be created; or
- the investor may invest at least EUR20 million as a deposit with a Luxembourg financial institution in order to obtain a residency permit.

Acquisition of Luxembourgish Nationality

To apply for Luxembourgish nationality by naturalisation, the candidate must meet the following conditions:

- be at least 18 years old at the time the application is submitted;
- have legally resided in Luxembourg for at least five years – the final year of residence

immediately preceding the naturalisation application must have been uninterrupted;
- have knowledge of the Luxembourgish language, as evidenced by a Luxembourgish language test certificate;
- have attended a civic course (*Vivre ensemble au Grand-Duché de Luxembourg*) or passed the test covering the topics taught in this course; and
- meet good repute and integrity requirements.

7.2 Expeditious Citizenship

Luxembourgish nationality can be assigned to non-Luxembourgish nationals "by option". This is possible in ten specific cases and subject to further conditions (such as meeting good repute and integrity requirements):

- for adults with a parent, adoptive parent or grandparent who is or was Luxembourgish;
- for parents of a Luxembourgish minor;
- in the event of marriage to a Luxembourgish national;
- for persons born in Luxembourg, over the age of 12;
- for adults having completed seven years of schooling in Luxembourg;
- for adults residing legally in Luxembourg for at least 20 years;
- for adults having fulfilled the obligations arising from the Welcome and Integration Contract (*Contrat d'accueil et d'intégration*);
  (a) for adults who settled in Luxembourg before the age of 18;
  (b) for adults with stateless person, refugee or subsidiary protection status; or
  (c) for volunteer soldiers.

Luxembourgish nationality may also be recovered under certain conditions – eg, if a direct ancestor of the candidate was a Luxembourgish national on 1 January 1900.

8. Planning for Minors, Adults with Disabilities and Elders

8.1 Special Planning Mechanisms

There are no special planning mechanisms for minors or for adults with disabilities in Luxembourg.

8.2 Appointment of a Guardian

Appointing a guardian, conservator or similar party requires a court proceeding and ongoing supervision by the court.

8.3 Elder Law

Under certain conditions, elderly people may benefit from the Social Inclusion Act, which provides basic livelihoods to people whose pension or other means of livelihood are insufficient. In addition, any person in need may contact the social office of their municipality of residence, the purpose of which includes carrying out all steps required to obtain social services and financial aid, accepting (to the extent possible) the supervision imposed by the guardianship judge, and covering the risk of illness, disability and senescence of uninsured people.

9. Planning for Non-traditional Families

9.1 Children

Children born out of wedlock enjoy the same rights as legitimate children.

The law distinguishes between full and simple adoption. In the case of a full adoption, the adoptee loses all legal ties with their family of origin, with the new filiation completely replacing the original filiation. In the case of a simple adoption, the adoptee maintains their filiation

with their family of origin while acquiring inheritance rights in their adoptive family.

The adoptee has the same civil rights as a non-adopted child within their adoptive family, except that the adoptee is not entitled to the forced heirship (*réserve héréditaire*) in the succession of the ascendants of their adoptive parent.

9.2 Same-Sex Marriage

Luxembourg recognises same-sex marriage and has also recognised the right to enter into a civil partnership since 2004. Partners have fewer rights than spouses. Partnerships can be terminated ad nutum. The ex-partner might be entitled to alimony in the year following the end of the partnership.

Contrary to marriage, a civil partnership does not entail automatic succession rights for the surviving partner. However, if the predeceased partner bequeaths (part of) their estate to their partner, the tax exemption applies if the partnership was registered three years before their death.

10. Charitable Planning

10.1 Charitable Giving

Luxembourg has attempted to incentivise charitable giving by offering a variety of legal forms that can be used to set up a Luxembourg charity:

- charitable associations (*associations sans but lucratif* – ASBLs);
- charitable foundations (*fondations sans but lucratif*); and
- societal impact companies (*sociétés d'impact sociétal* – SIS).

Under certain conditions, donations to charities are deductible from income tax and may be exempt from gift tax.

10.2 Common Charitable Structures

Foundations are common charitable structures. Any person may establish a foundation by way of a notarial deed or will, by irrevocably allocating all or part of their estate to this purpose. In order to benefit from legal personality, the foundation's articles of association must be approved by Grand-Ducal decree.

A foundation must be registered with the Luxembourg register of trade and companies, and must pursue a philanthropic, social, scientific, religious, artistic, educational, sports or tourist objective, each time without the intention to generate profit. Consequently, a foundation can be defined as an independent pool of assets or rights with legal personality that is set up to carry out a public interest purpose.

Foundation Assets

Most assets can be allocated to a foundation, but only real estate assets that are used by the foundation to carry out its purpose can be allocated to the foundation (notably the registered seat of the foundation).

The allocation of assets by the founder(s), made through the deed of foundation, becomes irrevocable upon approval of the Minister of Justice. This irrevocable nature also appears during the foundation's existence and at its liquidation. A foundation is prohibited from distributing profits and may be liquidated if it cannot carry out its public interest purpose.

If the foundation is liquidated, liquidation proceeds must be allocated to another foundation.

Foundation Management

A foundation is managed by a board of directors whose appointment procedure must have been stated in the foundation's articles of association. The Ministry of Justice checks that the foundation's assets are used in accordance with the public interest purpose for which they were created. There is a requirement for the board of directors to submit the foundation's accounts and the provisional budget to the Ministry of Justice within two months following the end of each financial year.

Foundation and Taxes

Foundations are taxable entities, but income derived from charitable or public interest activities is exempt. Due to their public interest rationale, Luxembourg foundations are thus exempted from Luxembourg taxes. The exemption only applies as long as the activity carried out by the foundation is charitable or related to public interest.

If a foundation carries out a commercial or industrial activity, it will normally be taxed for the part related to said activity. In this context, commercial or industrial activities are defined as those that aim to make profit. In addition, if a foundation carries out a different purpose to the charitable or public interest purposes for which it was settled, there is a risk of the dismissal of directors and the judicial liquidation of the foundation.

The registration of a foundation deed with the Luxembourg register of trade and companies is subject to a fixed registration duty that amounts to EUR12.

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