### Luxembourg in International Tax Planning

Second edition

### Philip J. Warner

Updated with the assistance of Marc Schmitz and Ernst & Young, Luxembourj



International Bureau of Fiscal Documentation

#### **TABLE OF CONTENTS**

Acknowledgements	v
Abbreviations used regularly	vii

Introduction

#### PARTA BACKGROUND

ix

# Chapter 1 - An introduction to Luxembourg and essential legal knowledge

1.1.	An introduction to Luxembourg	5
1.2.	Essential legal knowledge	10

#### PART B

THE ESSENTIAL PRINCIPLES OF LUXEMBOURG TAXATION

### Chapter 2 - Resident businesses and branches of non-resident businesses

2.1.	The presence considered to generate taxable	
	commercial income	47
2.2.	Profits-based taxes	51
2.3.	Corporate income tax	95
2.4.	Municipal business tax and its interaction with	
	corporate income tax	111
2.5.	Net worth tax	116
2.6.	Capital duty	134

## Chapter 3 - The taxation of non-residents not operating through a branch

3.1.	The taxation exposure of non-residents	151
3.2.	Dividends and their equivalents	152

3.3.	Interest on loans secured by a Luxembourg	
	mortgage	172
3.4.	Rental income and royalties	174
3.5.	Capital gains of non-residents	178
3.6.	Net worth tax and non-residents	182
3.7.	The taxation of directors' fees paid to	
	non-residents	183

#### PARTC SPECIAL SITUATIONS

#### **Chapter 4 - Banking in Luxembourg**

4.1.	Luxembourg' s banking industry	191
4.2.	Credit for foreign tax	197
4.3.	The neutralisation of exchange gains on equity	
	for tax purposes	213
4.4.	The fiduciary contract and trusts	227

## Chapter 5 - The participation exemption (the normally taxable holding Company or "SOPARFI")

5.1.	The basis of the participation exemption	235
5.2.	Clarification of some important common terms	239
5.3.	The exemption of dividends and the division of	
	the net assets of a Company	247
5.4.	The exemption of capital gains	257
5.5.	The participation exemption and net worth tax	266
5.6.	Other issues arising from the participation	
	exemption	269
5.7.	The participation exemption - summary table	283

#### Chapter 6 - Reinsurance companies in Luxembourg

6.1.	Economic and legal factors	287
6.2.	The taxation of reinsurance companies in	
	Luxembourg	294

# Chapter 7 - Other entities and benefits available including recent developments

7.1.	Cost-plus arrangements	317
7.2.	Group finance companies	320
7.3.	The Luxembourg Maritime Flag	327
7.4.	The taxation of partnerships	332
7.5.	Economic Interest Groupings and European	
	Economic Interest Groupings	337
7.6.	Audio-Visual and venture capital investment	
	certificates	340
7.7.	Other tax benefits	344
7.8.	International pension funds	345
7.9.	Securitisation vehicles	353
7.10.	The SCI AR - Venture capital fund and private	
	equity vehicle	360

### PART D

#### ENTITIES EXEMPT FROM TAX ON PROFITS

#### Chapter 8 - 1929 holding companies

8.1.	Standard 1929 holding companies	371
8.2.	Milliardaire holding companies	393
8.3.	Financial holding companies	398
8.4.	1929 holding companies going forward	401

#### Chapter 9 - Investment funds and related companies

9.1.	Luxembourg's investment fund business	409
9.2.	Taxation of Luxembourg investment funds	
	in Luxembourg	412
9.3.	The taxation of Luxembourg investment	
	funds in the countries in which they invest	415
9.4.	The taxation of the unit holders	422
9.5.	The taxation of companies supplying Services	
	to investment funds	425

#### PARTE CORPORATE REORGANISATIONS AND PLANNING OPPORTUNITIES

#### **Chapter 10 - Corporate reorganisations**

10.1.	The taxation of liquidations	435
10.2.	Changes in the nature of a Company, mergers	
	and divisions	442
10.3.	Transfer of registered office	454
10.4.	Transfer of a business to a Company	460
10.5.	Switching between the SOPARFI and the 1929	
	holding Company regimes	466

#### **Chapter 11 - Planning opportunities**

11.1.	Luxembourg tax planning and advance clearances	477
11.2.	A comparison of the SOPARFI and the	
	1929 holding Company	480
11.3.	Extracting funds from a taxable Luxembourg	
	Company in a tax-efficient way	482
11.4.	The 1996 tax treaty between Luxembourg and	
	the US	493
11.5.	The Luxembourg Company with a finance branch	
	in Switzerland	501
11.6.	Extra tax credits on foreign dividends	510

#### Appendices

Ι	Accounts presentation for holding companies (as defined by the Grand-Ducal Regulation	
	of 29 June 1984)	519
II	The full definition of a permanent	
	establishment in the original langüages with	
	an English translation (Art. 16 of the	
	"Tax Adaptation Law"- StAnpG)	521
III	Art. 54 LIR: reinvestment of capital gains	523

IV	Withholding tax rates for payments from	
	Luxembourg (agreements in force as at 1 January	
	2004)	525
V	Credit for foreign taxation: derivation of formulae	529
VI	Credit for foreign taxation: calculation comparing	
	the different methods	533
VII	Withholding tax rates on dividends received by a	
	resident of Luxembourg (agreements in force as	
	at 1 January 2004)	535
VIII	Withholding tax rates on interest and royalties	
	received by a resident of Luxembourg	
	(agreements in force as at 1 January 2004)	539
IX	Tax treaty developments	543
Х	Useful Internet addresses	545
Glossary		547
Bibliography Reference table to the loi concernant Vimpöt sur le revenu (LIR)		553 555