

7. LUXEMBOURG

7.1. General

The Luxembourgian Income Tax Act (memorial A No 76; respective valid version in *Le Code Fiscal Luxembourgeois Vol.II*) is based on the German Income Tax Act. The final withholding tax at source is provided for in Art 146 et seq. *Loi de l'Impôt sur le Revenu, L.I.R*, which states that domestic income from dividends, shares of profit, and bonds is subject to final withholding tax at source in addition to any additional tax it may be subject to depending on the amount of the profit distributions (of the borrower). Other domestic³³ earnings from equities, capital shares, participation certificates and shareholdings are also subject to final withholding tax³⁴.

The final withholding tax at source in the amount of 20% is levied on income from capital assets, that is, domestic capital income from shareholdings (dividends). Interest income is subject to a 10% final withholding tax at source. In accordance with the EU Savings Tax Directive of 2005, the initial tax rate, which amounts to 15%, is progressively raised to 20% and 35%³⁵. Profit distributions to holders of controlling equity stakes in a company are tax-exempt if this company is fully tax-liable and domiciled in Luxemburg and does not present the characteristics of a holding company.

The Luxembourgian foundation law is closely tied to the non-profit association (*association sans but lucratif*) law. The Act of 21 April 1928 for Associations and Foundations, hereafter "Foundation Act" (*Gesetz vom 21. April 1928 über die Vereine und die Stiftungen ohne Gewinnzweck*) was amended on 22 February 1984, on 4 March 1994, on 1 August 2001 and on 19 December 2002. Currently, approximately 150 foundations with legal personality exist in Luxembourg. The majority of these foundations are active in the areas of education and in social projects³⁶. Pursuant to the will of the Luxembourgian legislators, the Belgian provisions concerning the application of the Foundation Act and Belgian case-law is also applicable to Luxembourg. Pursuant to Article 27 Foundation Act, a foundation must use its profits to pursue a philanthropic, social, religious, scientific, artistic, educational, athletic or touristic purpose. In contrast to Belgium, Luxembourg only recognises foundations that serve the public interest or so-called public utility purposes; there are no foundations for private benefit.

³³ Domestic capital income is all earnings of a natural person domiciled in Luxembourg, a private company domiciled or headquartered in Luxembourg, or a Luxembourgian public corporation.

³⁴ Cf. Knist (1996), p. 17.

³⁵ Cf. Fort (2007), p. 32.

³⁶ Cf. Beissel/Gabriel (2007), p. 1140.