

# Main characteristics of the tax regime of the contract

## Luxembourg

UPDATED:  
DECEMBER 2019

When the Policyholder/Beneficiary is a tax resident in the Grand Duchy of Luxembourg

The tax regime applicable to the Policy on the Date of conclusion of the Policy is Luxembourg taxation as the country of tax residence of the Policyholder/Beneficiary on the Date of conclusion of the Policy.

### THE POLICYHOLDER'S ATTENTION IS DRAWN TO THE FACT THAT:

- the present appendix gives a general explanation of the main characteristics of the tax regime applicable to the Contract,
- the characteristics of the tax regime applicable to the Contract may change during the life of the Contract,
- information on the main characteristics of the tax regime for the Contract (i) is given subject to changes in regulatory and legislative provisions and the doctrine of the Luxembourg tax authorities in force, and (ii) has no contractual value. This information is communicated purely as an approximate guide,
- before signing the Insurance Proposal, and during the life of the Contract, the Company strongly recommends that the Policyholder obtains advice from a qualified and authorised tax adviser in order to be fully informed of the tax regime applicable to the Contract and to find out the solutions applicable to specific situations.

Except where agreed to the contrary, the terms below with a capital letter have the meaning that is given to them in the General Conditions.

### 1. LUXEMBOURG LIFE-INSURANCE TAX REGIME

#### ARTICLE 1 - TAX-DEDUCTIBILITY OF THE PREMIUMS PAID

Premiums paid in respect of the Policy, together with the debit interest referred to Article 109 subparagraph 1) point 1a of the Law of 4 December 1967 as amended relating to income tax ("LIR"), are tax deductible up to an annual amount of €672. This limit is doubled (i) for the spouse if the spouses are collectively taxed and (ii) for each child being part of the household.

That deductibility, however, is subject to the following cumulative criteria (Article 111 of the LIR):

- the premiums are paid to an insurance company approved in the Grand Duchy of Luxembourg or approved and having its head office in another member state of the European Union;
- the Contract has been subscribed for an effective period of at least to 10 years;
- insofar as the Policy is linked to an asset accumulation vehicle, the Policy must provide death cover covering at least 60% of the sum of regular premiums scheduled up to the end of the Policy or at least 130% of premiums and contributions paid up to the date of death;
- the premiums are not financed by a loan.

However, such premiums remain deductible if the Contract was

The present appendix covers only Policyholders who, at the date of signature of the Insurance Proposal, have a main residence in the Grand Duchy of Luxembourg. If this is not the case, Policyholders who are Luxembourg nationals will be provided with a dedicated appendix relating to the main characteristics of the tax regime applicable to the Contract based on their main residence on the date of signature of the Insurance Proposal.

subscribed more than 5 years ago and if these premiums continue to be paid under equal terms and according to a timetable specified in the initial Contract.

#### ARTICLE 2 - TAX TREATMENT OF WITHDRAWALS/ MATURITY OF CONTRACT IF THE LIFE ASSURED PARTY LIVES

At maturity of the Contract in case the Life Assured Party lives, only in the case where the Policyholders are beneficiaries if the Life Assured Party lives, or in the case of the total or partial withdrawal of the Contract, the capital or the surrender value received by the Policyholder is exempt from income tax (article 115 (17) L.I.R.), even if the premiums previously paid were fully or partially deducted from taxable income.

However, a partial or total withdrawal carried out within six months of the Contract Commencement/ Effective Date could be considered as an abuse of the entitlement by the Luxembourg tax authorities and could lead to taxation at a progressive income tax rate.

### **ARTICLE 3 - TAXATION IN CASE OF THE DEATH OF THE LIFE ASSURED PARTY**

In the event of the death of the Life Assured, the amounts paid to the Beneficiary are not subject to death duties, provided the Beneficiary is:

- a first-degree descendant or ascendant of the Life Assured; or
- the surviving spouse or partner in the estate.

This exemption is, however, limited to the legal share, i.e. the share obtained by the heir on the basis of the inheritance specified by law (article 24 of the law of 27 December 1817 on the collection of death duties as a preferential right of the Public Treasury).

In all other cases, inheritance taxes may apply.

## **2. TAXATION OF CAPITALISATION CONTRACT**

The taxation of the Grand Duchy of Luxembourg applies provided the Policyholder/Beneficiary has his tax residence in the Grand Duchy of Luxembourg when any of the following operations took place: subscription, payment of a premium, partial or total withdrawal, expiry of the Policy.

### **ARTICLE 1 - TAXATION OF AN INDIVIDUAL PERSON'S CAPITALISATION CONTRACT**

#### **Article 1.1 - Non-deductibility of premiums paid**

Premiums paid under a capitalisation policies which does not cover any of the risks listed in article 111, paragraph 1, of the L.I.R. (risks in the event of life, death, accident, disability, sickness or civil liability) are not deductible for tax purposes.

### **Article 1.2 - Taxation at surrender**

In capitalisation policies, resolution is not triggered by life, disability or death and for this reason, in the event of total or partial surrender of the Policy, the capital or the surrender value received by the Policyholder is subject to income tax only for the share exceeding the countervalue of the premiums paid by the Policyholder.

A distinction must be made depending on the type of reference funds offered by the Policy.

#### **Article 1.2.1 Funds with guaranteed premium**

The surrender value is equal to the sum of the amounts of (i) the initial premium plus the additional premiums (the 'Premiums'), (ii) the guaranteed interest on the Premiums accrued but not yet paid and (iii) the earnings bonus not yet paid.

The countervalue of the premiums does not constitute income for the purposes of Luxembourg tax law.

The portion of the surrender value representing guaranteed interest on the Premiums paid by the taxpayer must be categorised in Luxembourg as interest resulting from movable capital taxable in Luxembourg.

As regards the portion of the surrender value representing the earnings bonus not yet paid, this would probably have to be categorised as a capital gain. Under article 99 of the L.I.R., capital gains are taxed where they are made on movable assets resulting among others from speculative operations. Constituting a speculative operation is the realisation of movable assets when the interval between acquisition or constitution (i.e. conclusion of the policy) and realisation (i.e. surrender) is less than six months. In such a situation, the earnings bonus not yet paid will be a profit from speculation (i.e. capital gain) subject to Luxembourg tax.

However, when the interval between acquisition or constitution (i.e. conclusion of the policy) and realisation (i.e. surrender) is greater than six months, the profit would constitute a capital gain outside the scope of article 99 of the L.I.R. and thus generally not subject to Luxembourg tax.

#### **Article 1.2.2 Unit-Linked Funds**

The surrender value is equal to the value of all the investments made by the funds at the time of the surrender linked to the changes in the assets in relation to this reference fund.

The difference between the surrender value and the initial premium plus additional premiums would generally release either a capital gain or a loss, which, under article 102bis(14) of the L.I.R., would be deductible from the positive income under the same article (i.e. the profits from speculation resulting from realisation of movable or immovable assets, when the interval between acquisition or constitution and realisation is less than six months for movable assets and less than two years for immovable assets).

The capital gain realised could be categorised either as taxable profit from speculation as defined hereinabove, if surrender took place within six months of conclusion of the policy (not exempt under article 115(17) of the L.I.R.), or as non-taxable capital gain, if surrender took place more than six months after conclusion of the policy.

### **Article 1.3 - Taxation in the event of the Policyholder's death**

The beneficiary of the capitalisation policy is the Policyholder. In the event of the Policyholder's death, the Policy will be included in the Policyholder's estate and will not therefore be subject to death duties provided the heir is:

- a first-degree descendant or ascendant of the Policyholder; or
- the surviving spouse or partner in the estate.

This exemption is, however, limited to the legal share, i.e. the share obtained by the heir on the basis of the inheritance specified by law (article 24 of the law of 27 December 1817 on the collection of death duties as a preferential right of the Public Treasury).

In all other cases, death duties are likely to apply.

## **ARTICLE 2 - TAXATION OF THE CAPITALISATION CONTRACT OF A LEGAL ENTITY (SUBJECT TO CORPORATE TAX)**

The Policyholder's attention is drawn to the fact that this Article 2 sets out solely, in general terms, the main characteristics of the tax regime applicable at the time of surrender of the Policy, which is a capitalisation policy not covered by articles 111 and 115(17) of the L.I.R.

A distinction must be made depending on the types of reference funds offered by the Policy.

### **Article 2.1 - Funds with guaranteed premium**

The Surrender Value is equal to the sum of the (i) Premiums, (ii) Interest and (iii) Capital Gains.

For the Policyholder, the portion of the surrender value corresponding to the Premiums is exempt, whereas the portion of the surrender value corresponding to the proceeds of the Policy (Interest and Capital Gains) constitutes taxable income for the Policyholder.

Pursuant to the principle of linking the tax balance sheet to the commercial balance sheet (Article 40 L.I.R.), the proceeds of the Policy are taxable in respect of the financial year in which they were recorded.

In general terms, the Policyholder's taxable profit is constituted by the positive difference between (i) the sum of the proceeds of the Policy and the other types of taxable income realised by the Policyholder during the same financial

year and (ii) the tax-deductible operating expenses and any tax losses carried forward.

The taxable profit is subject to corporate income tax ('IRC and municipal business tax ('ICC') in accordance with the provisions of the L.I.R.

For 2019, IRC is levied at a rate of 17% when the taxable profit exceeds EUR 200,000. When the taxable profit is between EUR 175,000 and EUR 200,001, EUR 26,250 plus 31% of the income exceeding EUR 175,000 is applicable. Finally, a reduced rate of 15% is applied when the taxable profit does not exceed EUR 175,000. IRC is supplemented by a contribution of 7% for the employment fund.

The ICC has a rate that varies according to the municipality where the Policyholder's head office is located. For 2019, the rate is 6.75% for the city of Luxembourg.

Pursuant to the foregoing, the Policyholder based in Luxembourgville in 2019 will be taxed at the global rate of (i) 24.94% if he realises a taxable profit greater than EUR 200,000, (ii) EUR 26,250 plus 39.92% of the income exceeding EUR 175,000 if he realises a taxable profit between EUR 175,000 and EUR 200,001 and (iii) 22.80% if he realises a taxable profit not exceeding EUR 175,000.

### **Article 2.2 - Unit-Linked Funds**

The surrender value is equal to the value of all the investments made by the funds at the time of the surrender linked to the changes in the assets in relation to this reference fund.

The difference between the Surrender value and the Initial Premium increased by the Additional Premiums generates either a capital gain that is taxable in accordance with the previously-described rules, or a tax loss deductible as regards the Policyholder.

## **3. AUTOMATIC EXCHANGE OF INFORMATION**

### **Article 3.1 - Mandate to the Company pursuant to tax obligations**

The Company could find itself subject to (i) the automatic exchange of information standard concerning financial accounts in the field of taxation (the "Standard") as well as the Common Reporting Standard (CRS) contained in the Luxembourg law dated 18 December 2015 in regards to mandatory an automatic exchange of information concerning financial accounts in the field of taxation and transposing directive 2014/107/ EU (the "CRS Law") and (ii) the intergovernmental agreement model 1 ("IGA") concluded between Luxembourg and the United States of America on 28 March 2014 and transposed by the Luxembourg law of 24 July 2015.

Pursuant to the IGA and CRS Law, the Company must submit an annual declaration to the Luxembourg tax authorities (the "AFL") of all personal and financial information, including identification of i) any Account-holder subject to declaration and ii) any not-financial entity Account-holder whose controlling persons are deemed as persons subject to a declaration. The information to be declared includes their first and last name(s), address(es), place and date of birth as well as their account(s) and account balance (or equivalent for life insurance), financial income, including capital gain as well as insurance policies with a surrender value (the "Information"). The AFL must then communicate the Information to the authorities of the State of residence of the Account Holder.

In the case of the Contract, the Account-holder is any person entitled to receive the redemption value within the meaning the IGA and CRS Law or change the name of the Beneficiary. If no-one is entitled to receive the

redemption value or change the name of the Beneficiary, the Account-holder is the person designated as the Beneficiary in the Contract and enjoying an absolute right to payments under the Contract. On expiry of the Contract, each person who is entitled to receive a sum of money under the Contract is considered to be an Account-holder.

Persons subject to declaration are also informed that some transactions carried out by them will be declared by sending supporting documents and that some of this information will be used as a basis for the annual declaration to the AFL. Similarly, the Policyholder undertakes to inform the Company within thirty (30) days from receipt of such supporting documents of any inaccuracies in relation to their personal data. The Policyholder also undertakes to inform the Company, and send it any supporting documents, of any changes to the Information, within thirty (30) days of their occurrence.

All the information will be processed by the Company in accordance with the Regulation (EU) 2016/679 and the Luxembourg law of 1 August 2018 on the organisation of the National Data Protection Commission and each Account Holder has a right to access Information notified to the AFL and to rectify such Information.

Any Policyholder or Account Holder failing to comply with requests for the Company's Information and documentation may be liable for any penalty, fine or tax imposed on the Company and caused by the failure on the part of that Policyholder or Account Holder in its obligation to transmit Information required from the Company and/or may be subject to a declaration on the basis of the Information held by the Company for the AFL.

### Article 3.2 - Wealth tax

With effect from 1st January 2006, the wealth tax was abolished for individual persons, whether resident or not.

I, the undersigned \_\_\_\_\_ recognise that I have read the above clauses.

Executed in \_\_\_\_\_ on \_\_\_\_ / \_\_\_\_ / \_\_\_\_\_

First Policyholder or sole Policyholder

Signature

Second Policyholder

Signature