Legal Framework

The legal basis of the tax consolidation regime is the article 164bis L.I.R (Income Tax Law). The *Circulaire du directeur des contributions – L.I.R. n° 164bis/1* dated on September 27th 2004 clarifies the application of this article.

A group of companies (parent and subsidiaries) may benefit from the tax consolidation regime where conditions are fulfilled. The tax consolidation regime allows companies to pool or offset the respective taxable profit of each company in the group and to be taxed on the global amount.

As consequence, the losses of some consolidated companies may be offset by the profits realize by others companies in the group. When the tax regime applies, the parent company which is the "umbrella" company will pay the corporate income tax on the overall taxable profit of the consolidated companies.

Eligible companies

*Principle*

The tax consolidation regime can be applied to fully taxable resident capital companies with at least 95% of their capital directly or indirectly held by:

- another fully taxable resident capital company; or
- a permanent establishment in Luxembourg of a non-resident capital company that is fully liable for a tax corresponding to corporate income tax.

*Exception*

The tax consolidation regime may be applied to resident capital companies with at least 75% of their capital directly or indirectly held by the consolidating company provided that:

- at least 75% of the minority shareholders agree to this regime;
- the Minister of Finance has confirmed that the participating interest is particularly likely to promote the growth and structural improvement of the national economy.

*Conditions*

In order to benefit from the tax consolidation regime:

- the 95% (or 75%) minimum shareholding must be held without interruption from the beginning of the financial year to which the regime is applied;
- the subsidiaries and the consolidating company must begin and end their financial years on the same date;

In order to apply the regime, the companies concerned must be related for at least five financial years. The regime is extended by tacit renewal until the companies concerned end its application or one of the application conditions is no longer met.

The companies concerned must submit a joint written request to the relevant tax office for the consolidating company before the end of the first financial year of the period for which the regime is being requested.