

**Q&A  
CNC  
16/009**

**QUESTIONS / ANSWERS:**  
**INVESTMENT PROPERTIES  
UNDER LUX GAAP AND LUX GAAP – FV REGIMES:  
COST MODEL vs. FAIR VALUE MODEL**

**Context:**

The purpose of the laws of 10 December 2010<sup>1</sup> and 30 July 2013<sup>2</sup> was to facilitate the convergence of general accounting law applicable to Luxembourg undertakings with the IFRS international accounting standards as adopted by the European Union, in particular by introducing new concepts such as the substance principle or the fair value measurement method. This approach has not been changed by the law of 18 December 2015<sup>3</sup> transposing Directive 2013/34/EU<sup>4</sup>.

In accordance with article 64*sexies* LRCS, categories of assets other than financial instruments may be measured at fair value under the LUX GAAP – FV regime<sup>5</sup> where such fair value measurement is permitted under the IFRS – EU regime.

In this context, a new category of assets known as "investment property" has indirectly appeared in the LUX GAAP and LUX GAAP – FV regimes via Article 64*sexies* LRCS and its reference to the IFRS – EU regime. This category of assets is distinct from that of land and buildings intended for use in the production or supply of goods and services, for administrative purposes or for sale in the ordinary course of business<sup>6</sup>.

**Questions:**

In the absence of guidance, a number of questions have arisen regarding the accounting treatments available under LUX GAAP and LUX GAAP – FV for the asset category of "investment properties".

**Key words:** art. 26 LRCS, art. 51 LRCS, art. 52 LRCS, art. 55 LRCS, art. 64*sexies* LRCS, art. 64*octies* LRCS, art. 64*nonies* LRCS, art. 65 LRCS, art. 72*ter* LRCS, accounting directive 2013/34/UE, 4<sup>th</sup> directive 78/660/CEE, art. 42 *sexies* et 42 *septies* dir. 78/660/CEE, dir. 2003/51/EC, IAS 40, investment property, IFRS 13, fair value, fixed tangible assets, property, plant and equipment, land, buildings, systematic depreciation, unrealised gains, deferred tax, value adjustment, non-distributable, revaluation reserves, other reserves not available

<sup>1</sup> Law of 10 December 2010 on the introduction of international accounting standards for undertakings, *Mém. A* - N°225 of 17 December 2010 (doc. parl. 5976).

<sup>2</sup> Law of 30 July 2013 reforming the Accounting Standards Board and amending various provisions relating to the bookkeeping and annual accounts of undertakings and the consolidated accounts of certain types of companies, *Mém. A* - N°177 of 2 October 2013 (doc. parl. 6376).

<sup>3</sup> Law of 18 December 2015 amending, with a view to the transposition of Directive 2013/34/EU of the European Parliament and of the Council of 26 June, 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC: 1) the amended law of 10 August 1915 on commercial companies; 2) Title II of the amended law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings; 3) Title II of Book I of the Commercial Code, *Mém. A* - N°258 of 28 December 2015 (doc. parl. 6718).

<sup>4</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013.

<sup>5</sup> See: Q&A CNC 14/001 "Luxembourg accounting law applicable to undertakings: three distinct regimes" (formerly Q&A 01/2014)

<sup>6</sup> Land and buildings other than investment property are not covered by the fair value option in article 64*sexies* LRCS, as this only applies to asset categories for which fair value measurement is permitted under IFRS as adopted by the European Union. IFRS do not currently allow the fair value measurement model to be used for land and buildings other than investment properties, as only the cost and revaluation models are currently available for these assets (see IAS 16 Property, Plant and Equipment).

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**Answer:**

The purpose of this Q&A is to address a number of issues relating to the accounting treatment of the investment property asset category under LUX GAAP and LUX GAAP – FV:

1. The definition of the asset category of "investment property";
2. The accounting characterisation of investment properties under LUX GAAP and LUX GAAP – FV;
3. Recognition, measurement and presentation of investment property under LUX GAAP: application of the "cost" model;
4. Recognition, measurement and presentation of investment property under LUX GAAP – FV: application of the "fair value" model;
5. Conclusions on the accounting treatments available under LUX GAAP and LUX GAAP – FV for the investment property asset category.

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**1. Definition of the "investment property" asset category**

Similar to the Accounting Directive 2013/34/EU, the LUX GAAP and LUX GAAP – FV regimes do not know the concept of investment property which is defined as follows by IAS 40 adopted by the European Union:

*"Investment property is property (land or a building - or part of a building - or both) held (by the owner or by the lessee as a right-of-use asset) to earn rentals or for capital appreciation or both, rather than for:*

- (a) use in the production or supply of goods or services or for administrative purposes; or*
- (b) sale in the ordinary course of business".*

It follows from the above that the accounting concept of investment property is a concept directly imported from the IFRS – EU regime and that it would be useful to provide details of its accounting treatment under the LUX GAAP and LUX GAAP – FV regimes.

**2. The accounting treatment of investment property under LUX GAAP and LUX GAAP – FV**

The Accounting Directive 2013/34/EU from which the LUX GAAP and LUX GAAP – FV regimes are derived does not distinguish between property occupied by the undertaking for operational purposes (e.g. to be used in the production, supply of goods or services or for administrative purposes) and property held by the undertaking for investment purposes (e.g. to generate rental income and/or to realise capital gains). Both constitute fixed tangible assets when they are intended to be used on a long-term basis for the undertaking's activities (operational or investment).

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On the other hand, in situations where property is held by the undertaking with a view to sale in the ordinary course of the undertaking's business or in the process of construction or development with a view to such sale, then such property is generally classified as current assets (inventories / stocks) in accordance with the Accounting Directive and the LUX GAAP and LUX GAAP – FV regimes that are derived from it.

Consequently, under the LUX GAAP and LUX GAAP – FV regimes, investment property within the meaning of IAS 40 held by the undertaking generally constitutes – in the same way as property occupied by the undertaking for operating purposes – fixed tangible assets which is classified in the balance sheet under item C.II.1 "Land and buildings"<sup>7</sup>.

**3. Accounting, measurement and presentation of investment property under LUX GAAP: application of the "cost" model**

The LUX GAAP regime rests on a valuation / measurement based on the principle of purchase price or production cost in application of article 52 LRCS.

Under LUX GAAP, investment property must be measured using the cost model in accordance with the provisions of Articles 52 and 55 LRCS, the practical application of which to the item "Land and buildings" is explained in Q&A CNC 16/007<sup>8</sup>.

For this purpose, it should be remembered that – according to the cost model – under both LUX GAAP and IFRS – EU<sup>9</sup>, land and buildings are distinct assets subject to the principle of separate valuation / measurement even when – in substance – they have been acquired together by the undertaking and/or are managed by the undertaking as if they were a single asset.

As a result, there can be no set-off / compensation – for example – between unrealised capital gains on land and systematic depreciation on buildings. The principle of systematic depreciation of fixed assets with a limited useful economic life thus applies to buildings, while land is generally exempt from this – with some exceptions (e.g. quarries) – due to its unlimited useful economic life.

<sup>7</sup> Cf. Balance sheet layout 2016 in accordance with the Grand-Ducal regulation of 18 December 2015 determining the form and content of the layouts presenting the balance sheet and the profit and loss account, Annex I, *Mém. A* - N°258 of 28 December 2015.

<sup>8</sup> Q&A CNC 16/007 "*Land and buildings under LUX GAAP: application of the cost model*" (formerly Q&A 01/2016).

<sup>9</sup> The IFRS – EU regime allows undertakings to use the cost model to measure investment property (IAS 40 para. 56), with reference to IAS 16 "Property, Plant and Equipment".

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**4. Accounting, measurement and presentation of investment property under LUX GAAP – FV: application of the "fair value" model**

The application of the fair value model to investment property under LUX GAAP – FV raises a number of issues in terms of eligibility, application and use of profits resulting from this measurement model. In this Q&A, these issues will be addressed as follows:

- eligibility of investment properties to the fair value option under LUX GAAP – FV (see 4.1.);
- application of the fair value model to investment properties under LUX GAAP – FV (see 4.2.);
- non-distributable nature of unrealised gains arising from the measurement of investment properties at fair value and their allocation to unavailable reserves (see 4.3.).

**4.1 Eligibility of investment property to the fair value option under LUX GAAP – FV**

The LUX GAAP – FV regime allows undertakings to measure certain categories of assets other than financial instruments by reference to their fair value in application of article 64*sexies* LRCS, provided that the fair value model is permitted by the IFRS – EU regime for these categories of assets.

It follows from the above that the fair value measurement of investment properties under the LUX GAAP – FV regime (Article 64*sexies* LRCS<sup>10</sup>) is possible because the fair value model for this category of assets is itself permitted under the IFRS – EU regime pursuant to IAS 40<sup>11</sup>.

**4.2 Application of the fair value model to investment property under LUX GAAP – FV**

Article 64*sexies* LRCS relating to the fair value option applicable to categories of assets other than financial instruments provides little information on the application of the fair value model under LUX GAAP – FV.

<sup>10</sup> Article 64*sexies* of the LRCS states that:

*"By way of derogation from Article 52, undertakings may also measure specified categories of assets other than financial instruments at amounts determined by reference to their fair value, provided that their measurement at fair value is authorised under the international accounting standards adopted in accordance with the Regulation (EC) 1606/2002 of the European Parliament and of the Council on the application of the international accounting standards".*

<sup>11</sup> IAS 40 as adopted by the European Union states in paragraph 30 that *"With the exception noted in paragraph 32A, an entity shall choose as its accounting policy either the fair value model in paragraphs 33-55 or the cost model in paragraph 56 and shall apply that policy to all of its investment property"*.

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In this context, a number of practical questions arise for undertakings wishing to take advantage of the fair value option under LUX GAAP – FV, in particular with regard to the following aspects:

- the fair value model (see 4.2.1.);
- application of the fair value option to the entire asset category (see 4.2.2.);
- consistency of methods and its implications (see 4.2.3.);
- classification of gains and losses (see 4.2.4.);
- recognition of deferred tax (see 4.2.5.);
- presentation of information in the notes to the accounts (see 4.2.6.).

The purpose of the following is to explain these various elements by referring to the applicable legal and regulatory texts and by proposing – where the texts are silent – elements intended to facilitate the application of the fair value model by Luxembourg undertakings wishing to avail themselves of this option under the LUX GAAP – FV regime.

#### **4.2.1. The fair value model**

Article 64*sexies* LRCS does not specify how the fair value model is to be applied to investment properties under LUX GAAP – FV.

Considering the silence of the law, some consider that the concept of fair value<sup>12</sup> and – more broadly – the fair value model under LUX GAAP – FV are autonomous with respect to the fair value model under IFRS – EU<sup>13</sup> as proposed – in the case of investment property – by IAS 40.

Conversely, other consider that the fair value model under the LUX GAAP – FV regime constitutes an "IAS / IFRS option" which implies a direct reference under the LUX GAAP – FV regime to the fair value model of the IFRS – EU regime, i.e. – in the case of investment property – the application of the provisions of IAS 40 relating to the fair value model<sup>14</sup>.

<sup>12</sup> Cf.: doc. parl. 6376<sup>1</sup> Opinion of the Chamber of Commerce, p.3 "However, with regard to the express reference to the aforementioned Regulation no. 1606/2002 in Article 64*sexies*, the Chamber of Commerce wishes to point out that Article 64*sexies* originates in Article 42*sexies* of the Accounting Modernisation Directive, which contains an autonomous concept of fair value".

<sup>13</sup> Cf.: doc. parl. 6376<sup>2</sup> Opinion of the OEC, p. 10 "In agreement with the opinion of the Chamber of Commerce dated 27 March 2012, however, the OEC must point out that art. 64*sexies* is based on a definition of fair value autonomous from IFRS, intended to promote a more flexible approach to fair value.

The OEC is of the opinion that the spirit of this approach, intended by the Directive, should be preserved and that it is not incompatible with the exclusion of certain assets from fair value measurement. (...)

This solution would avoid having to consult a certain number of IFRS standards or interpretations for the same purpose, and therefore import into national accounting law elements of a sometimes highly complex international accounting framework".

<sup>14</sup> See: Circular CSSF 08/340 of 21 February 2008 applicable to credit institutions whose amended law of 17 June 1992 includes – since the law of 16 March 2006 – fair value options similar to those introduced in the general accounting law applicable to undertakings. Point I.2.3. of CSSF circular 08/340 (pp.7-8) states that "Credit institutions may use the following two IAS options:

1) Fair value measurement of financial instruments (IAS 39)

(...)

2) Fair value measurement of investment property (IAS 40)

Credit institutions may measure investment property at fair value through profit or loss (see Chapter 7a, new Articles 64d and 64e)".

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After analysis, CNC notes that Article 64sexies LRCS makes no explicit reference to IAS 40 on investment property or to IFRS 13 on fair value. **In theory**, this means that in the absence of choices made by the European legislator, Member States introducing the fair value model into domestic law have the option of defining generally accepted accounting principles in this area, or that – in the absence of choices made by the national legislator – undertakings have the option of choosing the fair value system applied to investment property to which they refer under LUX GAAP – FV.

However, an in-depth examination of the preparatory work reveals – **in practice** – that the autonomy of Member States and their undertakings in relation to the model adopted by IAS 40 as adopted by the European Union is in fact limited.

The preparatory work on the European accounting directives reveals that – following the adoption of Directive 2001/65/EC<sup>15</sup> introducing a fair value option for financial instruments, allowing in substance the application of IAS 39<sup>16</sup> – the European legislator realised that the fair value model within the IFRS framework also concerned categories of assets other than financial instruments and wished – in order to eliminate any incompatibility – to converge the accounting directives with the IFRS framework on these points. The preparatory work for Directive 2003/51/EC, known as the "modernisation of the accounting directives"<sup>17</sup>, sets out the objectives, spirit and limits of the European text that gave rise to Article 64sexies LRCS:

*"Other IASs require or permit the recognition of certain types of assets at fair value, notably IAS 40 Investment Property and IAS 41 Agriculture. These standards contain detailed requirements relating to fair value, and both require gains and losses arising from this measurement method to be recognised in the profit and loss account. The proposed amendment inserts two new Articles 42e and 42f, which are necessary to enable the two standards to be applied. It is considered that any Member State that permits, and any undertaking that adopts, the fair value system should do so only within the framework of a recognised and generally accepted accounting system, such as IAS.*

*Paragraphs 12 and 22 introduce a general provision enabling Member States to authorise the application of this treatment to any category of assets determined by them. This point is a condition for the subsequent adaptation of the Directive to future changes"<sup>18</sup>.*

<sup>15</sup> Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions

<sup>16</sup> International Accounting Standard 39 Financial Instruments: Recognition and Measurement

<sup>17</sup> Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Council Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, OJ L 178, 17.7.2003.

<sup>18</sup> COM(2002) 259/2 final, section 3.1, art. 1, para. 22, p. 6

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC, 83/349/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies and insurance undertakings, COM(2002) 259/2 final, 9.7.2002

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It follows, therefore, from a contextualised interpretation of European accounting law that:

- (i) the introduction of Articles 42e and 42f into the 4<sup>th</sup> Directive 78/660/EEC was expressly intended to allow the application of IAS 40 Investment Property and IAS 41 Agriculture;
- (ii) the generic nature of Articles 42e and 42f was intended to allow the inclusion – without further amendment of the Directive – of new categories of assets for which fair value measurement would in future be permitted by new IFRS standards;
- (iii) the Directive only allowed Member States to permit or require the fair value model in the context of a recognised and generally accepted accounting system, such as IFRS.

In the Luxembourg context, it should be noted that there is currently no recognised and generally accepted accounting system for the fair value model applied to investment property other than that proposed by the IFRS – EU regime<sup>19</sup>. CNC is therefore of the opinion that the application of the fair value model to investment property under the LUX GAAP – FV regime should be done in accordance with the provisions of IAS 40 as adopted by the European Union.

**4.2.2. Application of the fair value option to the entire asset category**

In accordance with the provisions of article 64sexies LRCS<sup>20</sup> and of IAS 40<sup>21</sup>, the fair value option must be applied to a category of assets as a whole.

<sup>19</sup> It should be noted that other internationally recognised accounting standards do not currently include a recognised and generally accepted accounting system relating to the fair value model applied to investment property that could constitute an alternative model to that proposed by IAS 40.

By way of illustration US GAAP – the Generally Accepted Accounting Principles of the United States of America that are recognised as equivalent to international accounting standards in accordance with Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council – do not have a standard dedicated to investment property, which does not have a specific definition or measurement model for this asset category.

<sup>20</sup> See: doc. parl. 6376<sup>0</sup>, comments on the articles, p.27, point (20):

*"(20) In view of the difficulties of interpretation caused by Article 64sexies, which gives undertakings the option of measuring assets other than financial instruments at fair value without specifying which categories of assets are concerned, It has been decided to specify that assets other than financial instruments that can be measured by reference to fair value can only be those for which IFRS accounting standards as adopted by the European Union provide a fair value measurement model, as is the case – for example – for investment property (IAS 40). The advantages of this reference are to circumscribe the scope of this fair value option, to provide a source of reference for undertakings wishing to apply this option and to promote the convergence of national accounting provisions with the IFRS framework, which corresponds to the spirit of Article 42sexies of Directive 78/660/EC, of which Article 64sexies of the Law of 19 December 2002 constitutes the transposition into Luxembourg law".*

<sup>21</sup> See: IAS 40 para. 33: "After initial recognition, an entity that chooses the fair value model shall measure all of its investment property at fair value, except in the cases described in paragraph 53".

See: IAS 40 para. 53: "There is a rebuttable presumption that an entity can reliably measure the fair value of an investment property on a continuing basis. However, in exceptional cases, there is clear evidence when an entity first acquires an investment property (or when an existing property first becomes investment property after a change in use) that the fair value of the investment property is not reliably measurable on a continuing basis. This arises when, and only when, the market for comparable properties is inactive (e.g., there are few recent transactions, price quotations are not current or observed transaction prices indicate that the seller was forced to sell) and alternative reliable measurements of fair value (for example, based on discounted cash flow projections) are not available. If an entity determines that the fair value of an investment property under construction is not reliably measurable but expects the fair value of the property to be reliably measurable when construction is complete, it shall measure that investment property under construction at cost until either its fair value becomes reliably measurable or construction is completed (whichever is earlier). If an entity determines that the fair value of an investment property (other than an investment property under construction) is not reliably measurable on a continuing basis, the entity shall measure that investment property using the cost model in IAS 16. The residual value of the investment property shall be assumed to be zero. The entity shall continue to apply IAS 16 until disposal of the investment property.

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Among the categories of assets other than financial instruments referred to in article 64<sup>sexies</sup> LRCS is the asset category of investment property.

Consequently, undertakings wishing to use the fair value option under LUX GAAP – FV to measure their investment properties must measure all their investment properties using this model.

Although undertakings are free to determine sub-categories of investment properties, for example on the basis of geographical criteria (e.g. Europe, the Americas, Asia, etc.) or on the basis of property-specific characteristics (e.g. industrial, administrative or residential property), these sub-categories cannot justify the application of separate accounting methods / policies to items belonging to one and the same asset category (e.g. fair value model for certain investment properties and cost model for other investment properties).

**4.2.3. Consistency of methods and its implications**

Pursuant to Article 51 (1) b) LRCS, "*accounting policies and measurement bases may not be modified from one financial year to another*".

As a result, an undertaking opting for the fair value option applied to investment properties is committed to this valuation / measurement model on a long-term basis.

Since a change in accounting policy can only occur in exceptional circumstances, it is the responsibility of the administrative or management body of the undertaking concerned to disclose the reasons for the change in accounting policy and its impact on the users of the financial statements in accordance with general accounting principles and the objective of a true and fair view<sup>22</sup>.

**4.2.4. Classification of gains and losses**

The fair value model differs from the cost model in that it allows the recognition of income that is not realised within the meaning of article 51 (1) c) aa) LRCS.

<sup>22</sup> By way of comparison, paragraph 31 of IAS 40 as adopted by the European Union states that "*a voluntary change in accounting policy shall be made only if the change results in the financial statements providing reliable and more relevant information about the effects of transactions, other events or conditions on the entity's financial position, financial performance or cash flows. It is highly unlikely that a change from the fair value model to the cost model will result in a more relevant presentation*".

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In this context, a number of questions arise concerning the determination and classification of gains and losses resulting from the application of this model:

(i) Determination and classification of gains and losses arising from fair value measurement

Under the fair value model, gains or losses arising from the fair value measurement of investment property are determined by the difference between the fair value at the end of the current financial year and the fair value at the end of the previous financial year. It is therefore the change in fair value during the financial year that appears in the profit and loss account.

With regard to the classification of this change in fair value, it should be noted that the profit and loss account – the layout of which is determined by the Grand Ducal regulation of 18 December 2015<sup>23</sup> – does not have captions dedicated to gains and losses resulting from the measurement of investment property at fair value under the LUX GAAP – FV regime.

In the absence of dedicated captions, it is recommended that positive or negative changes in fair value be classified under item 7. a) "Value adjustments"<sup>24</sup> in the profit and loss account. The counterpart to this change is shown in the balance sheet under asset item C.II.1 "Land and buildings".

(ii) Determining the capital gain or loss on disposal

Under the fair value model, the gain or loss on disposal of an investment property is determined as the difference between the sale price and the fair value as stated in the most recently published accounts without the need or possibility of reverting to the historical acquisition cost.

With regard to the classification of capital gains or losses on the disposal of investment property, it should be noted that the profit and loss account – the layout of which is determined by the Grand Ducal regulation of 18 December 2015 – does not have any captions dedicated to capital gains or losses resulting from the disposal of investment property.

In the absence of dedicated line items, it is recommended that capital gains or losses arising on the disposal of investment properties be classified under "4. Other operating income" (for capital gains) and "8. Other operating expenses" (for capital losses).

<sup>23</sup> Grand Ducal Regulation of 18 December 2015 determining the form and content of the balance sheet and profit and loss account layouts and implementing Articles 34, 35, 46 and 47 of the amended law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings, *Mém. A* - N°258 of 28 December 2015.

<sup>24</sup> Article 2(8) of Directive 2013/34/EU defines value adjustments as "*adjustments intended to take account of changes, in the value of individual assets established at the balance sheet date, whether the change is final or not*". This definition covers both downward and upward value adjustments.

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#### **4.2.5. Recognition of deferred tax**

While the predominant method of accounting for tax under LUX GAAP is the current tax method, it should be noted that under LUX GAAP – FV, the deferred tax method is applied where appropriate<sup>25</sup>.

If deferred tax must be recognised and there are no dedicated captions, it is recommended that the deferred tax expense (or deferred tax income<sup>26</sup>) relating to the change in fair value of investment property should be classified under "15. Income tax" and its counterpart in the balance sheet under liability line item B.2 "Provisions for tax".

#### **4.2.6. Presentation of information in the notes to the accounts**

As the legislation currently stands, undertakings opting to measure investment property at fair value under LUX GAAP – FV (art. 64sexies LRCS) must provide the following information in the notes to the accounts:

- (i) accounting methods / policies<sup>27</sup> and valuation / measurement methods (art. 65 (1) 1° LRCS);
- (ii) the main assumptions underlying the valuation models and techniques used in cases where fair value has not been determined by reference to a market value (art. 64octies, point a) LRCS);
- (iii) the fair value at the balance sheet date and changes in value during the financial year for the asset class of investment properties taken as a whole (art. 64octies, point b) LRCS);
- (iv) information about the principal terms and conditions that are likely to affect the amount and certainty of future cash flows for the investment property asset category taken as a whole (art. 64octies, point c) LRCS);
- (v) any additional information where the foregoing is not sufficient to give the true and fair view required by Article 26(3) LRCS (art. 26(4) LRCS)<sup>28</sup>.

#### **4.3. Non-distributable nature of unrealised gains arising from the measurement of investment properties at fair value and allocation / appropriation to reserves not available for distribution**

The measurement of assets at fair value raises issues related to accounting law, in particular the determination of distributable reserves.

<sup>25</sup> This obligation arises from article 65 (1) 11° b) LRCS, which states that "where valuation at fair value has been applied in accordance with section 7bis, undertakings shall show, as the case may be, deferred tax liabilities in the balance sheet as a cumulative amount".

<sup>26</sup> In the event of a negative change in fair value, the deferred tax liability is adjusted downwards, resulting in a credit to the profit and loss account.

<sup>27</sup> Under the terms of paragraph 5 of IAS 8 as adopted by the European Union, "accounting policies are the specific principles, bases, conventions, rules and practices applied by an entity in preparing and presenting its financial statements".

<sup>28</sup> To this end, undertakings may usefully refer to the "Disclosures" section of IAS 40 "Investment Property" as adopted by the European Union.

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In this respect and in accordance with article 64<sup>nonies</sup> LRCS, the provisions of article 72<sup>ter</sup> LRCS relating to the non-distributable nature of unrealised gains in connection with fair value measurement under IFRS – EU also apply to undertakings using fair value measurement under LUX GAAP – FV.

Consequently, unrealised gains, net of deferred tax, relating to the measurement of investment properties at fair value in accordance with article 64<sup>sexies</sup> LRCS, are not available for distribution.

When the profit for the financial year is appropriated<sup>29</sup>, the portion of the profit corresponding to unrealised gains, net of related deferred tax, must be allocated to unavailable reserves. Following the amendments introduced by the Grand Ducal regulation of 18 December 2015, this allocation must be made within item A.IV.4.b) "Other unavailable reserves"<sup>30</sup>.

#### **5. Conclusions on the accounting treatments available under LUX GAAP and LUX GAAP – FV for the investment property asset class**

The foregoing discussion has highlighted the fact that the asset category known as "investment property" is an accounting concept directly imported from the IFRS – EU regime and is subject to a distinct accounting treatment depending on whether the LUX GAAP or the LUX GAAP – FV regime is adopted, i.e.:

- under LUX GAAP, investment property must be valued / measured using the cost model in accordance with the provisions applicable to land and buildings (cf. art. 55 LRCS, Q&A CNC 16/007);
- under LUX GAAP – FV, investment property must be measured by reference to fair value and – to this end – It is recommended that the fair value model applied to investment property, as defined by IAS 40 adopted by the European Union, be used.

The cost and fair value models as defined above are the only two models available for the valuation / measurement of investment properties under Luxembourg accounting law applicable to undertakings (LUX GAAP, LUX GAAP – FV and IFRS – EU regimes)<sup>31</sup>.

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<sup>29</sup> Undertakings may refer to the illustrative examples contained in parliamentary document 6376<sup>0</sup> available on the Chamber of Deputies website (<https://www.chd.lu/fr>)

<sup>30</sup> Prior to the entry into force of the Grand Ducal regulation of 18 December 2015, unrealised reserves resulting from fair value measurement were included under equity (capital and reserves) item A.III. "Revaluation reserves". Where applicable, undertakings will – within their 2016 annual accounts – reclassify unrealised reserves resulting from fair value measurement from item A.III. "Revaluation reserves" to item A.IV.4.b) "Other unavailable reserves".

<sup>31</sup> See: - Q&A CNC 14/001 "Luxembourg accounting law for undertakings: three distinct regimes" (formerly Q&A 01/2014);  
- Q&A CNC 14/002 "Revaluation of fixed tangible assets" (formerly Q&A 02/2016);  
- Q&A CNC 16/007 "Land and buildings under LUX GAAP: application of the cost model" (formerly Q&A 01/2016).

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**Disclaimer**

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