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SOPARFI in Luxembourg

SOPARFI IN LUXEMBOURG

SOPARFI (Société de Participation Financière) is the term given to Luxembourg financial interest holding companies, whose activities are unrestricted but, in general, consist of holding and financing stakes in other companies in Luxembourg and abroad. SOPARFIs are unregulated (in principle, by the Commission de Surveillance du Secteur Financier) and are subject to common Luxembourg tax regulations. Where certain conditions are met, SOPARFIs may benefit from a number of tax advantages.

The two most commonly adopted legal forms of a SOPARFI are the Public Liability Company (Société Anonyme or S.A.) and the Limited Liability Company (Société à Responsabilité Limitée or S.à r.l.). The following table demonstrates the main features of these two forms.

	Public Limited Company (S.A.)	Limited Liability Company (S.à r.l.)
Company incorporation	Before a notary	
Minimum share capital/corporate capital	EUR 30,000. 100% must be fully subscribed and at least one quarter of the nominal value of each share paid-up	EUR 12,000. Must be fully subscribed and fully paid-up
Currency of share capital/corporate capital	Any freely convertible currency	
Number of share-holders/members	Minimum: 1; no maximum	Minimum: 1 (for a single member of the S.à r.l.); maximum 100
Shares/units	Registered or bearer shares. Bearer shares must be registered by the depositary (e.g. audit institution or account) on a register, which shall mention, amongst other things, the owner of the bearer shares and the number of bearer shares held	Registered units
Liabilities of share-holders/members	Shareholders/Members are liable up to the level of their contribution to the share capital	
Legal form of share-holders/members	Natural person or legal entity	
Public issue of shares/units	Yes	No (but publis issuance of bonds is permitted)
Transferability of shares/units	Free transferability of shares unless the articles of incorporation provide for some restrictions	Units may not be transferable inter vivos to non-members unless members representing at least 50% of the corporate capital shall have agreed thereto in a general meeting
Management	Directors - minimum: 3 (exception: S.A. with a single shareholder - minimum: 1)	A legal entity can exercise the function of a manager
	Board of Directors or Management Board with Supervisory Board	1 or more managers
	Director information can be obtained through the Luxembourg Trade and Companies Registrar	
Residency of management	No legal requirement regarding residency or nationality	
Registered office	Registered office address must be in Luxembourg	
Supervision/control	Independent auditor required if 2 of the 3 below criteria are exceeded (during 2 susequent years): • balance sheet total: EUR 4.4m • net turnover: EUR 8.8m • full-time employees: 50	
	Internal auditor: required unless audited by an independent auditor	Internal auditor: required if the company has more than 60 members, unless audited by an independent auditor
Annual accounts	Yes	

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TAX ADVANTAGES OF A SOPARFI

The SOPARFI is a fully-taxable company subject to the common tax regime in Luxembourg. Provided certain requirements are fulfilled, certain types of income realised by the SOPARFI benefit from the Luxembourg Participation Exemption Regime (see below). Furthermore, the SOPARFI is entitled to benefit from the reduced withholding tax rates provided for in double tax treaties (DTT) concluded by Luxembourg.

Income Tax (IT)

As from 1 January 2016, the minimum corporate tax regime was abolished and replaced by a minimum Net Wealth Tax (see below).

A SOPARFI is subject to a maximum aggregate IT rate of 29.22%. This includes:

- 20% Corporate Income Tax (CIT) (for taxable income less than EUR 15,000) or 21% CIT (for taxable income exceeding EUR 15,000)
- 7% solidarity surcharge (contribution au fonds pour l'emploi)
- 6.75% Municipal Business Tax (MBT) for companies located in Luxembourg City

Net Wealth Tax (NWT)

Following the repeal of the minimum CIT, a new minimum NWT was introduced from 1 January 2016. This also applies to securitisation vehicles and SICARs, which otherwise remain exempt from NWT.

For entities with financial assets, receivables on related entities, transferable securities and cash at bank exceeding 90% of their total gross assets and EUR 350,000, the minimum NWT is EUR 3,210.

For all other companies subject to NWT, the minimum NWT will range between EUR 535 and EUR 32,100 determined according to a progressive tax scale, in accordance with the company's balance sheet. Certain exceptions exist, notably qualifying participations, providing the relevant conditions are met.

Withholding Tax (WHT) on Dividends

Dividends distributed by a Luxembourg company are subject to WHT at a rate of 15%, except if exemption based on the EU Parent-Subsidiary Directive and reduction/exemption based on the DTT. Expenses in direct relation with exempt dividends are only tax-deductible if they exceed the exempt income of a given year.

Debt/Equity Ratio

- 85/15 is, in principle, accepted by the Luxembourg tax authorities. Within this limit, Luxembourg WHT is not applied on any interest payments and interests paid or accrued are tax-deductible
- 1/99 (capped at EUR 2m equity) is required for intra-group financing activities, e.g. back-to-back loans

Double Tax Treaties (DTT)

As SOPARFIs are fully-taxable resident companies, they benefit from Luxembourg's extensive network of DTT.

Royalties

The Luxembourg IP regime, which provides for an 80% exemption on income of certain intellectual property ("IP") rights, is repealed as from 1 July 2016 for CIT/MBT, and as from 1 January 2017 for NWT.

A grandfathering is introduced for eligible IP rights developed or acquired before 1 July 2016. These IP rights will continue to benefit from the existing IP regime until 30 June 2021.

Participation Exemption Regime

Provided certain conditions are met, the Luxembourg Participation Exemption Regime allows for the following exemptions:

- dividends received by the SOPARFI are exempt from CIT and MBT
- capital gains realised by the SOPARFI on the sale of shares are exempt from CIT and MBT
- dividends remitted by the SOPARFI are exempt from WHT
- qualifying participations are exempt from NWT

To qualify for the above exemptions, the following criteria must be met:

- the SOPARFI must hold at least 10% of the issued share capital of the underlying subsidiary (or an investment of at least EUR 1.2m for dividends received or EUR 6m for realised capital gains)
- the subsidiary must be a fully-taxable Luxembourg company, an entity covered by the EU Parent-Subsidiary Directive (which includes most European taxable companies) or a non-resident company subject to a similar tax regime (minimum 10.5% CIT)
- ownership of the interest in the subsidiary must have been held for at least 12 months

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