Luxembourg Financial Holding Company

Luxembourg Financial Holding Company, generally called "SOPARFI" (French acronym for Société de Participations Financières), is the most frequently used company in Luxembourg. The SOPARFI is indeed recognized by international investors as being a flexible investment vehicle which enables a wide range of activities within an attractive tax environment.

At a glance

- Subject to global income tax rate of 29.22% and to 0.5% net wealth tax on the net assets
- Eligible to the participation exemption regime for dividends, liquidation proceeds, capital gains and net wealth tax
- Benefits from Luxembourg double tax treaty network and European directives
- May be used in various investment schemes, e.g. holding and financing of participations, acquisition of real estate, acquisition of intellectual property, rights, etc.

1. Legal aspects

The SOPARFI can adopt various corporate forms: public limited liability company (*Société Anonyme*, "SA"), private limited liability company (*Société à Responsabilité Limitée*, "SARL"), partnership limited by shares (*Société en Commandite par Actions*, "SCA") and European company (*Société Européenne*, "SE"). However, in practice, the SOPARFI is generally incorporated in the form of a SA due to its operating flexibility. The characteristics of the SA are the following:

- The SA can be incorporated by at least one investor who may be a private individual or a company. No condition of nationality or residence is required;
- The SA must hold a shareholders general meeting at its registered office on the date specified in the articles of incorporation;
- The SA must be managed either by a board of directors composed of at least three members (one member in case the SA has only one shareholder) or by a supervisory board associated to a management board;
- The SA must be controlled by a statutory auditor or an independent auditor if certain size criteria are exceeded;
- The SA must have a minimum subscribed capital of at least EUR 31,000;
- The SA can issue registered and bearer shares.

2. Scope of activity

The SOPARFI has a wide scope of activity. Among other things, it can:

- Hold participations in resident or non-resident companies;
- Purchase, sell or exploit intellectual property rights;
- Acquire shares in real estate companies, or own a real estate property itself;
- Perform any type of commercial or industrial activity.

3. Tax aspects

3.1. Corporate income tax and municipal business tax

The SOPARFI is subject to corporate income tax and municipal business tax at the global rate of 29.22% (= 22.47% + 6.75%).

Corporate income tax (CIT)	
Taxable income inferior to EUR 15,000 (including solidarity tax rate of 7%)	21 %
Taxable income inferior to EUR 15,000 (including solidarity tax rate of 7%)	22.47%

Municipal business tax (MBT)
Calculation of the MBT rate Assessment base of 3% multiplied by the municipal multiplier depending on the municipality where the SOPARFI is located
For Luxembourg-city : 6.75% (3% x 225%)

As from 2013, a SOPARFI that has aggregate financial assets, securities and bank deposits exceeding 90% of its balance sheet total is subject to a minimum corporate income tax of EUR 3,210 (including solidarity tax rate of 7%). SOPARFI not falling under the above-mentioned criteria are from 2013 also subject to a minimum annual taxation ranging between EUR 535 and EUR 21,400 (including solidarity tax rate of 7%) and which is determined on the basis of their total balance sheet of the tax year concerned.

Dividends, liquidation proceeds received by the SOPARFI as well as capital gains realized on the sale of shares may be tax exempt under the participation exemption regime provided the required conditions are fulfilled.

Participation exemption regime for dividends / liquidation proceeds received and for capital gains on sale of shares

- *shareholding requirement:* at least 10% or acquisition price of EUR 1,200,000 for dividends / liquidation proceeds and EUR 6,000,000 for capital gain;
- *holding period:* at least 12 months (or commitment to hold) the minimum shareholding for at least 12 months;
- *subsidiary:* fully taxable resident company, EU company listed and covered by the parent-subsidiary directive or a non-EU company subject to corporate income tax of at least 10.5% computed on a taxable basis determined according to similar rules and criteria to those in Luxembourg.

Deduction of expenses

Expenses directly related to a participation that qualifies for the exemption (e.g. interest charges) are only deductible to the extent that they exceed exempt income arising from the relevant participation in a given year.

Write-downs in value of a participation that qualifies for the exemption are deductible. The exempt amount of a capital gain realized on a qualifying participation is, however, reduced by the amount of any expenses related to the participation that have previously reduced the company's taxable income.

Practical examples

1. Dividends

- On 15 June 2009, the SOPARFI purchases 15% of the shares of a French company for an acquisition price of EUR 200,000;
- On 15 October 2009, the SOPARFI receives a dividend of EUR 50,000 from its French subsidiary.

→ The dividend is fully exempt provided the SOPARFI commits to hold at least 10% of the shares of its French subsidiary until 15 June 2010

2. Capital gain

- On 15 June 2009, the SOPARFI purchases 60% of the shares of a French company for an acquisition price of EUR 800,000;
- On 15 October 2009, the SOPARFI sells 50% of the shares of its subsidiary for EUR 1,000,000.

→ The capital gain is fully exempt provided the SOPARFI commits to hold the remaining 10% until 15 June 2010

3.2. Withholding taxes

Dividends distributed by the SOPARFI to its shareholders are in principle subject to a withholding tax of 15%, unless it is reduced under an applicable double tax treaty signed with the State(s) of the shareholders.

Dividends may however benefit from a Luxembourg withholding tax exemption if the conditions of the participation exemption are fulfilled.

Participation exemption regime for dividends distributed

- *shareholding requirement:* at least 10% or acquisition price of EUR 1,200,000;
- *holding period:* at least 12 months or commitment to hold the minimum shareholding for at least 12 months;
- *beneficiary company:* fully taxable Luxembourg / EU / EEA or Swiss company as well as company resident in a country with which Luxembourg has concluded a double tax treaty and which is subject to tax of at least 10.5% computed on a taxable basis determined according to similar rules and criteria to those in Luxembourg.

Besides, it must be noted that there is neither withholding tax on interest paid by the SOPARFI to its shareholders (unless EU saving directive applies or unless interests are linked to the profit of the Luxembourg company), nor on liquidation proceeds distributed to the shareholders further to the liquidation of the SOPARFI.

3.3 Net wealth tax

The SOPARFI is subject to net wealth tax at a rate of 0.5% levied on its net asset value (i.e. assets less liabilities), based on an assessment each 1st January. However, participations held by the SOPARFI may be excluded from the calculation of the net asset value if the following conditions of the participation exemption regime are met.

Participation exemption regime for net wealth tax

- *shareholding requirement:* at least 10% or acquisition price of EUR 1,200,000;
- *holding period:* none ;
- *subsidiary*: fully taxable resident company, or EU company listed and covered by the parent-subsidiary directive, or a non-EU company subject to corporate income tax of at least 10.5% computed on a taxable basis determined according to similar rules and criteria to those in Luxembourg.

3.4. Intellectual Property rights

A tax framework for certain IP rights has been implemented in Luxembourg. Under this regime, income received in consideration of the use or the right to use copyright linked to software, patents, trade marks, domain names, designs or models benefit from 80% exemption. The tax exemption also applies to capital gains realized on the disposal of IP right, and leads to an effective tax rate of 5.84%.

From a net wealth tax perspective, the IP rights benefit from a full exemption.

The application of the 80% exemption is however subject to the following conditions:

- the IP right must be acquired (or created) after 31 December 2007; and
- Expenses in direct economic connection with the IP right must be recorded as an asset in the balance sheet during the first year for which the benefit of this tax regime is claimed; and
- The IP right must not have been acquired from an affiliated company (i.e. direct participation of at least 10%, sister company whose parent company holds at least 10% of both companies).

3.5. Chamber of commerce contribution

A compulsory Chamber of Commerce membership fee is due each year at a rate of 0.2% (decreasing rate as from EUR 49.5 m base up to 0.025% for base over EUR 111.5 m) for each Luxembourg company and is based on the taxable profit before tax losses carried forward and declared to the Luxembourg direct tax authorities two years preceding the year in which the membership is due. Even SOPARFIs (without commercial activities) should be members of the Luxembourg Chamber of Commerce. The contribution applicable to SOPARFIs is, however, fixed to an annual amount of EUR 350.

4. Thin capitalisation rules

Luxembourg tax law does not contain general thin capitalisation rules. However, in practice, the tax authorities generally require a debt-to-equity ratio of 85:15 when financing the acquisition of participations through an intra-group interest-bearing debt.

5. Accounting aspects

The SOPARFI must keep regular accounts in accordance with Luxembourg commercial law. The annual accounts, which may be presented in any currency, must include a balance sheet, a profit and loss account and notes to the accounts.

The annual accounts duly approved must be presented to the Company Register. The SOPARFI which owns subsidiaries may be required to present consolidated accounts in application of the law of 11 July 1988 adopting the seventh European Directive on consolidated accounts as domestic law. However, there are exceptions which allow the SOPARFI to avoid the requirement to draw up such accounts.

6. Services provided by Experta Luxembourg

Experta Luxembourg is a provider of services related to corporate and investment structures, as well as financial and estate planning. Experta Luxembourg assists private individuals, corporate clients and institutional investors with tailor-made solutions making use of creative planning techniques from various jurisdictions.

Experta Luxembourg may assist clients with the incorporation and management of SOPARFI. These services include the set up of a corporate structure organised through Luxembourg, administrative work at the incorporation of the company, as well as day-to-day administrative aspects, such as accounting, tax work and corporate secretarial services.

For inquiries please contact us at +352.26.92.55-1 or email us at **experta@experta.lu**.

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The objective of this fact sheet is to provide the reader with a general view of relevant aspects relating to the SOPARFI. No action shall be taken without prior consultation with Experta Luxembourg, as this document alone cannot cover all aspects relating to the incorporation and administration of the SOPARFI. Finally, please note that this document is provided for information purposes only and should not be understood as legal or fiscal advice.