

Luxembourg Holding Company
"SOPARFI"



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Introduction

Banque Privée Edmond de Rothschild Europe gives great importance to the quality of its relations with its clients, a quality founded on professionalism and trust.

More especially, "the Financial Engineering and Estate Planning Department" of Banque Privée Edmond de Rothschild Europe in Luxembourg offers its clients a personalised service in respect of the setting up and domiciliation of Luxembourg companies, in the context of both professional and private restructuring projects.

In addition, Banque Privée Edmond de Rothschild Europe, acting in its capacity as domiciliary agent, can put at companies' disposal a registered officer, administrators as well as an auditor.

The Bank also gives assistance in relation to drawing up Articles of Incorporation and takes care of the ancillary duties such as relations with banks, notaries and competent administrations.

These administrative duties also include the organisation of board meetings, shareholders' meetings, the completion of all legal formalities as well as all secretarial services.

The Bank also takes care of the accounting for these companies, the preparation of the annual accounts and their publication.

Finally, this service includes assistance with tax issues; ie regarding the location and type of company, the opportunity to establish other dependent entities, appropriate tax agreements aimed at avoiding double taxation as well as taking into account the personal tax situation of the client and his family.



Legal Characteristics

A. General

A SOPARFI or holding company is not a special type of company but an ordinary commercial company subject to Luxembourg law with regard to both its legal regime and tax status. As a result, a SOPARFI does not enjoy an exorbitant common law tax exemption but rather an objective exemption related to the nature of some of its revenue.

A SOPARFI is set up as a joint-stock company (*société anonyme*, public limited partnership or limited liability company). Its primary corporate objective is to manage holdings in other Luxembourg or foreign resident companies but it can also carry out other industrial or commercial activities or provide services.

The SOPARFI regime was introduced on 24 December 1990 by a Grand Duchy regulation designed to remedy the two major disadvantages of 1929 Holding Companies, namely:

- ▶ exclusion from the benefit of double tax treaties;
- ▶ exclusion from the area of application of the EEC's Parent/Subsidiary Directive 90/435/CEE.

B. The most common types of company used for creating a SOPARFI

A SOPARFI can take on any form of joint-stock company to be such by Luxembourg law, ie a *société anonyme* (SA), similar to a public limited company, a *société à responsabilité limitée* (SARL), similar to a private limited company, or a *société en commandite par actions* (SCA), similar to a limited partnership with shares. Therefore, cooperatives are excluded.



1. A SOPARFI set up under the form of a Société anonyme (S.A.) - Public limited company

The characteristics of this type of company are as follows:

- ▶ the securities representing the share capital can be bearer shares and therefore disposable by simple transfer;
- ▶ the share capital can be denominated in any currency;
- ▶ the shares can be listed on a stock market;
- ▶ there are no restrictions as to the nationality and residence of the directors;
- ▶ the minimum share capital is EUR 31,000. One-quarter of the capital of a SOPARFI set up in the form of an SA must be paid-up and this relates both to contributions in cash and kind. The shares of the SA will become bearer shares at the payment in full of the capital.

2. A SOPARFI set up under the form of a Private limited company (S.à.r.l.)

The characteristics of this type of company are as follows;

- ▶ A simpler and less expensive legal structure;
- ▶ contributions to a SARL do not need to be valued by an independent auditor (remain the responsibility of the managers);
- ▶ a SARL does not need an auditor;
- ▶ the minimum share capital is EUR 12,500.



Tax Characteristics

The tax benefits are as follows:

- ▶ dividends received and capital gains on disposal are exempt depending on the nature, size and duration of the shareholdings;
- ▶ no withholding tax on dividends paid between resident companies of the European Union (under conditions);
- ▶ no withholding tax on dividends paid to a company resident of a country with which Luxembourg has concluded a double tax treaty (under conditions);
- ▶ no withholding tax on liquidation proceed;
- ▶ possibility of offsetting financial charges in respect of taxable activities, capital losses on the disposal shareholdings and, under certain conditions, foreign tax credits against profits made from other taxable activities;
- ▶ very flexible thin capitalisation rules;
- ▶ possibility of VAT registration.

The tax regime of a SOPARFI enables it to take advantage of:

- ▶ the double tax treaties signed by Luxembourg and the other states;
- ▶ dividend income and medium and long-term capital gains on disposals which are tax exempt;
- ▶ offsetting of foreign withholding taxes, in so far as the provisions of Luxembourg domestic law permit.

A. Dividends received by a SOPARFI

1. 100% Exempt dividends (Article 166 of the LITL)

This article provides that dividends received by a SOPARFI from its resident or non-resident subsidiaries are tax exempt if:

the paying company is:

- ▶ a resident joint-stock company, fully taxable for corporate income tax (which does not benefit from total or partial subjective exemption), or
- ▶ a company resident in a Member State of the European Union and covered by the Parent-Subsidiary Directive, or
- ▶ a non-resident joint-stock company, fully taxable for a tax corresponding to corporate income tax (i.e. 10,50%, half of the Luxembourg corporate income tax rate), and
- ▶ held directly or indirectly through tax transparent entities.

a SOPARFI receiving dividends:

- ▶ holds or undertakes to hold, on the payment date of the dividends, the participation for an uninterrupted period of at least 12 months;
- ▶ throughout this period the level of the participation must not fall below the threshold of 10% of the capital of the paying company or the acquisition price of EUR 1,200,000.

In Luxembourg, no quota share for expenses and charges is added (unlike France and Belgium) unless the exemption relates to 100% of the dividend paid.

Operating expenses connected with exempt dividends are not deductible (for example the interest on loans taken out to finance a holding). However, it is still possible to charge any financial charges in excess of the investment income against the profit made from other taxable activities.

2. 50% Exempt dividends (Article 115.15 of the LIR)

If the conditions for enjoying 100% exemption on dividends are not fulfilled:

- ▶ either because these are not equity shares;
- ▶ or because the 12-month holding period has not been adhered to.

The dividends received by the SOPARFI will be 50% exempt. Consequently, 50% of the operating charges will be deductible.

3. Taxable dividends

Dividends which are neither fully or partially exempt are, by default, taxable. Operating charges are fully deductible.

B. Dividends paid by a SOPARFI

The dividends paid by a SOPARFI to its parent company are subject to a withholding tax in Luxembourg, the rate of which differs depending on whether or not the shareholder belongs to a Member State of the European Union (EU):

1. The parent company of the SOPARFI is a resident of the EU. (Article 147 of the LITL) - transposition of the Parent/ Subsidiary Directive 90/435/CEE

There is no withholding tax if:

- ▶ the effective beneficiary company (parent company) holds or undertakes to hold for an uninterrupted period of at least 12 months a participation of at least 10% or with an acquisition price of at least EUR 1,200,000 in the capital of the SOPARFI.



2. The parent company of the SOPARFI is not a resident of the EU (Articles 147-148 of the LIR)

In this case, a withholding tax is applied. However, a distinction must be made depending on whether:

- ▶ The parent company is located in a country which is not part of the EU but with which Luxembourg signed a double tax treaty. In this case, no withholding tax will be levied.

However, the beneficiary company must fulfilled the following conditions:

- being a company which is subject to a tax corresponding to the Luxembourg corporate income tax, i.e. 10.5%;
 - holding the participation in the Luxembourg company since at least 12 months;
 - holding a participation in the Luxembourg company of at least 10% of the capital of this company or failing that, a participation representing an acquisition cost of EUR 1.200.000.
- ▶ The parent company is located in a country which is not part of the EU and with which Luxembourg has not signed a double tax treaty. In this case:
 - a 15% withholding tax, which will be levied in Luxembourg, is applied to the dividends regardless of the proportion of the capital of the SOPARFI held by the foreign parent company.

C. Capital gains on disposal

Any capital gains made on the disposal of participations held directly or indirectly through tax transparent entities by a SOPARFI in a company are tax exempt if this company is:

- ▶ a resident joint-stock company, fully taxable for corporate income tax (which does not enjoy total or partial subjective exemption), or
- ▶ a resident company of a Member State of the European Union covered by the Parent/Subsidiary Directive, or
- ▶ a non-resident joint-stock company, fully taxable for a tax corresponding to corporate income tax. (i.e. 10,50%, half of the Luxembourg corporate income tax rate), and if:
 - ▶ the SOPARFI holds at least 10% of the capital of this company or failing that, a participation representing an acquisition cost of EUR 6,000,000.

This participation must have been held continuously for a period of at least 12 months, with effect from the date of the acquisition of the shares.

D. Deductibility of capital losses

Any capital losses made on the disposal of securities or latent capital losses recognised in the form of provisions for depreciation of participations are fully deductible from any taxable profits.

E. Tax credit

Foreign withholding tax deducted from dividends paid to a SOPARFI can only give rise to the granting of a tax credit chargeable against Luxembourg tax if a SOPARFI operates a business generating a taxable profit.

F. Capital duty

The capital duty has been abolished since the 1st of January 2009. A fixed registration duty of EUR 75 is now due for the incorporation of the Soparfi and also for any amendments made in the Memorandum and Articles of Association.

G. Other tax exemptions

A SOPARFI does not have to pay any subscription tax, unlike 1929 Holding Companies and Family Asset Management Companies (SPFs). There is no withholding tax on liquidation proceeds.

H. Net wealth tax

Net wealth tax is due from legal persons established in Luxembourg on the basis of 0.50% of the company's net assets valued on 01 January of each year. Nonetheless, holdings which benefit from the parent/subsidiary regime are exempt from this tax (no minimum holding period required).



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