

THE LUXEMBOURG SOPARFI

Overview

SOPARFI stands for SOciété de PARTicipations Financières which is an ordinary and fully taxable holding company.

The SOPARFI focuses its activities on holding participations in or providing financing to other companies. It benefits from the so-called “participation exemption” regime under which dividends derived from and capital gains realized on these participations may be exempt from tax in Luxembourg under certain conditions (see section below “Taxation”). SOPARFIs may also take advantage of Luxembourg’s network of double taxation avoidance treaties as well as the provisions of the EU Parent-Subsidiary Directive.

There is no restriction in terms of investors: any undertaking or private person may invest in a SOPARFI. The SOPARFI is not subject to any risk-spreading requirements and is not restricted to any specific type of investments.

The SOPARFI is not subject to the supervision of the Commission de Surveillance du Secteur Financier (CSSF), the Luxembourg financial regulatory authority. It is thus qualified as “non-regulated” vehicle and may be incorporated quickly and without prior approval from the CSSF.

The SOPARFI is not governed by any specific law; it shall comply with the general provisions of the Luxembourg law on commercial companies dated 10 August 1915, as amended and modernised.

A SOPARFI may inter alia (i) hold, buy, sell and manage equity interests in Luxembourg or foreign public or private companies, (ii) hold, buy, sell and manage bonds, debentures, certificates and other debt instruments issued by Luxembourg or foreign companies, (iii) hold, buy, sell, manage patents or other intellectual property rights and grant licenses related thereto, (iv) finance and grant financial assistance to subsidiaries, (v) issue debt instruments (e.g. preferred equity certificates) and (vi) grant guarantees, pledge, encumber and grant securities over its assets to guarantee its obligations or those of other companies.

Alongside its main holding feature, a SOPARFI may also carry out industrial or commercial activities. In this case, a business license granted by the Luxembourg Ministry of Middle Classes and Tourism is required before carrying out such activities.

LEGAL FORM

Depending on the investors' needs, the SOPARFI usually takes the form of (i) a public limited liability company (société anonyme or S.A.), (ii) a private limited liability company (société à responsabilité limitée or S.à r.l.), or (iii) a public limited liability partnership (société en commandite par actions or S.C.A.).

The below comparative overview provides the key features of the S.à r.l., the S.A. and the S.C.A., the most commonly meet for Luxembourg limited companies:

	S.à r.l.	S.A.	S.C.A.
Share capital	<ul style="list-style-type: none"> ▶ Minimum share capital of EUR 12,000 (fully paid-up); ▶ In cash or in kind; ▶ Minimum 5% of the annual net profit must be allocated to a statutory non-distributable reserve until such reserve amounts to 10% of the share capital. 	<ul style="list-style-type: none"> ▶ Minimum share capital of EUR 30,000 (minimum payment of 25% only, which has to be paid in upon subscription); ▶ In cash or in kind; ▶ Minimum 5% of the annual net profit must be allocated to a statutory non-distributable reserve until such reserve amounts to 10% of the share capital. 	<ul style="list-style-type: none"> ▶ Minimum share capital of EUR 30,000 (minimum payment of 25% only, which has to be paid in upon subscription); ▶ In cash or in kind; ▶ Minimum 5% of the annual net profit must be allocated to a statutory non-distributable reserve until such reserve amounts to 10% of the share capital.
Shareholders	<ul style="list-style-type: none"> ▶ Minimum 1 shareholder; ▶ Maximum 100 shareholders. 	<ul style="list-style-type: none"> ▶ Minimum 1 shareholder; ▶ No maximum. 	<ul style="list-style-type: none"> ▶ At least 1 limited partner and 1 general (unlimited) partner (GP); ▶ No maximum.
Shareholder's liability	<ul style="list-style-type: none"> ▶ Shareholder(s) liability limited to the capital contribution. 	<ul style="list-style-type: none"> ▶ Shareholder(s) liability limited to the capital contribution. 	<ul style="list-style-type: none"> ▶ GP(s) with indefinite, joint and several liability; ▶ Limited partners with limited liability (up to the capital contribution).
Shares	<ul style="list-style-type: none"> ▶ Registered; ▶ Voting; ▶ Different classes of shares possible; ▶ Not freely negotiable. 	<ul style="list-style-type: none"> ▶ Registered, bearer or dematerialised form; ▶ Voting or non-voting; ▶ Different classes of shares possible; ▶ Negotiable. 	<ul style="list-style-type: none"> ▶ Registered, bearer limited shares or dematerialised form; ▶ Voting or non-voting limited shares; ▶ Different classes of shares possible; ▶ Limited shares are negotiable.

	S.à r.l.	S.A.	S.C.A.
Management	<ul style="list-style-type: none"> ▶ At least 1 manager appointed for a limited or unlimited period; ▶ Revocation only for cause only otherwise provided in the articles of association; ▶ Manager is responsible for ensuring compliance with applicable laws and regulations. Duty to act in the best interest of the Company. 	<ul style="list-style-type: none"> ▶ One-tier: Board of directors (conseil d'administration) which must have at least 3 members (unless there is only 1 shareholder in which case 1 director is sufficient), OR ▶ Two-tier: Management board supervised by supervisory board; ▶ Maximum term of 6 years (renewable); ▶ Revocation at any time with or without cause by simple majority; ▶ The board (or the management board) is responsible for ensuring compliance with applicable laws and regulations. Duty to act in the best interest of the Company. 	<ul style="list-style-type: none"> ▶ 1 or more GP(s) (not all GPs have to be managers of the S.C.A.) or other manager appointed pursuant to the articles of association (AoA); ▶ Dismissal of the GP(s) requires an amendment to the AoA which is, unless otherwise foreseen by the AoA, subject to the approval of the GP(s); ▶ GP is responsible for the management of the legal entity and ensuring compliance with applicable laws and regulations. Duty to act in the best interest of the Company.
Supervision	<ul style="list-style-type: none"> ▶ 1 or more statutory auditor(s) in case the S.à.r.l. has more than 25 shareholders; ▶ External auditor must be appointed if certain thresholds are surpassed (relating to total balance sheet, turnover and number of employees). 	<ul style="list-style-type: none"> ▶ 1 or more statutory auditor(s); ▶ External auditor must be appointed if certain thresholds are surpassed (relating to total balance sheet, turnover and number of employees). 	<ul style="list-style-type: none"> ▶ Supervisory board consisting of at least 3 statutory auditors or appointment of an external auditor; ▶ External auditor must be appointed if certain thresholds are surpassed (relating to total balance sheet, turnover and number of employees).

	S.à r.l.	S.A.	S.C.A.
Transfer of shares	<ul style="list-style-type: none"> ▶ Freely transferable among the shareholders of the Company; ▶ Transfer of shares to third parties requires a vote of shareholders representing at least 75% of the share capital* (* unless AoA stipulates less); ▶ No listing; ▶ No public offer. 	<ul style="list-style-type: none"> ▶ Freely transferable; ▶ Listing possible; ▶ Public offer possible. 	<ul style="list-style-type: none"> ▶ Limited shares freely transferable; ▶ unlimited (GP) shares transferable under certain conditions; ▶ Listing of limited shares possible; ▶ Public offer limited shares possible.
Quorum/ Majorities	<ul style="list-style-type: none"> ▶ Ordinary resolutions: Simple majority of share capital; ▶ Extraordinary resolutions: majority of shareholders by number and majority of shareholders representing at least 75% of the share capital (with only two shareholders, unanimity is thus required); ▶ Shares transfer to third parties: approval of 75% of share capital; ▶ Change of nationality and increase of shareholders' commitment: unanimity required. 	<ul style="list-style-type: none"> ▶ Ordinary resolutions: No attendance quorum and simple majority of votes; ▶ Extraordinary resolutions: 50% attendance quorum and 2/3 majority of votes; ▶ Change of nationality and increase of shareholders' commitment: unanimity required. 	<ul style="list-style-type: none"> ▶ Same as S.A. except that, unless otherwise provided for in the AoA, the GP's consent is also required.

	S.à r.l.	S.A.	S.C.A.
Publication requirements	<ul style="list-style-type: none"> ▶ Full AoA; ▶ Annual accounts and consolidated accounts; ▶ Identity of the shareholders; ▶ Identity of the managers. 	<ul style="list-style-type: none"> ▶ Full AoA; ▶ Annual accounts and consolidated accounts; ▶ Identity of the directors; ▶ Identity of the auditor. 	<ul style="list-style-type: none"> ▶ Full AoA; ▶ Annual accounts and consolidated accounts; ▶ Identity of GP; ▶ Identity of the Supervisory board.
Tax transparency	▶ Not tax transparent (but check-the-box eligible).	▶ Not tax transparent.	▶ Not tax transparent (but check-the-box eligible).

TAXATION

1. LEVIED TAXES

Corporation taxes

The overall income tax rate amounts to 29.22% for companies that have their principal place of business in the City of Luxembourg.

Net worth tax

A SOPARFI is subject to an annual net wealth tax (*Impôt sur la fortune*), to be paid based on its total net assets except qualifying subsidiaries (total assets minus total liabilities), which is levied at the rate of 0.5% and assessed on 1st January of each year. A 0.05% rate applies to the taxable base in excess of EUR 500 million.

For companies whose financial assets exceed 90% of their total balance sheet (like SOPARFIs) and the amount of EUR 350,000, the minimum net wealth tax varies from EUR 535 to EUR 3,210.

The net wealth tax due may be reduced by a tax credit through the creation of a special five-year reserve, provided certain conditions are met.

Value Added Tax (taxe sur la valeur ajoutée)

A pure holding company does not have the status of a taxable person for VAT purposes and does not have to register for VAT in Luxembourg.

2. PARTICIPATION EXEMPTION - DOUBLE TAXATION RELIEF FOR DIVIDENDS AND CAPITAL GAINS ON SHARES

Income tax exemption on dividends received

Dividends received by a Luxembourg company are in principle subject to corporate income tax at the overall standard rate of 29.22%.

However, the domestic participation exemption regime based on the EU Parent-Subsidiary Directive provides that dividends (including liquidation dividends) are exempt from taxes provided the following requirements are met:

- ▶ the company paying the dividend must be (i) an entity within the scope of article 2 of the EU Parent-Subsidiary Directive, or (ii) an entity which is subject in its country of residence to corporate income tax corresponding to Luxembourg corporate income tax (referred to below as a Qualifying Subsidiary); and
- ▶ at the time of the dividend/liquidation distribution, the SOPARFI must have held for an uninterrupted period of at least 12 months (or must commit itself to continue to hold until an uninterrupted period of at least 12 months has elapsed) a direct participation of 10% or more of the nominal paid up capital of the subsidiary, or, in the event of a lower percentage of participation, a direct participation having an acquisition price of at least EUR 1,200,000 (for dividends and liquidation proceeds).

If the above holding requirement conditions are not met, dividends from a Luxembourg Qualifying Subsidiary are automatically exempt for 50%.

In principle, the dividend exemption also applies to qualifying subsidiaries held through tax transparent entities.

Withholding tax exemption on dividends paid

In principle, a 15% withholding tax is levied on dividends paid by a Luxembourg company, unless such rate can be reduced in accordance with an applicable treaty or the domestic dividend withholding tax exemption regime described below.

A full withholding tax exemption may be applicable if the effective beneficiary company (parent company) is a fully taxable company established in a EU/EAA or treaty country (in which case a subject to tax test is to be met) and if it has held for an uninterrupted period of at least 12 months (or has committed itself to continue to hold until an uninterrupted period of at least 12 months has elapsed) a direct participation of 10% or more of the nominal paid up capital of the SOPARFI, or, in the event of a lower percentage participation, a direct participation having an acquisition price of at least EUR 1,200,000 (for dividends and liquidation proceeds).

As from 2016 and further to the amendment of the EU Parent-Subsidiary Directive, a general anti-abuse rule has been introduced so that in an EU context only the exemption of dividend or withholding tax shall be denied for non-genuine arrangements that have been put in place for the main purpose to obtain tax advantages without reflecting economic reality. Another anti-abuse provision applicable from 2016 provides that dividends/profit distributions which are tax deductible in the hands of the EU subsidiary may not benefit from the participation exemption.

Capital Gains

Capital gains and losses are included in the taxable basis for corporate income tax. The participation exemption regime applicable to dividends also applies to capital gains if, at the time of the capital gain resulting from the disposal of shares (including currency exchange gains), the SOPARFI has held for an uninterrupted period of at least 12 months a direct participation of 10% or more of the nominal paid up capital of the subsidiary, or, in the event of a lower percentage participation, a direct participation having an acquisition price of at least EUR 6,000,000.

The capital gains exemption, in principle, also applies to participations held through tax-transparent entities.

Capital gains realized on qualifying subsidiaries are taxable to the extent that related expenses (e.g. interest on loans used to finance the purchase of such shares) were deducted from non-exempted profits in previous years.

Liquidation of a SOPARFI

Liquidation proceeds (or advance payments on liquidation) are not subject to dividend withholding tax.

3. TAX TREATMENT OF INTEREST AND ROYALTIES

Withholding tax on interest

Arm's length, fixed or floating rate interest payments made to legal persons are not subject to Luxembourg withholding tax. Profit sharing interest paid on certain debt instrument may be subject, under certain conditions, to a 15% withholding tax, unless a lower tax treaty rate applies, or an exemption would be available.

Withholding tax on royalties

Luxembourg does not levy any withholding tax on royalties.

4. SOPARFI FINANCING

Luxembourg tax law does not contain debt to equity ratio provisions. However, for holding activities, the administrative practice requires compliance with a 85:15 debt-to-equity ratio for related party when debt financing is granted or guaranteed by a shareholder in order to guarantee the tax deductibility of interest payments in the hands of the payer.

5. ADVANCE TAX AGREEMENTS

A legal framework for Advance Tax Agreements has been introduced by the Luxembourg law of December 19, 2014. The General Tax Law now provides for a procedural framework for Advance Tax Agreement requests.

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