

SOPARFI

A) Background

SOPARFI is the acronym for “Société de Participations Financières”, the French term for “Holding company”. The acronym normally is referred to with regard to the tax treatment of dividends and capital gains from affiliated companies.

A Soparfi can adopt on several legal forms. Nevertheless, in most cases a Soparfi is incorporated in the form of a public limited company (S.A.) or a private limited company (S.à r.l.).

A Soparfi as such is a fully taxable regular Luxembourg limited liability company. They are non-regulated and are, as such, faster to incorporate, cheaper to manage and less subject to reporting than any of the regulated vehicles.

There are virtually no limitations for the activities of a Soparfi. It could combine various activities such as holding of participations and running regular commercial or industrial activities. It provides investors with the opportunity to take advantage of the EU Directives and to benefit from the vast Double Tax Treaty network.

1) Holding activity

If all conditions are complied with, dividends received are tax exempt and the Soparfi could exist with hardly paying any taxes. As the exemption provided for is in line with EU Directives, only in anti-abuse situations Luxembourg may refuse the exemption if in the EU member state the dividend payment was tax deductible. It is understood, that “holding activity” can include the financing of the underlying group companies. In such a case, there will be specific substance and transfer pricing requirements to be met.¹

2) Commercial activity

As the company is basically a regular fully taxable entity which has received the branding Soparfi due to its holding and financing activities, it can also carry-out any (VATable) commercial activity.

¹ A distinct document describes these rules and requirements.



In this case the underlying net income is subject to tax as per the standard tax rates stated below. In order to run a commercial activity, in general a business permit needs to be issued by the Luxembourg authorities, based on the professional integrity and qualifications of the person in charge of the business.

3) Holding foreign assets (real estate)

Apart from indirect holding of assets and activities (i.e. shares in active companies), the Soparfi can also directly hold and exploit assets located in other countries (e.g. through a permanent establishment or real estate). Under the provisions of the Double Tax Treaties, such income is generally tax exempt in Luxembourg. However, as the underlying income is exempt, related expenses are not deductible in Luxembourg.

The net income generated by assets held in a foreign country will, in general, be subject to the corresponding local tax rules in such country.

B) Tax facts

Company incorporation and share transfer

Capital duty

There is no stamp duty on subscription of share capital or transfers of shares, except a fixed registration fee of EUR 75.

General tax features

Net Wealth Tax

A Soparfi is subject to Net Wealth Tax (“NWT”) at a rate of 0.5%, assessed on its adjusted net asset value (unitary value) as at January 1st of each year. A reduced tax rate of 0.05% is due for the portion of net wealth exceeding EUR 500 million.

The unitary value is usually calculated based on the company’s balance sheet as at December 31st of the preceding year; i.e. taxable assets less liabilities financing such taxable assets. The net wealth of the company represents basically market values (with some exceptions, e.g. real estate or interest in partnerships).

Exempt from NWT are:

- i. Assets held abroad (real estate, permanent establishments);
- ii. Qualifying intellectual property;
- iii. Qualifying participations under the following conditions:
 1. Subsidiary is a fully taxable company
 2. Holding directly or indirectly at least 10% of the share capital OR with an acquisition value of at least EUR 1.2 million.

A minimum NWT is due for each company in existence on 1 January of a calendar year.

The Soparfi is on an annual basis subject to a minimum NWT of EUR 4,815 (including the 7% solidarity surcharge) if the sum of financial assets, amounts owed by affiliated undertakings and companies with participating interest, transferable securities and cash at bank exceed both 90% of its total balance sheet and EUR 350,000.

Other Soparfis are subject to a progressive minimum NWT depending on the total assets of their balance sheet of the tax year concerned. This minimum rate ranges from EUR 535 to EUR 32,100 (including the 7% solidarity surcharge).

Balance sheet total ≤ 90 % of total assets in financial assets	Minimum NWT (incl. 7% solidarity surcharge)
Up to EUR 350,000	EUR 535
EUR 350,001 up to EUR 2,000,000	EUR 1,605
EUR 2,000,001 up to EUR 10,000,000	EUR 5,350
EUR 10,000,001 up to EUR 15,000,000	EUR 10,700
EUR 15,000,001 up to EUR 20,000,000	EUR 16,050
EUR 20,000,001 up to EUR 30,000,000	EUR 21,400
More than EUR 30,000,000	EUR 32,100

The NWT may be reduced by the Corporate Income Tax ("CIT") due by the Soparfi on the previous year (max. up to the applicable minimum NWT). In case of a reduction of the NWT, a «special reserve» has to be set up. For this, an amount equal to five times the amount of NWT the company wishes to reduce must be allocated to the special reserve account and needs to be maintained for five years. The NWT to be reduced may not be higher than the CIT due by the company for the given year.

Corporate Income Tax

A Soparfi is subject to Corporate Income Tax on its worldwide income. The taxable basis is computed on the basis of the company's financial statements and adjusted by deduction of the exempt income (e.g. dividends from qualifying shareholdings and income from assets abroad) and by addition of non-deductible items (e.g. non-deductible taxes, directors' fees, expenses connected to exempt income etc.).

Taxable income	CIT rate 2017 (inkl. 7% solidarity surcharge)
< EUR 25,000	15%
≥ EUR 25,000 and ≤ EUR 30,001	15% of 25,000 + 39% of the basis above EUR 25,000
> EUR 30,001	19%

CIT is levied at a tax rate of 19% in 2017 (20.33% including the 7% surcharge for the employment fund), to be reduced to 18% (19.26%) starting 1 January 2018.

Municipal Business Tax

A Soparfi is subject to Municipal Business Tax ("MBT"). The MBT rate is 6.75% for companies located in Luxembourg-City (the MBT rate varies from one municipality to another). The taxable basis is the same as for CIT purposes.

The overall combined rate of corporation taxes (including CIT, MBT and the contribution to the employment fund) for the year 2017 amounts to 27.08% in Luxembourg-City. This rate will be reduced to 26.01% as from 1 January 2018.

Value Added Tax

A Soparfi whose activity is limited to the mere holding of shares does not have the status of a taxable person for VAT purposes and is not required to register for VAT in Luxembourg unless it purchases intra-Community goods of more than EUR 10,000 excluding VAT per year.

A Soparfi performing a VAT exempt business activity only, e.g. a lending activity, is considered as taxable person and has to register for VAT under the simplified taxation regime, if it receives services or goods from foreign taxable persons for which it is liable for VAT as recipient of the services or goods. Under the simplified taxation regime no input VAT can be deducted. Simplified VAT returns have to be filed annually.

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If the Soparfi carries out a taxable economic activity it is obliged to register for VAT under the normal taxation regime in case its annual turnover exceeds EUR 30,000 excluding VAT. The taxable person is entitled to deduct the input VAT which can be allocated to its taxable business activity. The periodicity and the VAT compliance obligations depend on the annual turnover, the intra-Community purchases of goods or the intra-Community sales of services or goods respectively.

C) Participation Exemption

Dividends and capital gains exemption

Soparfis benefit from the so-called participation exemption regime. This tax regime provides for a full exemption from income tax for dividends (including liquidation proceeds) received and capital gains realized by a Soparfi provided that the following conditions are met:

- a) The subsidiary is:
 - i. A fully taxable Luxembourg resident corporation; or
 - ii. An entity within the scope of Article 2 of the EU Parent-Subsidiary Directive; or
 - iii. A non-resident corporation that is subject to a tax comparable to the Luxembourg corporate income tax.
- b) On the date of the realization of the income, the Soparfi holds or commits to hold a direct or indirect participation in the share capital of the distributing company for an uninterrupted period of at least 12 months.
- c) The Soparfi has directly or indirectly held a participation of at least 10% of the share capital of the subsidiary or its acquisition price amounts to at least EUR 1.2 million (in case of dividends and liquidation proceeds) or EUR 6 million (in case of capital gains).

Expenses economically linked to the exempt dividends or capital gains are only tax deductible in a given year to the extent that they exceed the exempt income in the same year (recapture rule).

D) Withholding Taxes

Dividends

Dividend payments to resident and non-resident shareholders are in principle subject to a standard withholding tax rate of 15%.

An exemption or reduction of withholding tax may be available under applicable double tax treaties. A full withholding tax exemption is available if the following conditions are met:

- a) The dividends are paid to:

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- i. A fully taxable Luxembourg resident corporation; or
 - ii. An entity within the scope of Article 2 of the EU Parent-Subsidiary Directive; or
 - iii. A corporation resident in a treaty country that is subject to a tax comparable to the Luxembourg corporate income tax.
- b) On the date of the realization of the income, the shareholder holds or commits to hold a direct or indirect participation in the share capital of the distributing company for an uninterrupted period of at least 12 months.
- c) The shareholder has directly or indirectly held a participation of at least 10% of the share capital of the Soparfi or its acquisition price amounts to at least EUR 1.2 million.

Interest

In general, there is no withholding tax on interest payments.

However, there is a 15% withholding tax on interest on profit-sharing bonds or in case interest payments are made in excess of acceptable thin capitalization rules as they will then be re-qualified into hidden dividend distributions.

Liquidation proceeds

No withholding tax becomes due in Luxembourg on proceeds derived from a full or partial liquidation of a fully-taxable corporation, regardless of the tax status or residency of the shareholder.

Royalties

There is no withholding tax on royalty payments, regardless of the tax status or residency of the recipient.

E) Thin capitalization rules

According to the general tax practice holding companies have to respect a debt / equity ratio of 85/15 for all shareholder liabilities incurred by the company.

F) Tax loss carry forward

As from 2017, the use of tax losses generated is limited in time. Losses generated during and after 2017 will only be able to be carried forward for a maximum period of 17 years. Tax losses that arose before 2017 are not affected by this limitation (they may be carried forward indefinitely). No carry-back is allowed.

G) Double Tax Treaties

Currently Luxembourg has signed Double Tax Treaties with 83 other countries. Soparfi, in general, benefit from the protection of Double Tax Treaties as they are fully taxable resident companies.

H) Conclusion

The Soparfi is a vehicle that can be ideal for the structuring of international groups, for conducting private equity investments or for the holding of assets. In this respect, it is commonly used by multinational groups, investment companies and families in order to manage their business operations or private wealth.

Although commercial activities are taxed at standard rates, the holding activities will often be tax exempt, if certain conditions are met. Hence, careful tax planning is required.

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