

## KEY FACTS COMPANIES

A MODERN LEGAL AND REGULATORY FRAMEWORK AND A WIDE NETWORK OF DOUBLE-TAXATION TREATIES THAT HELP TO OPTIMIZE FINANCING AND ASSET-HOLDING STRUCTURES MAKE LUXEMBOURG ONE OF THE MOST ATTRACTIVE FINANCIAL CENTRES IN THE WORLD. IT IS ALSO AN IMPORTANT GATEWAY TO ALL EUROPEAN COUNTRIES DUE TO ITS CENTRAL LOCATION AND POLITICALLY STABLE ENVIRONMENT.

### OVERVIEW – WHY LUXEMBOURG?

Luxembourg is a part of the OECD “white list” and is very highly ranked as a reliable and transparent jurisdiction. These features have helped Luxembourg become a prime location for holding companies in general. Currently, Luxembourg holding companies are used by high-net-worth individuals and families, international groups, private equity firms and investments funds.

### SOPARFI – SOCIÉTÉ DE PARTICIPATIONS FINANCIÈRES

Luxembourg’s *Société de Participations Financières* (SOPARFI) is an unregulated company vehicle which has no restrictions on its field of activity and is commonly used as a holding company.

The SOPARFI is frequently used as a holding and/or financing vehicle for a group of businesses (it can hold all type of assets: movable and immovable property, tangible and intangible assets).

As a holding company it offers users, under certain well-defined conditions, the opportunity to eliminate or mitigate corporate income tax in Luxembourg and Luxembourg withholding tax on dividends paid to EU and non-EU corporate shareholders where a relevant double tax treaty (DTT) is in place.

Benefits include:

- > Attractive participation exemption regime
- > Luxembourg’s extensive network of double tax treaties
- > EU directives transposed into Luxembourg law (e.g., the EU Parent-Subsidiary Directive)

### STRUCTURE OF A SOPARFI

- > It is usually established as a Public Limited Liability Company (SA) or a Private Limited Liability Company (SARL) even if other legal forms can be adopted (i.e., Partnership Limited by Shares (SCA), Special Limited Partnership (SCSp), Limited Partnership (SCS), Société coopérative (SCOP or SCoSA), European company (SE), Simplified Public Company (SAS))
- > Registered office address must be in Luxembourg
- > Board meetings must be held in Luxembourg, unanimous consent resolutions may be used
- > Annual financial statements must be filed every year with the Luxembourg Trade and Companies Register
- > Tax returns must be filed annually with the Luxembourg Tax authorities
- > Approximately four (4) to five (5) days for incorporation, from the receipt of the share capital in the company bank account and the due diligence documents
- > Official corporate documents furnished within approximately four weeks by the Luxembourg Trade and Companies Register

## SOPARFI COMPARISON – SARL VS. SA

	SARL	SA
MINIMUM SHARE CAPITAL	€12,000 – 100% must be paid-in	€30,000 – 25% must be paid-in
SHARES INTERESTS	Registered Shares must be fully paid-up at incorporation.	Registered or bearer shares Bearer shares must be deposited with a depositary, registered and holder(s) must be identified.
SHAREHOLDERS	<ul style="list-style-type: none"> <li>&gt; Minimum 1 – Maximum 100</li> <li>&gt; Shareholder information is available in the Luxembourg Trade and Companies Register</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Minimum 1 – No maximum</li> </ul>
MANAGEMENT	<ul style="list-style-type: none"> <li>&gt; One or several managers or Board of Managers</li> <li>&gt; Minimum one (1)</li> <li>&gt; Director information is available in the Luxembourg Trade and Companies Register</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Board of Directors or Executive board, together with supervisory board</li> <li>&gt; Minimum three (3) members, unless the company has one (1) sole shareholder, in which case it can have one (1) single director</li> <li>&gt; Director information is available in the Luxembourg Trade and Companies Register</li> </ul>
RESIDENCY OF MANAGEMENT MEMBERS	No legal requirement regarding residency or nationality but it is recommended to have Luxembourg resident management members	No legal requirement regarding residency or nationality but it is recommended to have Luxembourg resident management members
SUPERVISION AND CONTROL	Number of associates up to 60: statutory auditor not compulsory independent auditor only required under specific conditions	For small sized companies: required statutory auditor independent auditor only required under specific conditions
STATUS	Either natural person or legal entity appointing as a manager or director	Either natural person or legal entity appointing as a manager or director

## TAXATION OF SOPARFIS

### Corporate Income Tax

- > A SOPARFI is subject to the aggregate combined tax rate of  $\pm 24.94\%$  depending on the municipality of location.

### Debt-Equity Ratio

- > An 85:15 debt-equity ratio is generally acceptable by the Luxembourg tax authorities for a shareholding activity.
- > Within this limit, interests paid or accrued on debt are tax deductible and interest payments do not suffer any Luxembourg withholding tax (unless EU Savings Directive applies). As per the Anti-Tax Avoidance Directive (ATAD) limitation of the deductibility of exceeding borrowing costs, the deductibility is capped at the highest of 30% of the fiscal EBITDA or €3 million.

### Net Wealth Tax

- > A SOPARFI is subject to NWT at the rate of 0.5% up to a NWT base of €500 million, assessed on its net asset value (unitary value) as of January 1 of each year.
- > Certain assets are exempt from NWT, notably qualifying participations, providing that relevant conditions are met.
- > From 2017, the minimum Net Wealth Tax is €4,815, applicable to all SOPARFIs whose financial assets (participations, loans to affiliates, securities, cash) exceed 90% of their gross assets and €350,000.

### Dividends Received

Dividends are tax exempt subject to the following criteria:

- > The SOPARFI must own a minimum of 10% of the issued share capital of the underlying subsidiary (or an investment of at least €1.2 million).
- > The subsidiary, whether or not non-resident, must be subject to a similar tax regime.
- > Ownership of the interest in the subsidiary must have been held for a period of 12 months or the SOPARFI must have committed to hold the shares in the subsidiary for a 12-month period from the date the dividend has been received.

### Outgoing Dividends

- > Dividends paid to corporate shareholders established in an EU, a DTT, or an EEA country should not be withheld at source if the beneficiary of such dividends is subject to the above-mentioned conditions. In other cases, a 15% withholding tax should be imposed on distributions.

### Liquidation Proceeds

- > Liquidation proceeds received by a SOPARFI from a subsidiary are tax exempt in Luxembourg under certain conditions.
- > Liquidation proceeds paid by a SOPARFI to its shareholder are tax exempt.

### Interest

- > Interest received is fully taxable at the corporate tax rate.
- > Interest paid abroad is tax exempt subject to EU Interest and Royalty directive (Directive 2003/49/EC).
- > The debt equity-ratio may not exceed 85:15.

### Capital Gain Exemption

- > To qualify for capital gain exemption, the SOPARFI investment in the subsidiary must be 10% (or €6 million) and seller must have held the corresponding shares for a period of 12 months.

### Royalties

- > A total of 80% of royalty and other net income (e.g., capital gains) derived from intellectual property rights (copyrights on software, patents, trademarks, designs, models and even internet domain names) is tax exempt.
- > The balance (20%) is taxable at the corporate rate, giving an effective tax rate of approximately 5% depending on the municipality of location.
- > Royalties paid abroad are tax exempt subject to EU Interest and Royalty directive (Directive 2003/49/EC).
- > Attention! This regime has been repealed since 1 July 2016 and as such abolished.
- > Future: Luxembourg IP Box 2.0, in process of implementation.

### VAT

- > VAT applies to the transfer and exploitation of intellectual property rights by a SOPARFI.
- > Current standard VAT rate: 17%.

### Double Tax Treaties

The SOPARFI is eligible to use Luxembourg's extensive network of double tax treaties.

### Liquidation – Depreciation – Recapture Rule

- > The exemption of incomes coming from subsidiaries (dividends, capital gains, etc.) is limited to the net incomes. Expenses of previous and current financial years, directly in relation with gross incomes are not deductible.
- > Depreciation of participations is allowed.
- > Liquidation losses are fully deductible.
- > From 2017 losses can be carried forward indefinitely (limited to 17 years).

### PRIVATE WEALTH MANAGEMENT COMPANY

#### *(Société de Gestion de Patrimoine Familial – SPF)*

The Private Wealth Management Company (SPF) is aimed at private investors and individuals. It is fully tax exempt on income received from shares, bonds, notes, mutual funds, deposit accounts and any financial instrument.

### Eligible Investors

An SPF is only open to investors managing their private wealth, in particular:

- > An individual or group of closely related individuals managing his / their private wealth
- > Private wealth entities acting for one or more individuals (which include trusts, foundations, anstalts, stichtings, etc.)
- > Intermediaries acting for shareholders in either of the above two categories

### Legal Forms of an SPF

An SPF can be established under legal form of (among others):

- > SARL: requires capital of €12,000, a minimum of one associate and one manager
- > SA: requires capital of €30,000 (of which at least 25% must be paid in), a minimum of one shareholder and one director, as well as a statutory auditor
- > SCA: requires capital of €30,000 (of which at least 25% must be paid in), a minimum of two shareholders, a general partner (actionnaire comantité) and a limited partner (actionnaire comanditaire), and one manager, as well as three statutory auditors
- > COOPSA: a co-operative company that has adopted the form of a public limited liability company allowing variable capital, requiring a minimum of one shareholder and one director

### Permitted Activities of an SPF

An SPF is strictly limited to the acquisition, holding, management and disposal of financial assets and can passively invest in any type of security. It cannot undertake commercial trading activities or be involved in the management of any other company and cannot hold real estate, intellectual property or grant interest-bearing loans.

Financial assets an SPF can hold include:

- > Shares or equivalent in public or private companies, including SOPARFIs
- > Bonds
- > Warrants
- > Derivatives, put/call options on securities, indexes and currencies
- > Interests in securitisation and investment funds
- > Deposit accounts

### Taxation of an SPF

#### At the Level of the SPF

- > Exempt from corporate income tax, municipal business tax and net wealth tax
- > A subscription tax of 0.25% is applicable on the paid-in share capital, including share premium with a minimum of €100 and maximum of €125,000 a year Subscription tax also applies to that part of the debt (if any) that exceeds an equity-to-debt ratio of 1 to 8
- > Not entitled to benefit from Luxembourg's double tax treaties or the EU Directives
- > Any dividend and interest payments on financial assets received by an SPF might be subject to withholding tax, if any, in the State of source in accordance with the domestic tax rules of that State

#### At the Level of the Shareholders

- > No withholding tax on the distribution of profits from an SPF to its shareholders and on liquidation proceeds
- > Withholding tax levied at source on the interest paid on the advances and debt of the SPF to individuals at a rate of 20% for Luxembourg residents, 0% for EU residents and 0% in all other cases

Our local Luxembourg office can provide all services required for the establishment and ongoing representation and administration of SOPARFIs and SPFs.

- ▶ PEOPLE LED
- ▶ TECH ENABLED
- ▶ GLOBAL COVERAGE
- ▶ TAILORED SERVICE

- ▶ 1,000 STAFF
- ▶ 25 JURISDICTIONS
- ▶ 38,000 ENTITIES
- ▶ \$140BN AUA

- ▶ FUNDS
- ▶ PRIVATE CLIENTS
- ▶ CORPORATE CLIENTS
- ▶ MARITIME

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