

The Luxembourg "soparfi"

The Luxembourg Holding & Finance Company

Introduction

The "soparfi" (*société de participations financières*) is not a special legal company form but an ordinary, unregulated entity governed by the Luxembourg Law on commercial companies.

The *soparfi* is a fully taxable company and can benefit from the tax privileges provided by European Directives (e.g. Parent-Daughter-Directive for the tax-exemption on dividends and capital gains). In addition, it can also get treaty access to the extensive double-tax-treaty (DTA's) network of the Grand-Duchy of Luxembourg. There are currently in excess of 70 DTA's in place between Luxembourg and other countries.

Main Features

The *soparfi* is the vehicle of choice for establishing holding companies for both listed corporates or family owned businesses, as well as Special Purpose Vehicles (SPV's) to hold private equity or real estate Investments. Often the benefits of a holding company or SPV are enhanced by financing activities via or through the *soparfi*. The main purpose is typically to optimize taxation on any income related to a subsidiary it holds.

A *soparfi* has certain specifics and follows a separate fiscal exemption regime (the so-called "participation exemption") by limiting its activity to holding and structuring investments.

The Participation Exemption

The participation exemption regime is what typically defines the *soparfi*, namely the tax exemption at the level of the *soparfi* on dividends, liquidation proceeds, interest and capital gains received or derived from a subsidiary as well as an exemption on net wealth tax.

The participation exemption on dividends and capital gains is subject to fulfilling specific requirements under Luxembourg law which are:

- / The *soparfi* holds a "qualified participation", i.e. either (i) a participation of at least 10% of the share capital of the subsidiary or (ii) has acquired the participation at a price of equivalent to, or more than EUR 1.2 million.
- / The subsidiary itself qualifies as an eligible entity under the participation exemption, i.e. the subsidiary needs to be a (i) corporation located in a EU-Member State (or an acknowledged

non-EU country) and (ii) the country of residence is taxable at a corporate income tax rate equivalent to the Luxembourg tax rate.

- / The *soparfi* must respect a minimum holding period of one year, which means that at the time of the tax initiation (e.g. receipt of dividends, of capital gains on sale of subsidiary, etc.) the *soparfi* should have held (or as of then commits itself to hold) the participation for an uninterrupted period of at least twelve (12) months.

In principal, the participation exemption on 0.5% net wealth tax follows the same rules as laid out above, the sole difference being however, that there is no minimum holding period applicable.

Financing: Thin Capitalization

Thin capitalization rules (so-called "debt-equity-ratio") for the financing of participations by **affiliated** parties of the *soparfi* are not codified under Luxembourg law, yet the Luxembourg tax authorities commonly practice the application of such rules.

Advice from a professional advisor and confirmation from the Luxembourg tax authorities ("tax rulings") should be sought for upfront.

Corporate Governance

1. Legal Form

The *soparfi* is mandatorily a corporation, i.e. a company with its own legal personality and capacity, which means that it needs to have a capital divided into/limited by shares ('*société à capital*') as opposed to the ordinary partnership.

The *soparfi* may therefore take the legal form of a public or joint stock company (*'société anonyme – S.A.'*), a private limited liability company (*'société à responsabilité limitée – S.à.r.l.'*) or of a partnership limited by shares (*'société en commandite par actions – SCA'*).

2. Corporate Object

The corporate purpose of a *soparfi* is limited to the holding and financing of participations. However, despite the label of “holding” company, a *soparfi* can also engage in any commercial activity which is (i) related to the holding activity, or (ii) not limited to other types of special purpose vehicles requiring special business licenses subject to Luxembourg trade or financial regulation.

3. Accounting and General Taxation

A *soparfi* is, as in all ordinary commercial companies, obliged to maintain a proper and accurate bookkeeping and, within a legal deadline after the close of the business year, to establish annual financial statements and to file tax returns.

The *soparfi* is subject to corporate income tax (*'impôt sur le revenu des collectivités – IRC'*), municipal business tax (*'impôt commercial communal – ICC'*) and net wealth tax (*'impôt sur la fortune – ISF'*), the overall combined effective tax rate for Luxembourg-City standing as of January 1, 2017 at 27.08% and which is to be progressively reduced to overall 26.01% by 2018.

In addition, next to its holding purpose, the *soparfi* related activities or services (so-called “mixed holding company”) can be implemented on a case-by-case basis subject to VAT compliance.

4. Special Reporting Requirements

Every *soparfi* which is either the ultimate parent entity (“*UPE*”) of a multinational enterprise group (“*MNE Group*”) or the appointed substitute of such non-Luxembourg UPE has to file as of January 2017 a so-called “*country-by-country (CbC) report*” to the Luxembourg tax authorities.

The CbC-reporting is the implementation into national law of OECD and EU actions in the scope of the BEPS Project (*Base Erosion and Profit Shifting*).

A *MNE Group* in the meaning of the law is given when the following conditions are met:

- / Requirement of the UPE to prepare consolidated financial statements, either mandatorily by virtue of local law or which would be required to do so if equity interests in any of its enterprises were listed;
- / Consolidated annual group turnover of EUR 750 million or more.

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