



THE LUXEMBOURG HOLDING AND FINANCING COMPANY

THE SOPARFI (SOCIÉTÉ DE PARTICIPATIONS FINANCIÈRES)

BE UNSTOPPABLE

BUREN

LEGAL | TAX

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1. Introduction

- A *société de participations financières* (SOPARFI) is a normally taxable Luxembourg company which may benefit from Luxembourg's tax treaty network (see Annex 1) and the tax related EU Directives.
- The term SOPARFI is generally used to refer to holding and financing companies; i.e., companies used to hold participations and/or to act as a financing vehicle.
- Dividends and capital gains derived by a Luxembourg SOPARFI from its participations are exempt from Luxembourg income taxes provided the conditions for the participation exemption are fulfilled (see below). Further, the repatriation of profits derived by the SOPARFI can be structured in a tax efficient manner.
- A SOPARFI may also be involved in intra-group financing (borrowing and on-lending). With proper structuring, the SOPARFI would be taxed on a (nominal) interest margin only (i.e., the differential between the interest income and the interest expense) with respect to its financing activity.
- A SOPARFI can be used by any type of investor and can hold any type of asset (participations, real estate, IP, etc.).
- In the case where a SOPARFI holds qualifying IP assets, it may benefit from an 80% exemption on royalties and capital gains under the Luxembourg IP tax regime.

2. Regulatory aspects

As regards regulation, a SOPARFI:

- does not require preliminary or formal authorization from a regulatory authority in order to carry out its holding and intra-group financing activities;
- is not subject to supervision from a Luxembourg regulatory authority;
- is subject to Anti-money laundering legislation;
- can eventually be converted into an investment vehicle like a securitisation company (SV), investment company in risk capital (SICAR),

specialised investment fund (SIF), EU passport or non-EU passport undertaking for collective investments (UCI).

3. Legal framework

- SOPARFIs are considered as commercial companies subject to the legal provisions of the Law of 10 August 1915 on commercial companies, as amended.
- SOPARFIs are not subject to specific legal provisions.
- A SOPARFI can take the legal form of:
 - a public limited company (S.A. – *société anonyme*),
 - a limited liability company (S.à r.l. – *société à responsabilité limitée*),
 - a partnership limited by shares (S.C.A. – *société en commandite par actions*),
 - a cooperative company (S.C. – *société cooperative*), or
 - a European company (*société européenne*).
- As per Luxembourg company law, the SOPARFI's central administration must be located in Luxembourg in order to be considered as a Luxembourg company.

4. Incorporation process

The process to incorporate a SOPARFI involves the founding shareholder(s), the Luxembourg lawyers (Buren Avocats S.à r.l.), a domiciliation company (in cases where the client does not have a footprint in Luxembourg), a Luxembourg bank and a Luxembourg notary.

The process takes place through the following steps:

1. The client selects the SOPARFI's name. Buren checks the availability of the name with the Luxembourg Trade and Companies Register (the "RCS").
2. The client selects a domiciliation company (Buren can provide some alternatives, if needed).
3. The domiciliation company, in coordination with the client, opens a bank account with a bank in Luxembourg.
4. Buren drafts the incorporation deed which contains the articles of incorporation of the SOPARFI (as per client's specifications).
5. Buren drafts power(s) of attorney to be issued by the founding shareholder(s) of the SOPARFI to authorise any lawyer of Buren to represent the



- founding shareholder(s) at the incorporation meeting to be held before a Luxembourg notary.
6. Buren drafts declaration(s) of beneficial ownership.
 7. Collection of KYC information.
 8. The domiciliation company drafts a domiciliation agreement, a management and indemnification agreement, as appropriate.
 9. The founding shareholder(s) transfer the incorporation funds to the SOPARFI's (newly opened) bank account.
 10. The Luxembourg bank issues a "blocking" certificate (*certificat de blocage*) evidencing the availability of the incorporation funds on the SOPARFI's bank account.
 11. Holding of the incorporation meeting before a Luxembourg notary by the founding shareholder(s) (or its/their representative(s)).
 12. The notary issues an "unblocking" certificate indicating that the SOPARFI has come into existence and that the funds are now at the disposal of the company.
 13. The domiciliation company and the SOPARFI sign a domiciliation agreement, together with the management and indemnification agreement, as appropriate.

14. The notary files the Incorporation Deed with the RCS and registers the Company with the RCS.
15. Publication of the Incorporation Deed in the *Journal Officiel du Grand-Duché de Luxembourg, Recueil Electronique des Sociétés et Associations* (the Luxembourg Official Gazette).

5. Tax aspects and examples

- The incorporation of a SOPARFI, as well as any amendment to its articles of incorporation, is subject to a registration tax at the fixed amount of EUR 75.
- A SOPARFI is subject to the Luxembourg corporate income tax ("CIT"), the municipal business tax ("MBT") as well as the contribution to the unemployment fund which result in an aggregate income tax rate of 24.94% (applicable as from the fiscal year 2019 for companies established in Luxembourg City).
- A SOPARFI is also subject to the net wealth tax ("NWT") at the rate of 0.5% on the net asset value of the company (in general terms, assets minus liabilities) as of 1st January of each year; net wealth in excess of EUR 500 million is subject to the NWT at a rate of 0.05%. Note that

participations qualifying for the participation exemption are also exempt from NWT; on the other hand, liabilities financing participations exempt from NWT are not deductible from the NWT basis.

- A minimum NWT of EUR 4,815 is charged every year to Luxembourg SOPARFIs if (i) its balance sheet is comprised of at least 90% of financial fixed assets (such as shares, intercompany receivables, securities and cash) and (ii) the total assets in its balance sheet amount to at least EUR 350,000; otherwise, the minimum NWT will depend on the balance sheet total and will vary between EUR 535 and EUR 32,100.
- As a normally taxable company, a SOPARFI is entitled to:
 - the benefits of Luxembourg's tax treaty network which comprises 83 tax treaties (as of January 2019). See Luxembourg's current tax treaty network in **Annex 1**.
 - the tax related EU Directives such as the Parent – Subsidiary Directive and the Interest and Royalties Directive, which ensure the avoidance of double taxation on dividend, interest and royalty payments within the European Union.
- Dividends, liquidation proceeds and capital gains derived by a SOPARFI from its shareholdings may, under certain conditions (see below), benefit from the Luxembourg participation exemption, which implies a 100% exemption from Luxembourg income taxes.



- In order to benefit from the participation exemption, the SOPARFI must:
 1. hold or commit to hold at least 10% of the shares (or, alternatively, a participation with an acquisition price of at least EUR 1.2 million, for the exemption of dividends, and EUR 6 million, for the exemption of capital gains) in
 2. a qualifying subsidiary (in general terms, a taxable Luxembourg company, a company covered by the EU Parent – Subsidiary Directive or a company subject to an income tax comparable to the Luxembourg one – see below)
 3. during a period of at least 12 consecutive months.

For purposes of the participation exemption, a foreign income tax is considered as comparable if it is charged at a rate of at least 8.5% on a tax basis similar to the Luxembourg one.

- Dividends distributed by a SOPARFI are in principle subject to a 15% withholding tax (“WHT”). However, the WHT may be reduced under the provisions of an applicable tax treaty or exempted under a domestic WHT exemption (for example, under the Luxembourg implementation of the EU Parent – Subsidiary Directive). Note that the WHT may also be avoided with proper structuring.
- A non-resident shareholder of a SOPARFI is not subject to Luxembourg capital gains taxation upon the sale of its shares in the SOPARFI, unless:
 - the non-resident shareholder holds an important participation (i.e., more than 10% of the share capital of the SOPARFI), and
 - the sale takes place within six months from the acquisition of the participation.

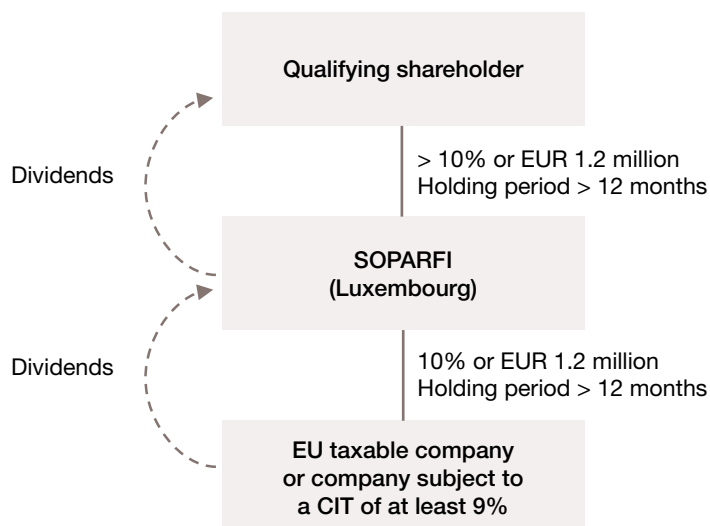
The above means that if the non-resident shareholder has held an important participation in a SOPARFI during more than 6 months, capital gains derived from the sale of that participation would not be subject to Luxembourg taxation. Further, in cases where this capital gains taxation is applicable, the tax treaties concluded by Luxembourg normally preclude it from imposing this capital gains taxation.

- The distribution of (advance) liquidation proceeds is not subject to Luxembourg WHT.

Example 1 | Dividend Exemption

In this case:

- Dividend income received by the SOPARFI would be tax exempt from Luxembourg CIT and MBT.
- No WHT would apply on dividends paid by the SOPARFI to its shareholder.



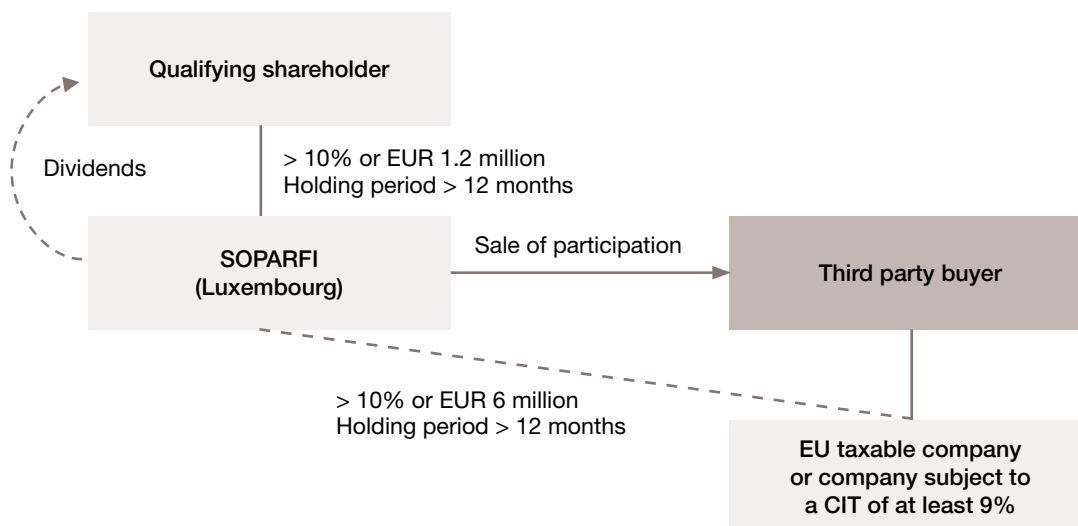
Points of attention:

- The SOPARFI should have proper substance in Luxembourg. See recommended best practices as regards substance in **Annex 2**.

Example 2 | Capital gain / dividend exemption

In this case:

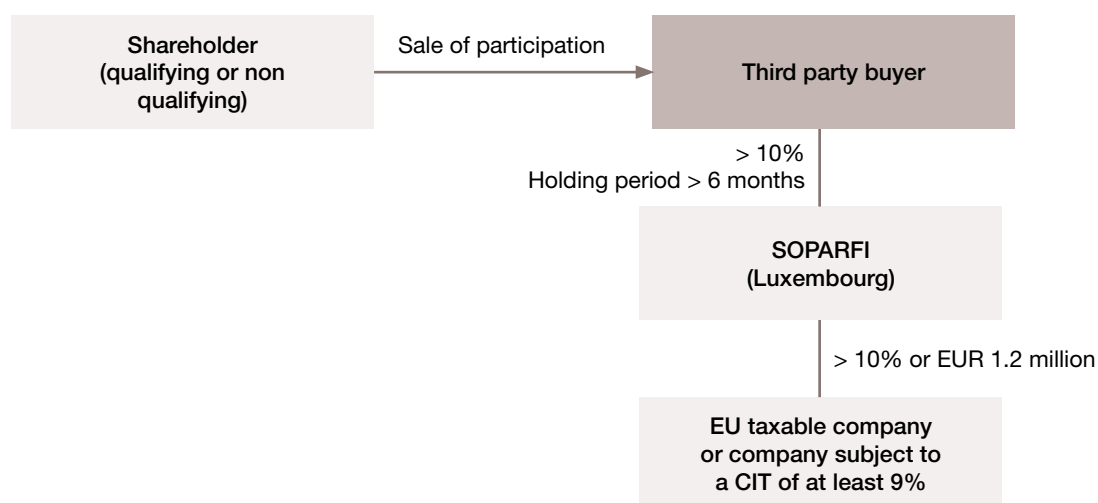
- Capital gains derived by the SOPARFI from the sale of its subsidiary would be tax exempt in Luxembourg.
- No WHT would apply on dividends paid by the SOPARFI to its shareholder.



Example 3 | Non-resident Capital gains taxation

In this case:

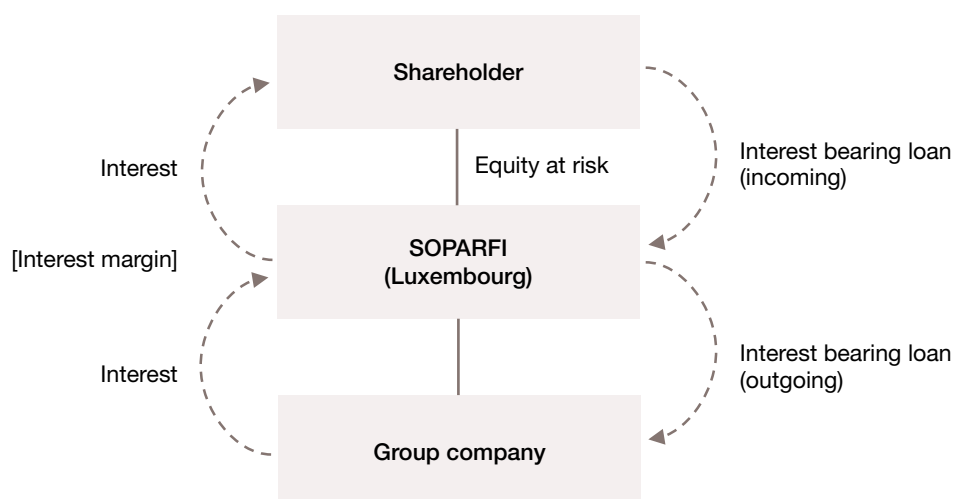
- No shareholder capital gains taxation in Luxembourg, provided that the shareholder has held the shares in the SOPARFI during at least 6 months or is entitled to the benefits of a tax treaty that precludes Luxembourg from imposing this taxation.



Example 4 | Taxation of intra-group financing activities

In this case:

- Interest income is fully taxable in the hands of the SOPARFI; on the other hand, the interest expense is tax deductible.
- The SOPARFI would be taxed on an interest margin (i.e., the differential between the interest income and the interest expense), which must be at arm's length and should be supported by a transfer pricing analysis. With proper structuring, the interest margin may be nominal.
- At arm's length interest payments effected by the SOPARFI are not subject to Luxembourg WHT.



Points of attention:

- The SOPARFI must have equity at risk in an amount sufficient to cover the risks incurred in its financing activity. The amount of equity at risk is also to be determined through a transfer pricing study.
- The SOPARFI must have proper substance in Luxembourg; specific conditions are provided by the LTA in an administrative circular.
- The Luxembourg implementation of the EU Anti Tax Avoidance Directive includes an interest limitation rule; however, the interest limitation rule does not affect the deductibility of interest expense in this case.



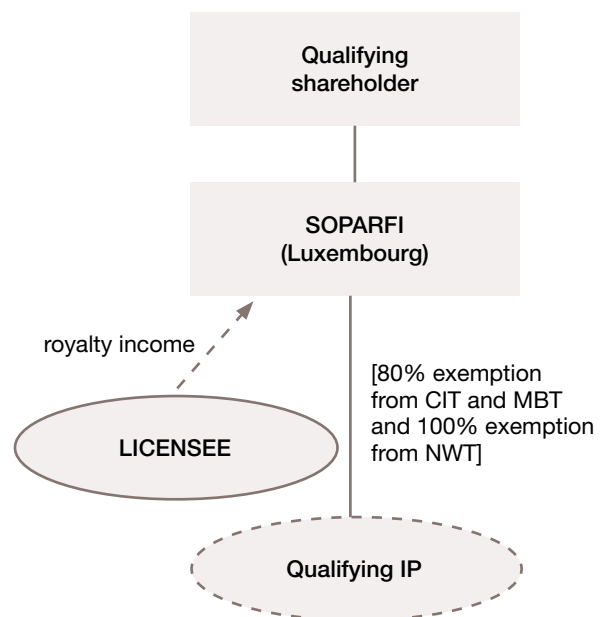
Example 5 | IP tax regime

In this case:

- Royalty income and capital gains derived from qualifying IP would benefit from an 80% exemption from CIT and MBT.
- Qualifying IP comprises, notably:
 - Patents, and
 - Copyrighted software.
- IP assets that qualify for the IP tax regime are also exempt from NWT.
- Foreign WHT on royalty income may be credited against the Luxembourg CIT but not against the MBT resulting in an effective tax rate of approx. 5%.

Points of attention:

- The Luxembourg IP tax regime is in line with the 'Modified nexus approach' (as defined in the BEPS Action 5); therefore income eligible for the tax exemption is determined on the basis of the proportion of qualifying expenses (R&D) and total expenses.



Annex 1 | Luxembourg tax treaty network

1	Andorra	43	Malta
2	Armenia	44	Mauritius
3	Austria	45	Mexico
4	Azerbaijan	46	Moldova
5	Bahrain	47	Monaco
6	Barbados	48	Mongolia
7	Belgium	49	Morocco
8	Brazil	50	Netherlands
9	Brunei	51	Norway
10	Bulgaria	52	Panama
11	Canada	53	Poland
12	China	54	Portugal
13	Croatia	55	Qatar
14	Cyprus	56	Romania
15	Czech Republic	57	Russian Federation
16	Denmark	58	San Marino
17	Estonia	59	Saudi Arabia
18	Finland	60	Senegal
19	France	61	Serbia, Republic of
20	Georgia	62	Seychelles
21	Germany	63	Singapore
22	Greece	64	Slovak Republic
23	Guernsey	65	Slovenia
24	Hong Kong SAR	66	South Africa
25	Hungary	67	Spain
26	Iceland	68	Sri Lanka
27	India	69	Sweden
28	Indonesia	70	Switzerland
29	Ireland	71	Taiwan
30	Isle of Man	72	Tajikistan
31	Israel	73	Thailand
32	Italy	74	Trinidad and Tobago
33	Japan	75	Tunisia
34	Jersey	76	Turkey
35	Kazakhstan	77	Ukraine
36	Korea (South)	78	United Arab Emirates
37	Laos	79	United Kingdom
38	Latvia	80	United States of America
39	Liechtenstein	81	Uruguay
40	Lithuania	82	Uzbekistan
41	Macedonia	83	Vientam
42	Malaysia		



Annex 2 | Substance best practices

Ideally, a SOPARFI should have such level of substance in Luxembourg, which makes it clear that the company is actually / effectively managed in Luxembourg. The substance assessment should be made on a case-by-case basis in light of the jurisdictions where the SOPARFI holds assets or carries-out activities and the jurisdiction where the non-Luxembourg managers and shareholders of the Luxembourg company are resident.

Below you may see a non-exhaustive set of recommendations:

- A majority of the members of the Board of Managers/Directors should be resident in Luxembourg;
- The meetings of the Board of Managers/Directors should be held physically in Luxembourg with the board members being present;
- Important decisions and execution of relevant agreements involving a Luxembourg company should take place in Luxembourg (i.e. purchase and sale agreements, loan agreements, etc.);
- Detailed minutes specifying the location of the meeting(s) should be drafted and kept in the registered office of the company. These minutes should document the discussions among the board members and the benefits for the company of the decisions resolved;
- The shareholders meetings (at least one per year) should be held in Luxembourg;
- The Luxembourg company should be adequately capitalized;
- The day-to-day management should be carried out in Luxembourg. The employees and/or board members of a SOPARFI should be the addressees of the letters, mails, reports, etc. sent to the SOPARFI;
- The SOPARFI should ensure that its financial statements demonstrate that it incurred and was responsible for the various costs that a fully functioning standalone entity would incur;
- The books and records of a SOPARFI should be kept in Luxembourg at its registered office and the company should operate through Luxembourg bank accounts;
- The SOPARFI must comply with all its tax filing obligations and generally with all Luxembourg company law, reporting and publication requirements;
- The company should ideally operate its activities from a standard fully equipped and furnished office (i.e. computer, telephone, fax, email, internet, etc.);
- When the workload justifies it, the company should ideally hire a (full time or part-time) employee. The job description should cover the functions necessary to operate the Luxembourg company as a standalone entity.

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