



HALSEY GROUP^{Srl}

**PROFESSIONAL SERVICES
FOR COMPANIES**



SOPARFI

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General features

The SOPARFI (société de participation financière – financial holding company) is the most used unregulated investment vehicle. The notion of SOPARFI is not a defined legal or tax concept but refers to a company the corporate purpose of which is to carry on holding and financial activities under the ordinary tax regime (the so-called "Participation Exemption).

A SOPARFI may be incorporated as a public limited company (S.A.), private limited company (S.à r.l.), simplified public limited company (S.A.S.) or partnership limited by shares (S.C.A.).

The recent modernisation of the Company Law has again increased the flexibility (contractual rather than institutional approach) and security of the rules governing Luxembourg companies.

Regulatory environment

Unless they fall within the scope of the AIFM Law (please see below), SOPARFIs are not subject to any supervisory authority.

Tax aspects

Income taxation

As Luxembourg tax residents, the SOPARFIs are fully-taxable entities subject to corporate income tax ("CIT"), municipal business tax ("MBT") and net worth tax ("NWT"). SOPARFIs further benefit from the wide Luxembourg double tax treaty network (81 as of September 2017).

Commercial profits realised by a Luxembourg company are in principle subject to CIT and MBT on profits at the current global aggregate rate of 27.08% (CIT: 20.33% - including the solidarity surtax - and MBT: 6.75%) if the company is located in the municipality of Luxembourg.

The CIT rate will be reduced to 18% as from 2018 leading to an aggregate rate of 26.01% (CIT: 19.26% - including the solidarity surtax - and MBT: 6.75%) if the company is located in the municipality of Luxembourg.

However, article 166 of the amended law dated 4 December 1967 on income tax ("ITL") provides for special rules for dividends, liquidations proceeds and capital gains realised by a SOPARFI (or by a Luxembourg permanent establishment of an EU company covered by article 2 of the EU parent-sub-sidiary directive or of a non-EU joint-stock company residing in a country with which Luxembourg has concluded a double tax treaty).

Under article 166 ITL, the dividends, liquidation proceeds and capital gains are exempt from tax in Luxembourg if all the following conditions are met:

- (I) at the date of realisation of the income, the SOPARFI holds, or commits itself to hold, for an uninterrupted period of 12 months a direct participation in the share capital of:
 - a Luxembourg resident fully-taxable entity, or



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- an EU company covered by article 2 of the EU parent-subsidiary directive (directive 2011/96/EU), or
 - a non-resident joint-stock company which is fully liable to a tax corresponding to Luxembourg CIT. Regarding this condition, the Luxembourg tax authorities generally apply a rule that the foreign effective tax rate must be at least 10.5% with the tax basis determined in a manner similar to that applied by Luxembourg, and
- (II) representing at least 10% of the capital of the subsidiary or having an acquisition price of at least EUR 1.2mio, in case of dividends and liquidation proceeds, or EUR 6mio, in case of capital gains.

If the conditions as mentioned above are not met (holding period and/or shareholding threshold), the SOPARFI may nevertheless benefit from a 50% exemption with respect to dividends received from entities of the types listed under (i) above.

However, article 166 ITL also contains anti-abuse measures the purpose of which is to prevent misuse of the parent-subsidiary directive and to deny the exemption in certain situations (i) deriving from the asymmetric tax treatment of the profit distribution or (ii) where an arrangement or a series of arrangements which, having been put into place for the main purpose, or one of the main purposes, of obtaining a tax advantage that defeats the object or purpose of the directive, are not genuine (an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality) having regard to all relevant facts and circumstances presenting fictive features.

Withholding tax exemption

Dividends paid by a SOPARFI will not be subject to a withholding tax if, at the time of the distribution, the parent company (a Luxembourg resident fully-taxable entity, or an EU company (or its Luxembourg permanent establishment) covered by article 2 of the EU parent-subsidiary directive, or a company (or its Luxembourg permanent establishment) residing in a country with which Luxembourg has concluded a double tax treaty and which is subject to a tax corresponding to Luxembourg CIT) holds, or commits itself to hold, for an uninterrupted period of 12 months, a participation in the SOPARFI of at least 10% of the share capital or having an acquisition price of at least EUR 1.2mio.

As for inbound flows, article 147 ITL also contains anti-abuse measures the purpose of which is to deny the exemption in certain situations presenting fictive features.

Net worth tax exemption

As a rule, Luxembourg levies an annual 0.5% NWT on the net worth referred to as the unitary value as determined as at 1st January of each year (the unitary value is calculated as the difference between assets generally estimated at their fair market value and liabilities vis-à-vis third parties).

Participations qualifying for the dividends and capital gains exemption described above will also be exempt from NWT (no requirement relating to a minimum holding period).

However, SOPARFIs are subject to a minimum NWT of EUR 4,815 for all fully-taxable resident entities holding whose fixed financial assets, receivables, transferable securities and cash at bank exceed 90% of their total gross assets and EUR 350,000.



Expenses related to exempt income

Further, the regime contains some rules intended to avoid the participation exemption to be used to generate both exempt income and deductible expenses.

If the acquisition of a participation is financed through an interest-bearing debt, such interest has an impact for the application of the participation exemption. Indeed, pursuant to article 166 (5) ITL, to the extent that received dividends are exempt, interests in direct economic relationship with these dividend incomes are not deductible (up to the related exempt income, the excess being deductible).

Similarly, if a participation is disposed of, the capital gain exemption does not apply to the extent of the algebraic sum of the related expenses (for example, interest exceeding the exempt dividend income) that have decreased the tax result of the current and preceding years (so-called "recapture rule").

Group financing activities

Luxembourg companies involved in intra-group financing activities are subject to a circular of the Tax administration (circular letter n°56/1 and 56bis/1), the purpose of which was to provide the country with standard practice in line with OECD guidelines.

This concerns entities principally engaged in intra-group financing transactions (not taking into account activities related to the holding of participations) such as granting loans or advances to associated companies and refinancing them through financial instruments (public issuances, private borrowings, bank loans).

This Circular requires a financing company to determine its remuneration on the basis of the OECD transfer pricing guidelines. The financing company needs to substantiate its remuneration on the basis of a transfer pricing analysis containing a functional analysis taking into account the functions performed, the assets used and the risks assumed in relation with the financing activities and an economic analysis of data on comparable transactions.

The Luxembourg companies involved in intra-group financing activities need to be appropriately equity financed to be in position to assume the risks involved (a case-by-case analysis will now have to be performed in order to assess the level of equity which is appropriate for the financing company).

Luxembourg companies involved in intra-group financing activities need also to satisfy to substance requirements: the majority of the members of the board, directors or managers having the power to engage the company must be Luxembourg residents or carry out a Luxembourg professional activity (at least 50% of their income from those activities are taxed in Luxembourg) and the financing company must have the appropriate resources to control the financing activities).

The companies engaged in intra-group financing activities may request advance pricing confirmations to be granted by the tax authorities.



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Accounting aspects

As any Luxembourg commercial companies, SOPARFIs must publish accounts on a yearly basis. The accounts need to be made available to shareholders within six months of the year-end. No semi-annual report is required by law.

SOPARFIs typically report under Luxembourg GAAP but it is also possible to produce accounts under IFRS and fair value option for some financial instruments and other categories of assets. Listed companies being undertakings whose securities are admitted to trading on an EU regulated market may use IFRS.

Companies in Luxembourg are required to prepare consolidated financial statements to the extent they (i) hold the majority of the shareholders' or members voting rights in another undertaking; or (ii) have the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and are at the same time a shareholder in or member of that undertaking; or (iii) are a shareholder in or member of an undertaking and, pursuant to an agreement with other shareholders in or members of that undertaking, control a majority of shareholders' or members' voting rights in that undertaking. SICARs (see below) are exempt from the obligation to prepare consolidated accounts imposed by the company law.

Luxembourg companies may derogate from this consolidation principle and be exempted from consolidation in the following circumstances:

- Small group exemption
- Upper level consolidation
- Temporary holding exemption

Annual accounts must be filed with the trade and company register within seven months after year-end and within one month of the approval of the annual accounts by the general meeting of shareholders.



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Services offers by Halsey Group

HALSEY has been established in Luxembourg for more than 20 years and has licenses from the "Commission de Surveillance du Secteur Financier" (CSSF), the Luxembourg Regulator, to provide domiciliation, fund administration and other corporate services. We provide a fast and reliable service to many private investors, leading institutions, major international corporations and private equity firms.

HALSEY offers its clients an extensive range of high quality services in connection with Luxembourg financial companies both at the time of incorporation and throughout the life of the company:

- Company formation
- Administrative and accounting
- Corporate secretarial
- Fund administration
- Company management
- Assistance in setting-up own offices & management of client staff

The objective of this fact sheet is to provide the reader with a general view of relevant aspects relating to the SOPARFI. No action shall be taken without prior consultation with Halsey Group, as this document alone cannot cover all aspects relating to the incorporation and administration of the SOPARFI. Finally, please note that this document is provided for information purposes only and should not be understood as legal or fiscal advice.