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A Comprehensive Look at SOPARFI Tax Advantages

A SOPARFI is a fully taxable commercial company, whose main function is restricted to the holding and financing of participations and other associated functions for companies in Luxembourg and those located abroad. It benefits from full treaty access and major advantages from EU Parent-Subsidiary directives. Like ordinary commercial companies, SOPARFIs are assessed with common Luxembourg tax regime. In some cases, SOPARFIs may benefit from a number of tax advantages.

The two most popular forms of a SOPARFI are the Limited Liability Company or SARL and the Public Liability Company or SA. Listed below are some of the main characteristics of a SA and SARL legal forms.

Company Incorporation

- The certificate of incorporation for both SAs and SARLs must take the form of a notarized deed.

Minimum Share Capital and Corporate Capital Requirements

SA

- The minimum share capital is set at EUR 30,000 with a minimum payment deposit of 25% upon subscription. The payment may be in cash or in kind.
- SAs must allocate at least 5% of its annual net profit to a statutory reserve until the amount reaches 10% of the share capital.

SARL

- The minimum share capital is set at EUR 12,000 to be fully paid upon subscription. The payment may be in cash or in kind.
- SARLs must allocate at least 5% of the annual net profit to a statutory reserve until the amount reaches 10% of the share capital.

Currency of Share Capital

- SAs and SARLs can have their share capital denominated in euros or in other freely traded currencies.

Number of Shareholders and Members

- **SA**

  There must be at least one shareholder.
- **SARL**

  There must be at least one shareholder with a maximum shareholder limit set at 100.

Shares/Units

- **SA**

  Registered shares or dematerialized units indicate the name of the share owners and the numbers of units held.

- **SARL**

  Registered units with different classes of shares possible.

Liabilities of Shareholders/Members

- SAs and SARLs have limited liability to their respective capital contributions.

Legal Form of Shareholders/Members

- Shareholder/s of SAs and SARLs must be a natural person or a legal entity.

Public Issue of Shares/ Units

- **SA**

  There is public issuance of shares or units.

- **SARL**

  There is no public issuance of shares, but public issuance of bonds is allowed.

Transferability of Shares/Units

- **SA**

  Allows for free transferability of shares unless there are pre-determined restrictions under the articles of incorporation.

- **SARL**

  The units are not transferable to non-members unless 50% of members that contributed to the corporate capital agree for transferability of shares during a general meeting.

Management

- **SA**

  Except for a SA with a single shareholder, all other SAs must have a minimum of three shareholders. There should be a board of directors or a management board with a supervisory board to oversee a SA. The information about SA director/s can be access through the Luxembourg Trade and Companies Registrar.

- **SARL**

  There should be at least one manager (or more) appointed to assume the responsibility for a limited or unlimited period. The information about SARL director/s can be access through the Luxembourg Trade and Companies Registrar.

Residency of Management

For both SAs and SARLs, there are no imposed restrictions or legal requirement in relation to a shareholder's/s country of residence or nationality.

Registered Office

For both SAs and SARLs, there should be a registered office addressed based in Luxembourg.

Supervision/Control

- **SA**

  There should be one or more statutory auditors to supervise a SA. An external auditor is needed if two out of the three factors exceed in value: (1) Balance sheet total of EUR 4.4 million, (2) Net turnover of EUR 8.8 million, and (3) total full-time employees are 50 or more.

- **SARL**

  There should be one or more internal or statutory auditors in case a SARL has more than 25 shareholders. An independent or external auditor should be appointed if certain factors relating to total balance sheet, net turnover, and number of full-time employees are exceeded.

Annual Accounts

- Both SAs and SARLs must disclose annual accounts and consolidated accounts.

SOPARFI Tax Advantages

As a fully taxable commercial company, a SOPARFI is subject to all common tax regulations enforced in Luxembourg. Under the conditions that certain requirements are met, certain types of income generated by a SOPARFI may enjoy Luxembourg Participation Exemption Regime. Additionally, SOPARFIs can take advantage from lower withholding tax rates and double tax treaties agreed upon by Luxembourg and other EU and non-EU member states.

Income Tax (IT)

As of 2021, minimum corporate tax regime was totally abolished and replaced by minimum wealth tax. A SOPARFI will be assessed of a maximum aggregate income tax rate at 24.94%.

The CIT rate is set at 17% for income over EUR 200,000. For corporate income below this amount, the applicable CIT rates are as follows:

- 15% for income below EUR 175,000, and
- EUR 26,250 plus 31% for income above EUR 175,000 and below EUR 200,001
- 7% solidarity surcharge
- Municipal Business Tax will be dependent on where a statutory seat is located. Municipal Business Tax varies between 6.75% and 10.5%. For all companies based in Luxembourg City, the rate is at 6.75%

Net Wealth Tax

Following the abolishment of the minimum corporate income tax in 2021, net wealth tax was introduced in its place. Net wealth taxation is also applicable to securitisation vehicles and SICARs, which otherwise are exempt from net wealth tax.

A minimum net wealth tax of EUR 4,815 applies to legal entities with financial assets, receivables on related entities, transferable securities, and cash at bank more than 90% of their total gross assets or an equivalent of EUR 350,000.

To all companies subject to net wealth tax, the minimum net wealth tax range is between EUR 535 and EUR 32,100, with the exact amount based on a progressive tax scale and from the company's balance sheet.

Withholding Tax Dividends

Dividends distributed by a Luxembourg company are assessed of withholding tax at a rate of 15%, except for cases of exemption on EU Patient-Subsidiary Directive and reduction or exemption based on double tax treaties. Expenses that are directly related to exempt dividends are tax deductible provided they exceed exempt income of a given year.

Debt/Equity Ratio

By rule, 85:15 ratio is accepted by the Luxembourg tax agencies. At this limit, withholding tax is not applicable on any interest payments while paid or accrued interests are tax deductible.

An equity/debt ratio of 1:99 capped ay EUR 2 million equity is mandated to partake in intra-group financing activities like back-to-back loans.

Double Tax Treaties

As SOPARFI are fully taxable local commercial companies, they may take advantage of an extensive network of double tax treaties.

Royalties

On 1 July 2017, the Luxembourg IP regime which provides 80% exemption on income or certain IP rights was repealed, and from 1 January 2017 for CIT/MBT/ in terms of net wealth tax.

On the other hand, grandfathering is introduced for eligible IP rights that were introduced or obtained before 1 July 2016. These IP rights still continue to take advantage from the current IP regime until 30 June 2021.

Participation Exemption Regime

Provided certain criteria are met, the Luxembourg Participation Exemption Regime is permitted for instances listed below:

- Dividends received by SOPARFIs are exempt from CIT and MBT.
- Capital gains earned by a SOPARFI on the sale of shares or units are exempt from CIT and MBT.
- Dividends that are remitted by a SOPARFI are not assessed with withholding tax.
- Qualified participations are not exempt from net wealth tax

To qualify for the exemptions listed above, the following criteria must be satisfied:

- A SOPARFI must hold at least 10% of issued share capital of an underlying subsidiary or an investment of at least EUR 1.2 million of received dividends or EUR 5 million for actual capital gains.
- The subsidiary must be a fully taxable Luxembourg company, an entity covered by the EU Parent-Subsidiary Directive, or a non-resident company subject to similar tax regime in his or her country.
- Ownership of the interest in the subsidiary must be held for at least 12 months.

For further information on how to set up a SOPARFI and which legal form will work best to your advantage, feel free to contact us today. Our Damalion team of experts will be more than happy to discuss any information you need in setting up a company in Luxembourg.

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