SOPARFI

Soparfi Holding Companies

A "Soparfi" is a fully taxable Luxembourg resident company limited by shares. As such, it benefits from double tax treaties concluded by Luxembourg.

A Soparfi can be incorporated under the form of:

– a public limited company (société anonyme),

– a private limited liability company (société à responsabilité limitée) – or a partnership limited by shares (société en commandite par actions).

The aim of a Soparfi consists in general in the taking of financial participations in resident or foreign companies and in the management of these participations. It may also carry out commercial activities, provided the required authorizations are obtained.

Although the principal tax aspects applicable to Luxembourg companies limited by shares are summarized hereunder, each specific situation has to be analysed with one of our specialists.

Capital duty

As from 1 January 2009, capital contribution duty has been abolished. A fixed registration fee of EUR 75 is levied at the incorporation of companies. This fee is also levied each time the articles of association are amended.

Taxation of revenues

Corporate income tax (CIT): 21,00%
Contribution to the employment fund: 1,47%
Municipal Business tax (MBT)* : 6,75%
Total 29,22%

* for Luxembourg city

Soparfi companies are subject to a minimum corporate income tax (hereafter "MCIT").

The MCIT is an advance payment on the corporate income tax due in future years. It is however not refundable.

The MCIT amounts to EUR 3.210 (including the contribution to the employment fund) for companies whose financial fixed assets, loans to affiliated undertakings, transferable securities and cash deposits exceed 90 % of the total assets of the company. Nevertheless, Companies exceeding the 90% threshold with a total balance sheet under EUR 350,000.00 should be liable to a MCIT amounting to EUR 535.00 as from FY 2015. Participations held in tax transparent entities are considered as fixed financial assets for the purpose of computing the 90 % threshold. The MCIT due by the other corporations depends on the total balance sheet of the company:

Total balance sheet	MCIT	MCIT*
up tp EUR 350.000	500	535
EUR 350.001 – EUR 2.000.000	1,500	1,605
EUR 2.000.001 – EUR 10.000.000	5,000	5,350
EUR 10.000.001 – EUR 15.000.000	10,000	10,700
EUR 15.000.001 – EUR 20.000.000	15,000	16,050
above EUR 20.000.000	20,000	21,400

*including the contribution to the employment fund

For the purpose of computing the total balance sheet of a company, the net book value of assets that produce revenues that will be exclusively taxed in another country by virtue of a double tax treaty will not be taken into consideration. This will be typically the case for real estate owned by a company in a country that has concluded a tax treaty with Luxembourg. As a consequence, a company, which exclusively owns real estate in a treaty country, will fall within the lower brackets or will be subject to MCIT for an amount of EUR 3.210.

Non-resident corporations with a permanent establishment in Luxembourg or owning Luxembourg real estate will not be subject to the MCIT.

For companies benefiting from a fiscal unity, only the parent company should be liable to the CIT and MBT for the all group. Nevertheless, in case of the group is in a tax loss position or the total CIT due is below the total amount of MCIT of the group, the parent company will be liable to the MCIT for itself and for the other entities part of the fiscal unity without exceeding a MCIT of EUR 21.400 (including the contribution to the employment fund).

Please also note that the parent company will be liable of the greater amount between the CIT due for the year and the MCIT for the group.

Net wealth tax

Companies are subject to an annual tax of 0,5% calculated on the net wealth of the company. Participations benefiting from the participation exemption may be eliminated from the tax basis of the net wealth tax. The company may reduce net wealth tax by the creation of a book reserve. The maximum reduction of net wealth tax amounts to one fifth of the book reserve under the condition that this reserve remains in the annual accounts during at least five years. The reduction of the net wealth tax may not exceed the amount of the corporate income tax due for the year. In addition, the reduction will not be granted for the amount of the MCIT.

Participation exemption

Dividends received from a qualified participation are tax exempt if the Soparfi holds or undertakes to hold the said participation during an uninterrupted period of at least 12 months, and if, during that period, the participation rate never passes below 10% of the share capital of the participation, or the acquisition cost below EUR 1.200.000.

Expenses related to tax exempt dividends (for example interest on a loan used to finance the purchase of the participation) are only tax deductible if they exceed the exempt dividend income for a given year.

Capital gains realized on the sale of a qualified participation are tax exempt if, at the day of sale, the seller holds or undertakes to hold the said participation during an uninterrupted period of at least 12 months and if, during that period, the

participation rate never passes below 10% of the share capital of the participation, or the acquisition cost below € 6.000.000.

The exempt amount of the capital gains is reduced by the sum of the expenses related to the participation which has been tax deductible over the year of disposal and over the previous years.

Qualified participations are fully taxable resident companies limited by shares, non-resident companies limited by shares taxed at a minimum tax rate of 10.5% whose taxable basis is computed on a similar way than the Luxembourg taxable basis and companies of an EU member state mentioned in the appendix to article 2 of the EEC Directive 90/435 of 23rd July 1990.

Dividends may also be exempt under the provisions of some double tax treaties.

On 5 August 2015, the Luxembourg government filed a draft bill in order to include the latest amendments of the European Parent-Subsidiary directive with respect to anti-avoidance measures and anti-hybrid provisions into the Luxembourg income tax law.

Indeed, the exemption of dividends described hereabove will no longer apply for dividends received from a company of another member-state if that exemption is the result of an arrangement or a series of arrangements, which have been put in place for the main purpose or for one of the main purposes of obtaining the benefits of that exemption. An arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put in place for valid commercial reasons, which reflect economic reality.

It is worth nothing that Luxembourg has already, since many years, a general anti-abuse clause in its tax laws, which enables the tax authorities to requalify a transaction according to its economic reality whatever the legal form adopted (a kind of substance over form).

In addition, a dividend from another member state will no longer be exempt if it has been tax deductible in the other member state.

Withholding tax

Dividends paid by a fully taxable Luxembourg company limited by shares are subject to a withholding tax of 15%. The withholding tax may be reduced by double tax treaties. Dividends paid to:

- a Luxembourg fully tax liable capital company;
- a parent company resident in an EU member state mentioned in the appendix to article 2 of the EEC Directive 90/435 of 23rd July 1990;
- the government or a municipality;
- a permanent establishment of one of the above mentioned companies;
- a non-resident capital company subject to a tax that corresponds to the Luxembourg corporate income tax and resident in a country with which Luxembourg has concluded a double tax treaty ;
- a capital company resident in the Swiss Confederation liable to the Swiss corporate income tax without possibility of exemption;
- a capital company or a cooperative resident in a member state of the European Economic Area subject to a tax that corresponds to the Luxembourg corporate income tax;
- a permanent establishment of a company resident in the European Economic Area other than a EU member state

are exempt from withholding tax provided that the parent company holds or undertakes to hold, during a period of at least 12 months, a participation in the Luxembourg company of at least 10% of the share capital or of an acquisition cost amounting to at least € 1.2 million.

Liquidation proceeds are not subject to withholding tax.

Luxembourg does not levy any withholding tax on interest payments (except interest paid to private persons, who are within the European Savings Directive and if the latter is applicable to the interest payment).

In addition, Luxembourg has also abolished in 2004 the withholding tax on royalty payments.

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