

Main features of Luxembourg soparfi taxation

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Contents

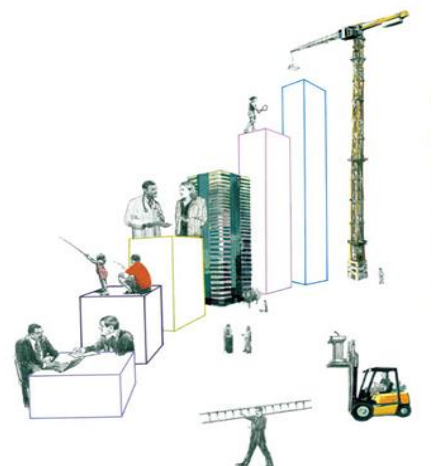
- 1 Corporate income tax rate
- 2 Double taxation relief for dividends
- 3 Double taxation relief for capital gains on shares
- 4 Net worth tax
- 5 Deferral and rollover of capital gains
- 6 Tax consolidation
- 7 Tax neutral reorganisation
- 8 Other tax advantages

Corporate income tax rate

The 2013 maximum overall rate for corporate income tax (combined with municipal business tax and additional tax surcharge) is 29.22% (instead of 28.80% for years 2011 and 2012) for businesses established in the city of Luxembourg.

As from 1 January 2013, the minimum flat income tax of EUR 3,210 (including the 7% surcharge) (instead of EUR 1,575 for years 2011 and 2012) is due for finance and holding companies, if the total of their financial assets (including the debtors owed by affiliated undertakings), transferable securities and cash amount to more than 90% of the entity's balance sheet.

For all the other Luxembourg entities, a minimum Corporate Income Tax (CIT) has also be introduced. This minimum CIT will amount from EUR 535 to EUR 21,400 depending on the total gross asset at the closing date.



Double taxation relief for dividends

Participation exemption

Withholding tax exemption on dividends distributed

Dividends distributed by a Luxembourg company are in principle subject to withholding tax at a rate of 15%, unless reduced under the provisions of a double tax treaty. However, Luxembourg Income Tax Law (hereafter "ITL") provides for special exemption rules for parent companies and subsidiaries, known as the participation exemption regime.

Under this regime, dividends paid by a Luxembourg company are not subject to withholding tax in Luxembourg if the following conditions are met:

- at the date the dividends are placed at the disposal of the beneficiary company, the latter holds or commits itself to hold a direct shareholding of at least 10% in the capital of its subsidiary, or the acquisition price of which amounts to at least EUR 1.2 million, for an uninterrupted period of at least 12 months;

- the recipient of the dividends is either:

- a collective entity which falls within the scope of article 2 of the EEC directive enacted on July 23, 1990 (90/435/CEE);

- a fully taxable joint stock company which is a resident of Luxembourg¹;

a Luxembourg permanent establishment of one of the above qualifying entities;

- a collective entity which is resident in a State with which Luxembourg has concluded a double tax treaty and which is fully subject to income tax comparable to the Luxembourg corporate income tax² as well as a Luxembourg permanent establishment of such collective entity;
- or a joint stock company that is resident in and subject to taxation in Switzerland; or

- a joint stock company or a co-operative company which is resident in the European Economic Area (EEA) other than an EU Member State and which is fully subject to income tax

comparable to the Luxembourg income tax; or

- a permanent establishment of a joint stock corporation or a co-operative company which is resident in an EEA Member State other than an EU Member State.

- the distributing company is a fully taxable joint-stock company which is resident of Luxembourg.

The exemption also applies to a participation in a qualifying company which is held through tax transparent entities, such as e.g. Luxembourg partnerships ("*sociétés de personnes*").

Corporate income tax exemption on dividends received

Dividends received by a Luxembourg company are in principle subject to corporate income tax and municipal business tax at the overall standard rate of 29.22% (for businesses established in the city of Luxembourg) in 2013.

However, under the Luxembourg participation exemption regime, dividends are exempt from taxation in Luxembourg if the following conditions are met:

- at the date the dividends are placed at the disposal of the recipient company, the latter holds or commits itself to hold a direct shareholding for an uninterrupted period of at least 12 months. This shareholding should represent at least 10% in the share capital of the distributing company, or its acquisition price should amount to at least EUR 1.2 million;

- the distributing company is:

- a collective entity which falls within the scope of article 2 of the EEC directive enacted on July 23, 1990 (90/435/CEE); or

- a fully taxable joint stock corporation which is resident of Luxembourg; or

- a non-resident joint-stock company which is liable to a tax corresponding to Luxembourg corporate income tax².

- the beneficiary company is:

- a fully taxable collective entity which is a resident of Luxembourg; or

- a Luxembourg permanent establishment of a company which falls within the scope of article 2 of the EEC directive enacted on July 23, 1990 (90/435/CEE); or

- a Luxembourg permanent establishment of a joint-stock company which is resident in a state with which Luxembourg has concluded a double tax treaty; or

- a Luxembourg permanent establishment of a corporation or a co-operative company that is resident in

an EEA country other than a Member State of the European Union.

The exemption also applies to a participation in a qualifying company which is held through tax transparent entities.

We draw your attention to the fact that, under these conditions, *a dividend distribution can occur shortly after the acquisition of the shares of the distributing company* by the recipient company, provided that the latter commits itself to hold for an uninterrupted period of at least 12 months a direct shareholding of at least 10% or the acquisition price of which amounted to at least EUR 1.2 million in the capital of the distributing company.

ITL provides that expenses economically connected to exempt income are not tax deductible. Therefore, should the Luxembourg company have financed the acquisition of the shareholding by debt, the interest expenses arising from that part of the debt deemed to be financing the shareholding will only be deductible for the part exceeding the tax-exempt dividends received from this subsidiary in the same year, or deductible for the part exceeding the tax-exempt capital gains realized on the disposal of shares in this subsidiary (cf. point 3).

Furthermore, the treatment of pre-acquisition dividends (distributions by the subsidiary of retained earnings relating to the time before it was acquired) can benefit from the participation exemption, but belatedly.

This is the case e.g. where the acquired company distributes dividends to its acquiring company so as to finance its acquisition. This distribution of dividends normally induces a write-down of the value of the participation held by the acquiring company in the acquired company.

¹ A joint stock corporation that is resident in Liechtenstein, Iceland or Norway

² Regarding this condition, the Luxembourg tax authorities generally consider that the foreign tax must be assessed at a minimum rate of 10.5% on a basis comparable to the Luxembourg taxable basis

In case of a write-down of a participation (deductible for tax purposes), the dividends received by the Luxembourg company are taxable to the extent of the write-down. However, subsequent write-ups of the participation are tax-exempt to the extent of the write-down, which made the dividends taxable previously. As a result, pre-acquisition dividends benefit from the participation exemption, although at the later time of the write-up, not at the moment of receipt.

Relief for dividends when participation exemption does not apply

Withholding tax on dividends where no participation exemption applies

Luxembourg law provides for a specific tax regime applicable to several entities with regard to withholding tax. There is no Luxembourg withholding tax levied on dividend distributions from:

- Undertakings for collective investment (UCI) governed by Luxembourg law, including SICARs (sociétés d'investissement en capital à risque); and
- Private wealth management companies (SPFs).

Partial tax exemption on dividends received

A 50% exemption is granted to Luxembourg fully taxable joint-stock companies for dividends from other Luxembourg joint-stock companies for which participation exemption is not available.

This 50% exemption is also available for dividends from companies resident of a Member State of the European Union and that fall within the scope of article 2 of the Parent-Subsidiary directive (i.e. most EU resident companies that are subject to income tax), or from joint-stock companies resident of a jurisdiction which has concluded a tax treaty with Luxembourg and which is liable to a tax corresponding to Luxembourg corporate income tax

Double taxation relief for capital gains on shares

Capital gains are generally regarded as ordinary business income and are taxed at normal corporate income rate. The favourable capital gains taxation rules described below apply to:

- a fully taxable collective entity which is a resident of Luxembourg; or
- a Luxembourg permanent establishment of a company which falls within the scope of article 2 of the EEC directive enacted on July 23, 1990 (90/435/CEE); or
- a Luxembourg permanent establishment of a joint-stock company which is resident in a state with which Luxembourg has concluded a double tax treaty; or
- a Luxembourg permanent establishment of a corporation or a co-operative company that is resident in an EEA country other than a Member State of the European Union. Capital gains on the sale of shares are exempt from tax under the same conditions as those described for dividends (see 2. above) except for one difference:
 - the direct participation (or indirect participation through a Luxembourg tax transparent entity) of the parent company must amount to at least 10% of the investee's share capital (as well as for dividends) or the purchase price must be at least EUR 6,000,000 (instead of EUR 1,200,000 for dividends).

Capital gains exemption on qualifying shares is available even when such shares were held through transparent entities.

Furthermore it is not required that the holding period be satisfied for each share realised nor must the holding period requirement be satisfied for all shares at the moment of realisation.

However, such capital gains are taxable to the extent of related expenses deducted in prior years, (interest on loans used to finance the purchase of such shares for example), unless already recaptured against tax exempt dividend income, as explained in 2. above.

Net worth tax

Shareholdings in resident or foreign companies fully subject to tax are not subject to net worth tax provided that the following conditions are met:

- the exempt (parent) company must be either:
 - a fully taxable resident company;
 - a Luxembourg permanent establishment of a company resident either in the European Union or in a country with which Luxembourg has concluded a double tax treaty;
- the subsidiary must be either:
 - another fully taxable resident company;

- a company resident in the European Union;
- a fully taxable non-resident company subject in its country of residence to an income tax comparable to Luxembourg corporate income Tax
- the direct participation (or indirect participation through a Luxembourg tax transparent entity) must amount to at least 10% of the share capital or have a purchase price of EUR 1,200,000.

Qualifying Intellectual Property (IP) ascribed in the assets of a resident company is not subject to net worth tax.

Deferral and rollover of capital gains

A Luxembourg domestic provision concerning the rollover of capital gains realised on the *exchange of shares* in Luxembourg companies, EU companies and non-resident joint-stock companies subject to a tax comparable to Luxembourg corporate income tax as well as the conversion of a loan into shares, *enables the shareholder* (resp. creditor) *to continue the book value of the shares exchanged* (resp. the loan converted into shares).

Another Luxembourg domestic tax rule provides that capital gains realised may be reinvested into newly acquired assets, so that the taxation is deferred until the disposal of such newly-acquired asset provided certain conditions are met. This regime also applies to shareholdings.

Tax consolidation

In order to benefit from Luxembourg tax consolidation, the minimum participation that the parent must hold (directly or indirectly) in the subsidiary(ies) is of 95%. A 75% participation threshold may also be exceptionally granted upon special request.

The tax consolidation is also available to companies with passive income from holding and/ or financing activities.

A permanent establishment of a non-resident company fully subject to a tax comparable to Luxembourg corporate income tax may also qualify as the parent company of the group for Luxembourg consolidation purposes.

The scope of application of the tax consolidation regime also includes Luxembourg subsidiaries owned indirectly by a Luxembourg parent *via a non-resident company*. The threshold for qualifying indirect ownership by the Luxembourg parent is 95%, provided that the intermediate non-resident companies are fully taxable in their

home jurisdiction in a form comparable to Luxembourg corporate income tax. When due, the minimum income tax will be levied only at the parent company's level..

Tax neutral reorganisation

As the participation in the subsidiary(ies) is in principle considered to be realised at the time of the merger, the resulting capital gain may be exempt from taxation provided that the requirements for the participation exemption for capital gains are met (see section 3 above) or provided that the participation represents at least 10% of the share capital of the subsidiary. Moreover, the tax law confirms the possible tax-neutrality of reorganisations (merger, de-merger, share-for-share exchange) involving EU companies.

Other Tax Advantages

Luxembourg also provides for many other advantages which are not described in detail but which could be outlined as follows:

- 0% withholding tax on interest payments;
- 0% withholding tax on royalties;
- 0% withholding tax on liquidation proceeds;
- no CFC rules;
- 1 / 99 debt-equity ratio (capped to EUR 2 million equity) required for intragroup financing activities (e.g. back-to-back loans); 15/85 D/E ratio required otherwise, but higher leverage may be obtained;
- possibility to use tax credits on foreign taxation from a taxable basis in Luxembourg;
- investment tax credits are available;
- open-minded tax authorities, with which favourable agreements may be reached.



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