

Business Luxembourg Company Formation

Legal forms

- Public Limited Company (PLC., Corp./SA)
- Limited Liability Company (LLC., Ltd./SARL)
- Partnership Limited by Shares (SCA)
- Limited Partnership (LP./SCS)
- General Partnership (GP./SNC)

Business forms

- SOPARFI-Financial Holding Company
- Trading and Service Company
- Private Asset Management Company (SPF)
- Securitisation Vehicle (SPV)
- Intellectual Property Rights (IP-Box)
- SICAV/SICAF Investment Fund
- SICAR Investment Company
- Specialised Investment Fund (SIF)
- Real Estate Company
- E-Commerce

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Your LCG Team

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Public Limited Company (PLC., Corp./SA) in Luxembourg

I. Legal structure of a Public Limited Company (PLC., Corp./SA)

1. Concept

A Public Limited Company (PLC., Corp./Société anonyme, SA) in Luxembourg is a corporation whose assets are wholly liable for the company's liabilities. Its shareholders are accordingly only liable to the extent of their respective contributions.

2. Purpose

A Public Limited Company (PLC., Corp./SA) in Luxembourg may be formed for the carrying on of commercial or non-commercial purposes and may take any form which is permitted by statute.

3. Formation

A Public Limited Company (PLC., Corp./SA) in Luxembourg is formed through the recording of its articles of association by a notary and their subsequent publication in the Official Bulletin (Mémorial C). Moreover, the articles of association are then lodged with Luxembourg's Trade and Companies Register. Following the afore-mentioned notarial recording, a Public Limited Company (PLC., Corp./SA) has unlimited legal capacity.

At least one natural or legal person is required for formation of a Public Limited Company (PLC., Corp./SA) in Luxembourg. The said person may be of any nationality and is not required to be resident in Luxembourg. Insofar as is not otherwise provided by the articles of association, a Public Limited Company (PLC., Corp./SA) will be formed for an unlimited duration with respect to time.

4. Shares and minimum capital

4.1. Shares

A Public Limited Company (PLC., Corp./SA) in Luxembourg is permitted to issue bearer shares as well as registered shares. The shares may be issued with or without voting rights. In respect of registered shares, a share register requires to be kept.

4.2. Minimum capital

The minimum capital of a Public Limited Company (PLC., Corp./SA) in Luxembourg is 31,000 EUR. This requires to be subscribed in full. When a Public Limited company (PLC., Corp./SA) is formed, at least 25% of the nominal value of every share requires to be paid up. Notwithstanding this,

bearer shares may only be issued once the company's capital is fully paid up. However, the said registered shares may be converted into bearer shares at this point.

The share capital of a Public Limited Company (PLC., Corp./SA) can be contributed in the form of a non-cash contribution or in the combined form of a non-cash contribution and a cash contribution. Non-cash contributions are valued by an independent auditor.

4.3. Transfer of shares

Bearer shares in a Public Limited Company (PLC., Corp./SA) in Luxembourg are transferred through the agreement and delivery of the bearer securities.

However, the transfer of registered shares is only effective on a Public Limited Company (PLC., Corp./SA) in Luxembourg if one of the following two criteria is satisfied:

- a) the existence of a transfer statement dated and signed by both the transferor and the transferee in the register of registered shares;
- b) the Public Limited Company (PLC., Corp./SA) has been notified of the transfer or the acceptance of the said transfer by the company in the form of a notarial deed.

5. Company name

The company name of a Public Limited Company (PLC., Corp./SA) in Luxembourg is able to be freely chosen insofar as an examination of the Trade and Companies Register shows that the chosen name has not already been allocated. It is a mandatory requirement that the company name ends with "AG" or "SA". It is not permitted that company name be the name of one of the company's shareholders.

6. Organisation

A Public Limited Company (PLC., Corp./SA) in Luxembourg is organised as follows:

6.1. General meeting

The general meeting of the shareholders has the most extensive powers to make all decisions affecting a Public Limited Company (PLC., Corp./SA) in Luxembourg. This includes, for example, a decision to amend the articles of association.

The ordinary general meeting must be convened annually at the date prescribed in the articles of association.

The board of directors as well as the commissaire of a Public Limited Company (PLC., Corp./SA) in Luxembourg can convene an extraordinary general meeting.

6.2. Board of directors

The board of directors is responsible for the management and representation of a Public Limited Company (PLC., Corp./SA) in Luxembourg and shall consist of at least one member (the director)

if the Public Limited Company (PLC., Corp./SA) has one shareholder or shall consist of three members if the company has more than one shareholder. The members of the board of directors may be natural as well as legal persons and are not required to be shareholders. In addition, no restrictions apply regarding the nationality or residence of its members. Moreover, the members of the board of directors are elected by the general meeting for a period of six years with the possibility of re-election.

6.3. Commissaire

If a Public Limited Company (PLC., Corp./SA) in Luxembourg does not exceed two of the following upper limits, the supervision of a Public Limited Company (PLC., Corp./SA) in Luxembourg is the responsibility of one or more than one commissaire who may be a shareholder(s) or non-shareholder(s):

- a) A balance sheet sum of 3,125 million EUR
- b) A net turnover of 6,25 million EUR
- c) 50 full-time employees – taking the average for the year

If a Public Limited Company (PLC., Corp./SA) does exceed two of the upper limits outlined above, its books require to be inspected by one or more than one independent auditor.

6.4. Management of the Company

The day-to-day management of a Public Limited Company (PLC., Corp./SA) in Luxembourg can be delegated by the board of directors to one or more than one member of the board of directors (administrateur-délégué).

7. Annual accounts

The annual accounts of a Public Limited Company in Luxembourg (PLC., Corp./SA) consist of the balance sheet, the profit and loss account and the notes thereto. Following their approval by the shareholders, the annual accounts will be lodged with Luxembourg's Trade and Companies Register and this will subsequently be published in the Official Bulletin (Mémorial C).

8. Liquidation

In the case where 50% of the company's share capital is lost, the members of the board of directors must convene a general meeting within two months. The said general meeting shall decide upon the potential liquidation of the Public Limited Company (PLC., Corp./SA) in Luxembourg. In the case where 75% of the company's share capital is lost, the company shall be liquidated if 25% of the votes cast at the general meeting were in favour of liquidation.

II. Tax structure of a Public Limited Company (PLC., Corp./SA)

Since January 1st, 2013, a Public Limited Company (PLC., Corp./SA) in Luxembourg has been liable, as a corporation, to corporate taxation at an annual rate of 29.22%. The said rate consists of the following components:

1.1 Corporate income tax

In Luxembourg, the rate of corporate income tax for income exceeding 15,000 EUR is 21% (or at a rate of 20% on income of up to 15,000 EUR) and is increased by the solidarity surtax of 7%.

The minimum payment of corporate income tax for all Public Limited Companies (PLC., Corp./SA) resident in Luxembourg which do not require a trade licence and the sum of their assets, securities and bank balance together exceed 90% of its balance sheet total is 3,210 EUR (3,000 EUR plus the 7% solidarity surtax).

1.2 Municipal business tax

All businesses resident in Luxembourg (e.g. trading-, industrial-, mining- or craft businesses) as well as the permanent establishments of foreign companies are subject to municipal business tax at a rate of 6.75%.

1.3 Withholding tax

The dividend distributions of Public Limited Companies (PLC., Corp./SA) in Luxembourg are liable to withholding tax at a rate of 15%. In contrast, royalty and interest payments as well as proceeds from liquidation or partial liquidation are not liable to withholding tax in Luxembourg.

2. Net wealth tax

Public Limited Companies (PLC., Corp./SA) in Luxembourg which have their registered office or place of central management and control in Luxembourg must pay net wealth tax on their total assets, namely assets in and outwith Luxembourg. However, for Public Limited Companies (PLC., Corp./SA) not resident in Luxembourg, only their assets in Luxembourg will be liable to the said tax. The annual rate of net wealth tax on taxable assets is 0.5%.

III. Effective structure of a Public Limited Company (PLC., Corp./SA)

In Luxembourg, the legal form of the Public Limited Company (PLC., Corp./SA) is often used by large companies. Notwithstanding this, it also represents an option for small and medium-sized companies. It offers the advantage of issuing shares in the form of easily transferable bearer shares. In practice in Luxembourg, the Public Limited Company (PLC., Corp./SA) is often used for business forms such as the SOPARFI-Financial Holding Company, the Trading Company, the Private Asset Management Company (SPF) as well as for the Securitisation Vehicle (SPV).

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Limited Liability Company (LLC., LTD./SARL) in Luxembourg

I. Legal structure of a Limited Liability Company (LLC., Ltd./SARL)

1. Concept

A Limited Liability Company (LLC., Ltd./Société à responsabilité limitée, SARL) in Luxembourg is a corporation whose assets are, in principle, wholly liable for the company's liabilities.

2. Purpose

A Limited Liability Company (LLC., Ltd./SARL) in Luxembourg can be formed for the carrying on of commercial or non-commercial purposes. Notwithstanding this, insurance companies as well as financial sector companies are not permitted to be formed in the form of a Limited Liability Company (LLC., Ltd./SARL).

3. Formation

A Limited Liability Company (LLC., Ltd./SARL) in Luxembourg is formed through the recording of its articles of association by a notary and the subsequent publication thereof in the Official Bulletin (Mémorial C). Moreover, the articles of association will be lodged with Luxembourg's Trade and Companies Register. A Limited Liability Company (LLC., Ltd./SARL) in Luxembourg acquires legal personality following the notarial recording.

The shareholders of a Limited Liability Company (LLC., Ltd./SARL) in Luxembourg may be natural or legal persons of which there must be at least 2 and no more than 40. Notwithstanding this, the formation of a single-person Limited Liability Company (LLC., Ltd./Société à Responsabilité limitée unipersonnelle) with a sole shareholder is possible. The provisions which apply to a Limited Liability Company (LLC., Ltd./SARL), essentially, equally apply to a single-person Limited Liability Company (LLC., Ltd./Société à Responsabilité limitée unipersonnelle). Moreover, the shareholders of a Limited Liability Company (LLC., Ltd./SARL) in Luxembourg must always be registered in the Trade and Companies Register.

Every Limited Liability Company (LLC., Ltd./SARL) in Luxembourg is required to keep a register containing the founding documents as well as the names, occupations and places of residence of the shareholders as well as details on the transfer of shares.

4. Shares and minimum capital

4.1. Minimum capital

The minimum capital of a Limited liability Company (LLC., Ltd./SARL) in Luxembourg is 12,500 EUR

and must be contributed in full. The capital is divided into registered shares, each having the same value. The said value is required to be at least 25 EUR.

The capital of a Limited Liability Company (LLC., Ltd./SARL) in Luxembourg may consist of non-cash contributions or of a combination of cash and non-cash contributions. In contrast to a Public Limited Company (PLC., Corp./SA) in Luxembourg, no valuation requires to be carried out on non-cash contributions by an independent auditor.

4.2. Transfer of shares

The shares of a Limited Liability Company (LLC., Ltd./SARL) in Luxembourg are not freely transferable. Shares are only permitted to be transferred or sold to non-shareholders in notarised form and with the consent of the general meeting. At least 75% of the company's share capital must be represented at the said meeting. In the case where shares are transferred to fellow shareholders of a Limited Liability Company (LLC., Ltd./SARL), no such consent is required. A private contract in such cases will suffice.

A Limited Liability Company (LLC., Ltd./SARL) is not permitted to issue securities to the public; only the issuance of registered share certificates to specific persons is possible.

5. Company name

The company name of a Limited Liability Company (LLC., Ltd./SARL) in Luxembourg is able to be freely chosen insofar as an examination of the Trade and Companies Register shows that the chosen name has not already been allocated. Moreover, the company name must end with the words "GmbH" or "SARL".

6. Organisation

The Limited Liability Company (LLC., Ltd./SARL) in Luxembourg is organised as follows:

6.1 General meeting

The general meeting is convened by the managing director(s) of a Limited Liability Company (LLC., Ltd./SARL) in Luxembourg and consists of all shareholders. If the number of shareholders does not exceed 25, the holding of a general meeting annually is optional.

6.2 Managing director

A Limited Liability Company (LLC., Ltd./SARL) in Luxembourg is managed by one or more than one managing director. It is not required that the managing director(s) be a shareholder or resident in Luxembourg.

6.3 Supervision

An internal supervision is only mandatory if the number of shareholders exceeds 25. Where this number is exceeded, one or more than one commissaire requires to be appointed to carry out the

said supervision. It is not required that the commissaire be a shareholder. Notwithstanding the above, if a Limited Liability Company (LLC., Ltd./SARL) exceeds two of the following upper limits, its books require to be inspected by one or more than one independent auditor:

- a) A balance sheet sum of 3,125 million EUR
- b) A net turnover of 6,25 million EUR
- c) 50 full-time employees – taking the average for the year

7. Annual accounts

The annual accounts of a Limited Liability Company in Luxembourg (LLC., Ltd./SARL) consist of the balance sheet, the profit and loss account and the notes thereto. Following their approval by the shareholders, the annual accounts will be lodged with Luxembourg's Trade and Companies Register and will be subsequently published in the Official Bulletin (Mémorial C).

8. Dissolution

A Limited Liability Company (LLC., Ltd./SARL) in Luxembourg may be dissolved either through a resolution of the general meeting at which 75% of the company's share capital requires to be represented or through a court order.

II. Tax structure of a Limited Liability Company (LLC., Ltd./SARL)

1. Corporate taxation

Since January 1st, 2013, a Limited Liability Company (LLC., Ltd./SARL) in Luxembourg has been liable, as a corporation, to corporate taxation at an annual rate of 29.22%. The said rate consists of the following components:

1.1 Corporate income tax

In Luxembourg, the rate of corporate income tax on income exceeding 15,000 EUR is 21% (or at a rate of 20% on income of up to 15,000 EUR) and is increased by the solidarity surtax of 7%.

The minimum payment of corporate income tax for all Limited Liability Companies (LLC., Ltd./SARL) resident in Luxembourg which do not require a trade licence and the sum of their assets, securities and bank balance together exceed 90% of their balance sheet total is 3,210 EUR (3,000 EUR plus the 7% solidarity surtax).

1.2 Municipal business tax

All businesses resident in Luxembourg (e.g. trading-, industrial-, mining- or craft businesses) as well as the permanent establishments of foreign companies are subject to municipal business tax at a rate of 6.75%.

1.3 Withholding tax

The dividend distributions of Limited Liability Companies (LLC., Ltd./SARL) in Luxembourg are liable to withholding tax at a rate of 15%. Royalty and interest payments as well as proceeds from liquidation or partial liquidation are not liable to withholding tax in Luxembourg.

2. Net wealth tax

Limited Liability Companies (LLC., Ltd./SARL) in Luxembourg which have their registered office or place of central management and control in Luxembourg must pay net wealth tax on their total assets, namely assets within and outwith Luxembourg. However, for Limited Liability Companies (LLC., Ltd./SARL) not resident in Luxembourg, only assets within Luxembourg will be liable to the said tax. The annual rate of net wealth tax on taxable assets is 0.5%.

III. Effective structure of a Limited Liability Company (LLC., Ltd./SARL)

In Luxembourg, the legal form of the Limited Liability Company (LLC., Ltd./SARL) is predominantly preferred by medium-sized companies. This is particularly due to the low minimum capital as well as the fact that it is suited to all purposes (from the trading of goods to asset management).

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Partnership Limited by Shares (SCA) in Luxembourg

I. Legal structure of a Partnership Limited by Shares (SCA)

1. Concept

A Partnership Limited by Shares (Société en commandite par actions, SCA) is a corporation which, at the same time, shows the characteristics of a partnership. A Partnership Limited by Shares (SCA) consists of at least two shareholders, namely one shareholder subject to unlimited liability (general partner) and one limited liability shareholder. The latter is liable for the liabilities of the Partnership Limited by Shares (SCA) only for a sum matching his contribution.

Insofar as is not otherwise provided, the provisions on Public Limited Companies (PLC., Corp./SA) in Luxembourg also apply to Partnerships Limited by Shares (SNC) resident in Luxembourg.

2. Foundation

A Partnership Limited by Shares (SNC) in Luxembourg is formed through the recording of its articles of association by a notary as well as its registration in the Trade and Companies Register. At least one personally liable shareholder (general partner) is required to be mentioned by name in the said articles of association.

3. Minimum capital

The provisions on Public Limited Companies (PLC., Corp./SA) in Luxembourg apply in respect of the minimum capital of the limited liability shareholders of a Partnership Limited by Shares (SCA). The minimum capital of a Partnership Limited by Shares (SCA) in Luxembourg is accordingly 31,000 EUR. In contrast thereto, the Partnership Law provisions which contain no minimum capital requirements apply in respect of the capital contributions of the general partners.

4. Company name

The company name of a Partnership Limited by Shares (SCA) is permitted only to contain the name of one or more than one of the personally liable shareholders (general partners).

5. Organisation

5.1 General meeting

The general meeting of a Partnership Limited by Shares (SCA) in Luxembourg has significantly fewer competences in comparison to those of a Public Limited Company (PLC., Corp./SA) in

Luxembourg. In particular, its resolutions on the amendment of the articles of association require the consent of the Partnership Limited by Share's (SCA) managing director.

5.2 Board of directors

The board of directors of a Partnership Limited by Shares (SCA) in Luxembourg is not elected. Instead, it mandatorily consists of those shareholders subject to unlimited liability (general partners). The said shareholders are responsible for the management and representation of a Partnership Limited by Shares (SCA).

5.3 Commissaire

At least three commissaire are required to carry out the supervision of a Partnership Limited by Shares (SCA) in Luxembourg.

II. Tax structure of a Partnership Limited by Shares (SCA) in Luxembourg

For the purposes of taxation, a distinction is made between the general partners and the Partnership Limited by Shares (SCA) itself together with the limited partners due to its hybrid structure. The general partners and their capital contributions are taxed in accordance with the Partnership Law provisions whilst the Partnership Limited by Shares (SCA) and the limited partners are treated as a corporation and/or shareholders for corporate taxation purposes.

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Limited Partnership (LP./SCS) in Luxembourg

I. Legal structure of a Limited Partnership (LP./SCS)

1. Concept

A Limited Partnership in Luxembourg (LP./Société en commandite simple, SCS) is a partnership having at least two shareholders, namely a 'general' partner and a 'limited' partner.

The general partner is subject to unlimited liability for the liabilities of a Limited Partnership (LP./SCS) in Luxembourg. If a Limited Partnership (LP./SCS) in Luxembourg has multiple general partners, the liability of such partners is secondary, joint and several and unlimited. The duties of the general partners include the management of the Limited Partnership (LP./SCS) in Luxembourg. In contrast thereto, the limited partners are liable for the liabilities of a Limited Partnership (LP./SCS) only to the extent of that amount which they have contributed (the limited liability sum). Such partners are consequently not permitted to perform the management of the business and have restricted controlling rights.

2. Formation

A Limited Partnership (LP./SCS) in Luxembourg is formed through the conclusion of a partnership agreement between at least two persons and will subsequently be registered in the Trade and Companies Register. The registration in the Trade and Companies Register is of declaratory effect only.

3. Minimum capital

There is no minimum capital requirement for a Limited Partnership (LP./SCS) in Luxembourg.

4. Company name

The company name of a Limited Partnership (LP./SCS) in Luxembourg must contain the surname of at least one of the partners subject to unlimited tax liability (general partners). The use of the names of other persons, particularly the names of the limited partners, is not permitted.

II. Tax structure of a Limited Partnership (LP.)

A Limited Partnership (LP./SCS) in Luxembourg is not subject to taxation as such. Instead, every shareholder of a Limited Partnership (LP./SCS) is liable to taxation in Luxembourg on their share of the income and assets of the company as well as on their private income and assets.

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General Partnership (GP./SNC) in Luxembourg

1. Legal Structure of a General Partnership (GP./SNC) in Luxembourg

1. Concept

A General Partnership (GP./Société en nom collectif, SNC) in Luxembourg is a partnership in which two or more natural and/or legal persons come together in order to carry on business under a single trading name. The liability of all shareholders of a General Partnership (GP./SNC) in Luxembourg for its liabilities is unlimited and joint and several.

2. Formation

A General Partnership (GP./SNC) in Luxembourg is formed through the conclusion of a partnership agreement between at least two natural and/or legal persons. Moreover, a General Partnership (GP./SNC) is required to obtain a trading licence from Luxembourg's Ministry of Small and Medium-sized Businesses, Tourism and Housing and to be registered in the Trade and Companies Register in Luxembourg in order to carry on commercial activities.

3. Minimum capital

There is no minimum capital prescribed for the formation of a General Partnership (GP./SNC) in Luxembourg.

4. Company name

The company name of a General Partnership (GP./SNC) in Luxembourg is only permitted to contain the names of its shareholders.

II. Tax structure of a General Partnership (GP./SNC) in Luxembourg

A General Partnership (GP./SNC) is not taxed as such. Instead, its shareholders are liable to the standard taxation in Luxembourg.

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SOPARFI-Financial Holding Company in Luxembourg

I. Legal structure of a SOPARFI in Luxembourg

1. Concept

A SOPARFI-Financial Holding Company (Société de participations financières) in Luxembourg is a non-regulated Trading Company in Luxembourg which is fully liable to tax. It benefits from the “inter-corporate privilege” of the parent subsidiary Directive and is able to pursue and carry on Holding activities in addition to financing activities.

1.1. Holding: concept

The connected organisational form of the “Holding” involves the parent company of affiliated companies. The said parent company is a Trading Company which, as the umbrella organisation, holds shares in other companies.

1.2. Forms of Holding

With regard to the functions of a Holding Company, the following forms of Holdings are differentiated between:

- a) The Operational Holding or the Head Office Holding;
- b) The Management Holding or the Strategy Holding;
- c) The Financial Holding or the Asset Holding; and
- d) The Organisational Holding or the Structural Holding.

2. Purpose

The purpose of a SOPARFI in Luxembourg is predominantly the acquisition, management and realisation of investments in companies in or outwith Luxembourg.

A SOPARFI is permitted to carry on all types of commercial activities insofar as they are consistent with the articles of association and Luxembourg’s statutory provisions.

3. Formation

A SOPARFI in Luxembourg is formed through the recording of its articles of association by a notary. The articles of association will subsequently be published in the Official Bulletin (Mémorial C) and lodged with Luxembourg’s Trade and Companies Register.

A natural or legal person of any nationality and regardless of where the said person is resident may form a SOPARFI in Luxembourg.

A SOPARFI which carries on commercial or industrial activities as its principal or secondary activity is required to obtain a trade licence from Luxembourg's Ministry of Small and Medium-sized Businesses, Tourism and Housing.

4. Legal Form

A SOPARFI in Luxembourg is formed as a corporation and may take the form of the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL) or of the Partnership Limited by Shares (SCA).

5. A Luxembourg SOPARFI in the form of the Public Limited Company (PLC., Corp./SA)

In examining the legal structure, the following information uses as its example the Public Limited Company (PLC., Corp./SA) in Luxembourg due to a SOPARFI in Luxembourg being formed predominantly in that form:

5.1. Shares and minimum capital

A Public Limited Company (PLC., Corp./SA) in Luxembourg is permitted to issue bearer as well as registered shares. The said shares may be issued with or without voting rights. In the case of registered shares, a share register requires to be kept.

The minimum capital of a Public Limited Company (PLC., Corp./SA) in Luxembourg is 31,000 EUR and requires to be subscribed in full. It is required that at least 25% of the nominal value of each share is paid up. Only registered shares may be issued until the company's capital is fully paid up. Thereafter, the said shares may be converted to bearer shares.

5.2 Transfer of shares

The transfer of bearer shares is effected through the agreement and delivery of the bearer securities.

In contrast, the transfer of registered shares only becomes effective on the company if a transfer statement dated and signed by both the transferor and the transferee in the register of registered shares as well as the notification of the said transfer to the Public Limited Company (PLC., Corp./SA) or the acceptance thereof by the Public Limited Company (PLC., Corp./SA) in the form of a notarial deed are available.

5.3 Company name

The company name of a Public Limited Company (PLC., Corp./SA) in Luxembourg is able to be freely chosen insofar as an examination of the Trade and Companies Register shows that the chosen name has not already been allocated. It is a mandatory requirement that the company name ends with "AG" or "SA".

It is not permitted that company name be the name of one of the company's shareholders.

5.4 Organisation

The bodies of a Public Limited Company (PLC., Corp./SA) in Luxembourg are the general meeting, the board of directors as well as the commissaire.

II. Tax advantages of a SOPARFI in Luxembourg

1. Exemption from taxation of dividends and sale and liquidation proceeds from investments

Since January 1st, 2013, the rate of corporate taxation on the distribution of dividends and sale and liquidation proceeds by a corporation resident in or outwith Luxembourg to a corporation in Luxembourg has, in general, been 29.22% (21% or 20% corporate income tax, plus the solidarity surtax at a rate of 7% as well as the municipal business tax at a rate of 6.75%).

Notwithstanding this, SOPARFI-Financial Companies in Luxembourg which do not carry on commercial activities and whose assets, securities and bank balance together exceed 90% of their total balance sheet are required to pay only the minimum corporate taxation of 3,210 EUR (3,000 EUR plus the 7% solidarity surtax).

Notwithstanding this, under the application of the “inter-corporate privilege”, the dividends and sale and liquidation proceeds distributed to a SOPARFI in Luxembourg are exempt from tax upon satisfaction of the following requirements:

1.1 Requirements for the parent company

The parent company (SOPARFI) must be either a corporation resident in Luxembourg with unlimited tax liability or the permanent establishment in Luxembourg of an EU Company within the meaning of the parent subsidiary Directive or must be a corporation resident in a country which has agreed a double taxation agreement (DTA) with Luxembourg.

Furthermore, the parent company is required to hold at least 10% of the capital of the subsidiary company or to have acquired the said investment for at least 1.2 million EUR (or 6 million EUR for sale profits) and at the time of the making available of the dividends, the investment must have been held for an uninterrupted period of at least 12 months or an undertaking exists to do so.

1.2 Requirements for the subsidiary company

The subsidiary company must either be a corporation which has its registered office in Luxembourg with unlimited tax liability or a foreign corporation with unlimited tax liability which is liable to tax comparable to Luxembourg’s corporation tax or be an EU-subsiary company fully liable to corporate taxation (congruity with Luxembourg’s rate of corporation tax is not mandatory) within the meaning of the parent subsidiary Directive.

If the said requirements are not met, dividends may be at least 50% tax exempt if they are distributed by a corporation which is resident in Luxembourg with unlimited tax liability or a foreign corporation which is liable to corporate taxation (corresponding with Luxembourg’s rate

of corporation tax) and which has its registered office in a country which has agreed a DTA with Luxembourg or an EU-Subsidiary Company within the meaning of the parent subsidiary Directive.

2. Deduction of investment-related expenses

Investment-related expenses such as the interest on loans, incurred through the taking out of the said loans, are deductible to the extent which they exceed the tax-free income generated from the investment in the respective year. This also applies to losses suffered from the sale of or value adjustment of the said investments.

The exemption from taxation of the sale proceeds from investments is restricted if earlier write-offs to the going value of the investments have been made or where the expenses exceed the tax exempt income of the investments during the period in which they were held. The tax exempt sale profits will accordingly be adjusted for the amount of the investment-related expense which has already been deducted from the income liable to tax.

3. Exemption from the net wealth tax

The net wealth tax in Luxembourg applies at a rate of 0.5% on taxable assets. Corporations having their registered office or place of central control and management in Luxembourg are liable to the net wealth tax on their entire assets, namely assets within and outwith Luxembourg. In contrast thereto, corporations which are not resident in Luxembourg are only liable to tax on those assets within Luxembourg.

Notwithstanding this and under the mandatory requirement that the following requirements be fulfilled without exception, the value of an investment remains exempt from the net wealth tax:

The SOPARFI in Luxembourg must hold at least 10% of the capital of the subsidiary company or must have acquired the investment for a sum amounting to at least 1.2 million EUR. The subsidiary company must have been a resident or non-resident corporation with unlimited tax liability. For the application of the parent subsidiary privilege herein, no minimum holding period is prescribed.

4. Exemption from withholding tax

4.1. Withholding tax on dividend distributions

In general, dividends distributed by a corporation in Luxembourg are subject to withholding tax at a rate of 15%. However, the said tax will not be levied on a SOPARFI if the following requirements are satisfied:

4.1.1. Requirements for the distributing company

The SOPARFI-Financial Company distributing the dividends must be resident with unlimited tax liability.

4.1.2. Requirements for the receiving company

The receiving company must be a resident corporation with unlimited tax liability, a corporation resident in an EU member state within the meaning of the parent subsidiary Directive, a resident permanent establishment of a European Company within the meaning of the parent subsidiary Directive or a resident permanent establishment of a parent company which has its registered office in a country which has agreed a DTA with Luxembourg. Moreover, the receiving company is required to have an investment in the SOPARFI in Luxembourg amounting to at least 10% of the company's share capital or of a purchase price amounting to at least 1.2 million EUR which has been held for a period of 12 months or an undertaking exists to do so.

If a SOPARFI in Luxembourg distributes dividends to companies outwith the EU, these will most often be liable to withholding tax at the reduced rate of 5% insofar as there exists a DTA between Luxembourg and the relevant country.

4.2. Withholding tax on royalty payments, interest and liquidation proceeds

In Luxembourg, no withholding tax requires to be paid on royalty and interest payments as well as, in the case where a SOPARFI is liquidated, on the distribution of liquidation proceeds.

5. Double taxation agreements (DTA's)

A SOPARFI in Luxembourg can benefit from Luxembourg's multiple double taxation agreements (DTA's) due to the tax exemptions arising from the "inter-corporate privilege" not affecting the general tax liability of a SOPARFI.

6. Value added tax (VAT)

If the business activity of a SOPARFI in Luxembourg is not exclusively limited to the holding of investments, it will be liable to value-added tax (VAT) and is consequently required to register for value-added tax (VAT).

Luxembourg's rate of value-added tax (VAT) is 15%. Notwithstanding this, a reduced rate applies to certain goods and services. For example, a rate of 3% applies to the trade of e-books.

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Trading and Service Company in Luxembourg

I. Concept

A Trading and Service Company in Luxembourg has its registered office in Luxembourg and carries on skilled trade, industrial or other commercial activities.

II. Legal structure of a Trading and Service Company

1. Legal form

Luxembourg's Trading Companies Act of August 10th, 1915, differentiates between Trading Companies, in the strictest sense, and Commercial Associations.

1.1 Trading Companies in the strictest sense

Trading Companies in the strictest sense possess legal personality and include the following legal forms in Luxembourg: the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL); Partnership Limited by Shares (SCA); Limited Partnership (LP.); General Partnership (SENC); Co-operative Societies (SC) as well as the European Company (SE).

Notwithstanding this, it is usually only the Public Limited Company (PLC., Corp./SA) and the Limited Liability Company (LLC., Ltd./SARL) which are of interest for the formation of a Trading and Service Company in Luxembourg.

1.2 Commercial Associations

In contrast, Commercial Associations do not possess legal personality and are subdivided into Temporary Commercial Associations and Commercial Associations by Participation.

2. Formation

The particular requirements for the formation of a Trading and Service Company in Luxembourg are determined by the particular legal form chosen.

A Trading Company in Luxembourg may be formed by any foreign person (including persons from outwith the European Union (EU)) and managed by such persons as the director.

Notwithstanding this, the carrying on of any industrial and skilled trade activities requires prior written consent (a trade licence, autorisation d'établissement) from Luxembourg's Ministry of Small and Medium-sized Businesses, Tourism and Housing. In addition, trade registration is required as is the application for a value-added tax (VAT) identification number from the relevant tax authority.

The said consent (a trade licence) shall be issued when all legal requirements and qualifications have been satisfied by one of the managing directors or the manager as well as such a person having the requisite professional experience for the relevant activity. Moreover, it is required that the business operations of the company include having a physical permanent establishment in Luxembourg. This may, for example, be in the form of an office or the company's registered office.

Foreign companies which do not have their registered office in Luxembourg and which dispatch one or more than one employee to Luxembourg to carry out activities are required to appoint a Mandataire (legal representative).

III. Tax structure of a Trading and Service Company

The following information relates exclusively to the taxation of corporations in Luxembourg due to Trading and Service Companies being formed particularly in the form of a Public Limited Company (PLC., Corp./SA) or the Limited Liability Company (LLC., Ltd./SARL) in practice in Luxembourg:

1. Corporate taxation

From January 1st, 2013, corporations in Luxembourg have been taxed annually at a rate of 29.22%. The said corporate taxation comprises the following:

1.1 Corporate income tax

In Luxembourg, the rate of corporate income tax on income exceeding 15,000 EUR is 21% (or at a rate of 20% on income of up to 15,000 EUR) and is increased by the solidarity surtax of 7%.

The minimum payment of corporate income tax for all corporations resident in Luxembourg which do not require a trade licence and the sum of their assets, securities and bank balance together exceed 90% of their balance sheet total is 3,210 EUR (3,000 EUR plus the 7% solidarity surtax).

1.2 Municipal business tax

All businesses resident in Luxembourg (e.g. trading-, industrial-, mining- or craft businesses) as well as the permanent establishments of foreign companies are subject to municipal business tax at a rate of 6.75%.

1.3 Withholding tax

Dividend distributions in Luxembourg are liable to withholding tax at a rate of 15%. Royalty and interest payments as well as proceeds from liquidation or partial liquidation are not liable to withholding tax in Luxembourg.

2. Net wealth tax

Corporations in Luxembourg which have their registered office or place of central management and control in Luxembourg must pay net wealth tax on their total assets, namely assets in and outwith Luxembourg. However, for corporations not resident in Luxembourg, only assets in Luxembourg will be liable to the said tax. The annual rate of net wealth tax on taxable assets is 0.5%.

3. Value-added tax (VAT)

In Luxembourg, the rate of value-added tax (VAT) is 15%. Certain deliveries and services are liable to the reduced rate. This includes, for example, a rate of 3% on e-book transactions.

IV. Advantages of the formation of a Trading and Service Company in Luxembourg

1. Pro-business assessment framework

In addition to Luxembourg's tax administration being convenient and business-friendly, Luxembourg is particularly attractive due to its flexible administration of the assessment framework. Information regarding the scope of tax liability and undertakings relating to taxation (so-called tax rulings) can be sought from Luxembourg's tax authority prior to the tax being due. In principle, these can be relied upon by both sides. In Luxembourg, such tax ruling procedures can be completed within weeks.

2. Further advantages

There is very little red tape surrounding the formation and management of a Trading and Service Company in Luxembourg.

Moreover, Luxembourg is a signatory to double taxation agreements (DTA's) with many countries which prevent the double taxation of income from transactions which has already been taxed. It is possible to set off withholding tax paid abroad insofar as no setting off excess arises therefrom.

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Private Asset Management Company (SPF) in Luxembourg

I. Concept

The Private Asset Management Company (Société de gestion de patrimoine familial, SPF) has been in existence in Luxembourg since 2007 and is the successor to the abolished Luxembourg Holding 1929. The latter was abolished following a Decision of the European Commission that the taxation of this company represented prohibited state aid. The Private Asset Management Company (SPF) in Luxembourg is not a new company form. In its capacity as a legal person, it instead represents a suitable investment vehicle for the management and planning of the family assets, of a system for matrimonial property and of the succession of natural persons.

In the context of a Private Asset Management Company (SOF) in Luxembourg, “family assets” should be understood exclusively as the private assets of natural persons. The existence of family ties between the shareholders of a Private Asset Management Company (SPF) in Luxembourg is not required.

II. Legal structure of a Private Asset Management Company (SPF) in Luxembourg

1. Legal form

A Private Asset Management Company (SPF) in Luxembourg is only permitted to be formed as a corporation and therefore in the form of the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL), Partnership Limited by Shares (SCA) or Co-operative in the form of the Public Limited Company (SCOSA).

In practice in Luxembourg, the Public Limited Company (PLC., Corp./SA) and the Limited Liability Company (LLC., Ltd./SARL) are the predominant legal forms in which the SPF is formed.

2. Formation

A Private Asset Management Company (SPF) in Luxembourg is formed through the recording of its articles of association by a notary. The articles of association will subsequently be published in the Official Bulletin (Mémorial C) and lodged with Luxembourg’s Trade and Companies Register.

It is required that the articles of association of a SPF in Luxembourg state expressly that the company is subject to the provisions of Luxembourg’s law on Private Asset Management Companies.

3. Minimum capital

The minimum capital of a SPF in Luxembourg is dependent upon the particular legal form chosen.

4. Shareholders

The shareholders of a SPF in Luxembourg must be natural persons who are resident in or out-with Luxembourg and who will be active in the management of the private assets. Furthermore, trustees or patrimonial entities with or without legal personality, such as Trusts or private Foundations managing the private assets of natural persons, may be shareholders. Notwithstanding this, the number of shareholders requires to be restricted. For example, the said number is to be restricted to a particular family or any other group of investors. In contrast thereto, other corporations are not permitted to hold the position of shareholder in a Private Asset Management Company (SPF) in Luxembourg.

5. Activity

5.1. Permitted activity

The exclusive purpose of a Private Asset Management Company (SPF) in Luxembourg as laid down by statute is the acquisition and possession as well as the management and realisation of investments in financial instruments, in the broadest sense, including derivatives such as, for example, shares, investments; Funds; futures; bonds; options; precious metals as well as bank accounts.

Furthermore, a SPF in Luxembourg is only permitted to hold majority or 100% company shareholdings under the condition that a SPF is not involved in the management of the individual companies.

The unlimited taking out of loans from shareholders or from external third parties as well as the issuing of securities by a SPF in Luxembourg are also permitted.

5.2. Prohibited activity

A SPF in Luxembourg is prohibited from carrying on any type of commercial activity including the provision of management activity or financial services to third parties or shareholders.

Furthermore, the guaranteeing of loans is not permitted, even where a SPF has an interest in the relevant company. The exception thereto is where the guaranteeing involves a gratuitous deposit or surety in companies to which the Luxembourg SPF is affiliated.

A Private Asset Management Company (SPF) in Luxembourg is likewise not permitted to hold patents or rights, to directly possess real estate, to receive more than 5% of the complete dividend income of companies which is liable to taxation of less than 11% as well as the stock market flotation of SPF shares or their public offering.

Notwithstanding this, a SPF in Luxembourg may have a financial interest in structures carrying on the afore-mentioned prohibited activities.

6. Company name

It is required that the company name of a Private Asset Management Company (SPF) contains the abbreviation “SPF”.

7. Supervision

A Private Asset Management Company (SPF) in Luxembourg is subject to the supervision of Luxembourg’s Indirect Tax Administration (Administration de l’Enregistrement et des Domaines, AED) and to no further supervision. The domiciliation agent is required to submit a report annually on the SPF’s operation in Luxembourg within the given legal framework.

III. Advantages of forming a Private Asset Management Company (SPF) in Luxembourg

1. Tax advantages

1.1. Taxation

In Luxembourg, a SPF is liable to the so-called “subscription tax” (taxe d’abonnement) annually at a rate of 0.25% on its paid-up share capital, the share premium plus on a proportion of its debts exceeding 8 times the paid up share capital and the share premium. However, the maximum payment of subscription tax is restricted to 125,000 EUR.

1.2. Tax exemptions

In general, the income and profits of a Private Asset Management Company (SPF) in Luxembourg are exempt from corporation tax, municipal business tax as well as from the net wealth tax. Luxembourg’s lawmakers have justified the afore-mentioned subjective tax exemptions on the ground that the SPF does not carry on any commercial activities and is accordingly to be considered as an instrument for the management of the private assets of natural persons. The afore-mentioned tax exemptions consequently mean, however, that Luxembourg’s multiple double taxation agreements (DTA’s) do not apply to the SPF in Luxembourg.

1.3. Further tax exemptions

In Luxembourg, interest payments are exempt from withholding tax. Moreover, the distributions of a SPF in Luxembourg in the form of dividends to non-resident investors is exempt from withholding tax. This affects gains generated by a SPF in Luxembourg from its available capital and which are later distributed to non-resident shareholders.

Furthermore, gains from the transfer or sale of shares in a SPF in Luxembourg by a non-resident shareholder as well as a the liquidation proceeds of a SPF are exempt from taxation.

A SPF in Luxembourg is not liable to value-added tax (VAT) due to it not carrying on commercial transactions.

2. Further advantages

The Private Asset Management Company (SPF) in Luxembourg is an attractive vehicle for managing the private assets of wealthy natural persons. This is particularly so due to its special tax status as well as its wide spectrum of application.

A SPF in Luxembourg does not require an official licence prior to commencing its activities. Moreover, the shareholders of a SPF benefit from the liability liability of it as a legal person as well as from its ability to issue bearer and registered shares.

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Securitisation Vehicle (SPV) in Luxembourg

I. Concept of securitisation

Luxembourg's Securitisation Law of March 22nd, 2004, defines the concept of securitisation as follows: a business transaction in which a Securitisation Structure or Securitisation Vehicle (Special Purpose Vehicle, SPV) acquires or assumes direct or indirect risks from receivables, from other assets, assumed from third parties or from all or some obligations inherent in the business activities of third parties. A Securitisation Vehicle (SPV) finances itself from the issuing of securities whose value or the proceeds from which are dependant upon the assumed risks.

II. Legal Structure of a Securitisation Vehicle (SPV) in Luxembourg

Securitisation Vehicles (SPV) in Luxembourg are entities which either wholly perform the securitisation or which are involved in such transactions through the complete or partial assumption of the securitised risks or through the issuing of securities. The issuing of securities provides the financing.

1. Legal form

In Luxembourg, there are two types of Securitisation Vehicles (SPV), namely the non-regulated Securitisation Company in the form of a corporation and the Securitisation Funds.

1.1. Securitisation Company

As a corporation, a Securitisation Company in Luxembourg may be accordingly formed in the following legal forms: the Public Limited Company (PLC., Corp./SA); Limited Liability Company (LLC., Ltd./SARL); Partnership Limited by Shares (SCA) or Co-operative in the form of the Public Limited Company (SCOSA).

1.2. Securitisation Funds

In contrast to a Securitisation Company, a Securitisation Fund in Luxembourg does not have legal personality and instead consists of one or more than one jointly owned asset or trust asset. The Fund is managed by a Management Company which itself must be a Trading Company.

2. Formation

How a Securitisation Vehicle (SPV) is formed is dependent upon the particular legal form chosen.

2.1. Securitisation Company

A Securitisation Company in Luxembourg is formed through the recording of its articles of association by a notary. Its articles of association will subsequently be published in the Official Bulletin (Mémorial C) and lodged with Luxembourg's Trade and Companies Register.

2.2. Securitisation Funds

A Securitisation Fund in Luxembourg is formed in contractual form as jointly owned assets or as trust assets. The assets of such a Securitisation Fund require to be separated from those of the Management Company resident in Luxembourg.

3. Minimum capital

3.1. Securitisation Company

The minimum capital requirement of a Securitisation Company in Luxembourg which has been formed as a corporation is dependent upon the particular legal form chosen. The minimum capital relates to the legal entity as a whole and not merely to the individual compartments.

3.2. Securitisation Funds

In contrast, no minimum capital is prescribed for Securitisation Funds in Luxembourg. A minimum capital requirement is only prescribed for those Management Companies managing Funds. The said requirement will be determined by the particular legal form in which the Management Company has been formed.

4. Securitisation structures

Securitisation may be effected either through the transfer of the legal ownership of the assets (a "true sale" transaction) or through the transfer of the credit risks of the assets (a "synthetic" transaction).

4.1. "True sale" transaction

In a so-called "True Sale" transaction, the originator (the original creditor) sells an asset pool to a Securitisation Vehicle (SPV) in Luxembourg which subsequently issues securities which are secured exclusively by the transferred assets and the payment streams resulting from the said transfer. A Securitisation Vehicle (SPV) in Luxembourg acquires the said asset pool using the proceeds generated from issuing securities. The originator consequently transfers the legal as well as the beneficial ownership of the assets to the Securitisation Vehicle (SPV) in Luxembourg.

4.2. "Synthetic transaction"

In a "synthetic" transaction, the originator eliminates the credit risk through purchasing credit derivatives. The said elimination is achieved without selling the asset pool to a Securitisation Vehicle (SPV) in Luxembourg.

5. Asset classes (securitisation objects)

There exist no restrictions on which assets may be securitised in Luxembourg's Securitisation Law. Securitisation transactions may consequently pertain to moveable and immovable assets including yet not limited to, for example, diamonds; champagne; intellectual property; receivables of all types as well as all activities having a real value or which are expected to generate proceeds in the future.

The said securitised assets or risks will finally be represented by registered or bearer shares including, for example, shares, certificates and bonds.

6. Separation into compartments

The assets of a Securitisation Vehicle (SPV) in Luxembourg may be separated into a single compartment or several compartments. If the said separation is to be possible, it is required that this be specified in the articles of association of a Securitisation Company in Luxembourg or the contractual provisions of a Securitisation Fund. Each compartment therein represents an independent entity. This subsequently enables different securitisation transactions to be performed individually by each of the respective compartments. Moreover, the said compartments may be liquidated separately.

7. Supervision

If a Securitisation Vehicle (SPV) in Luxembourg issues securities to the public continuously, it requires the approval of and is subject to the supervision of Luxembourg's Financial Market Authority (CSSF). Moreover, a Securitisation Vehicle (SPV) in Luxembourg must entrust its liquid assets, including its securities, to a bank in Luxembourg on a fiduciary basis. In contrast thereto, the Law does not lay down any restrictions for Securitisation Instruments which issue securities through private placement.

8. Insolvency protection for Securitisation Vehicles (Securitisation Instruments)

The assets of a Securitisation Vehicle (SPV) in Luxembourg are treated separately from the assets of the originator. This therefore means that in the case of the originator's insolvency, this cannot have any effect upon the Securitisation Vehicle (SPV).

III. Tax structure of a Securitisation Vehicle (SPV) in Luxembourg

1. Securitisation Company

1.1. Corporate taxation

As a corporation, a Securitisation Company in Luxembourg is subject to corporate taxation annually at a rate of 29.22%. Corporate taxation consists of the following:

1.1.1. Corporate income tax

In Luxembourg, corporate income tax at a rate of 21% is levied on income exceeding 15,000 EUR (or at a rate of 20% on income not exceeding 15,000 EUR) and is increased by the solidarity surtax at a rate of 7%.

All corporations resident in Luxembourg which do not require a trade licence and whose assets, securities and bank balance together exceed 90% of its balance sheet total are required to pay only the minimum corporate income tax of 3,210 EUR (3,000 EUR plus the 7% solidarity surtax).

Notwithstanding this, the basis of assessment for corporate income tax may be reduced by all obligations relating to the investors' remuneration, such as interest or dividends, due to them constituting fully tax-deductible business expenses.

1.1.2. Municipal business tax

All businesses resident in Luxembourg (e.g. trading-, industrial-, mining- or craft businesses) as well as the permanent establishments of foreign companies are subject to municipal business tax at a rate of 6.75%.

1.2. Tax exemptions

The Securitisation Company in Luxembourg is liable neither to the municipal business tax nor to withholding tax on distributions to investors.

1.3. Double taxation agreements (DTA application)

The Securitisation Company in Luxembourg may benefit from Luxembourg's network of double taxation agreements (DTA's) due to its unlimited tax liability.

2. Securitisation Funds

Due to Securitisation Funds in Luxembourg lacking legal personality, it is the shareholders and their income which is liable to tax and not the Fund itself. A Securitisation Fund in Luxembourg is accordingly neither liable to corporate income tax nor to the so-called "subscription tax" ("Tax d' Abonnement"). As also applies in the case of a Securitisation Company in Luxembourg, a Securitisation Fund in Luxembourg is not liable to withholding tax on distributions to its investors.

IV. Practical aspects of Securitisation Vehicles (SPV) in Luxembourg

As a consequence of the afore-mentioned tax liability of a Securitisation Fund in Luxembourg, it is not widely used in practice. Instead, it is the Securitisation Company in Luxembourg which is

more widely used. The Public Limited Company (PLC., Corp./SA) is the most commonly used legal form, particularly if issued securities are to be publicly sold. In the case of the Limited Liability Company (LLC., Ltd./SARL), securities are not permitted to be issued on the capital market nor to be quoted on the stock exchange.

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Intellectual Property Rights (IP-Box) in Luxembourg

I. Intellectual Property-Box (IP-Box) in Luxembourg

The so-called IP-Box is an internationally recognised and, now, widely used instrument for the tax incentivising of research and development. It involves a special tax regime within which income from intellectual property rights (IP) is subject to preferential taxation.

Such a tax regime exists in Luxembourg to the extent that income from intellectual property rights is subject to preferential tax treatment. Within this framework, the application of Luxembourg's tax relief can result in the partial exemption of income from intellectual property from taxation.

II. Intellectual property rights (IP) in Luxembourg

For the purposes of Luxembourg's tax relief, the following constitute intellectual property rights (IP): Patents, copyright; software; trademarks; industrial designs and utility models; models; domain names; brands for services and goods as well as production and know-how.

III. Company for Intellectual Property Rights in Luxembourg

Intellectual property rights (IP) are increasingly a decisive success factor in international competition. Through a tax efficient structuring, the value of intellectual property rights (IP) can be further increased. This includes their relocation abroad enabling the subsequent receipt of income from licensing by a Company for Intellectual Property Rights which is subject to preferential tax treatment. Profits and tax revenue particularly accrue in the place where the intellectual property rights are located. Moreover, such assets can, in principle, be transferred relatively easy to a Company for Intellectual Property due to them not being tied to one particular geographical location.

Companies for Intellectual Property Rights are subsidiaries which have been formed especially in a country having a particularly advantageous tax system and subsidiaries, in which the intellectual property rights of a company are concentrated. The Company for Intellectual Property Rights is thereafter responsible for the establishment of and/or the further development, protection, management and exploitation of the intellectual property rights. In addition, the said company subsequently licenses such rights to group companies or third parties.

1. Luxembourg's Company for Intellectual Property Company as a tax optimisation instrument

A Company for Intellectual Property Rights in Luxembourg can be formed as a corporation and may accordingly take the form of the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SA); Partnership Limited by Shares (SCA) as well as Co-operative in the form of the Public Limited Company (SCOSA). In principle, a Company for Intellectual Property Rights in Luxembourg is formed through the recording of its articles of associations by a notary and their subsequent publication in the Official Bulletin (Mémorial C). Moreover, the articles of association are lodged with Luxembourg's Trade and Companies Register. The minimum capital required depends upon the particular legal form chosen.

If intellectual property rights are transferred to a Company for Intellectual Property Rights in Luxembourg, the profits made therefrom can be liable to Luxembourg's preferential taxation.

2. Structuring possibilities of Luxembourg's Company for Intellectual Property Rights

Over time, business models have been developed which use IP-SOPARFI-Holding Companies in Luxembourg, belonging to a group of companies, to minimise tax paid on income from the use and exploitation of their own or third-party intellectual property rights by a Company for Intellectual Property Rights. Such companies can be organised free from tax. Lastly, through transferring valuable intellectual property rights to IP-SOPARFI-Companies resident in Luxembourg which are preferentially taxed, the profits are accordingly relocated and are liable subsequently to Luxembourg's tax relief.

IV. Advantages of a Company for Intellectual Property Rights in Luxembourg

1. Preferential taxation of income from intellectual property rights (IP)

1.1 Tax incentives for income from the use of intellectual property rights (IP)

In principle, corporations in Luxembourg have been liable to corporate taxation of 29.22% (21% or 20% corporate income tax, increased through the solidarity surcharge of 7% as well as the municipal business tax at a rate of 6.75%) from January 1st, 2013.

Notwithstanding this, net income and capital gains made from the use, licensing and sale of intellectual property rights (IP) in Luxembourg are taxed at a rate of only 20% under application of the tax relief. 80% of the said income accordingly remains exempt from taxation in Luxembourg, resulting in the income subject to preferential taxation being liable to an effective tax burden of 5.84%. Therein, depreciation and financing costs are, among others, deductible.

1.2 Tax exemptions

In Luxembourg, intellectual property rights are not liable to the net wealth tax of 0.5% on taxable assets.

Additionally, companies in Luxembourg are not liable to withholding tax on profits from liquidation, licence fees nor interest. Moreover, it is possible for dividend distributions to be exempt from withholding tax under application of the parent subsidiary Directive.

1.3 Requirements

Luxembourg's tax relief of 80% applies upon satisfaction of the following requirements:

The intellectual property rights (IP) must have been acquired or developed after December 31st, 2007. It is required that the intellectual property rights have, at the least, a beneficial owner. In principle, a patent is not required; the right to the exclusive use within a certain scope is required. Moreover, it is required that the intellectual property rights and the development costs have already achieved a favourable trade balance. Where intellectual property rights (IP) are acquired, it must be demonstrated that the acquisition was for reasons unrelated to tax. The acquisition of intellectual property rights from directly connected or affiliated companies is not permitted. This concerns the transfer from parent/subsidiary companies having an investment of more than 10% and affiliated companies with common shareholders. Furthermore, it is required that a Company for Intellectual Property Rights has a company address in Luxembourg and at least one director who is resident in Luxembourg.

2. Further advantages

In tax practice in Luxembourg, the assessment framework is flexibly administered. Information on the scope of tax liability and undertakings relating to taxation (so-called tax rulings) can be sought from Luxembourg's tax authority prior to the tax being due. In principle, these can be relied upon by both sides. In Luxembourg, such tax ruling procedures can be completed within weeks.

Moreover, the unlimited carrying forward of losses is possible in Luxembourg and consequently a reduction of the tax burden.

Additionally, Luxembourg is a signatory to double taxation agreements (DTA's) with many countries which prevent the double taxation of income from transactions which has already been taxed. It is possible to set off withholding tax paid abroad on licensing income insofar as no setting off excess arises therefrom.

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SICAV/SICAF Investment Fund in Luxembourg

1. Legal structure of a SICAV/SICAF Investment Fund in Luxembourg

1. Concept

The SICAV and SICAF are investment fund structures in Luxembourg which may be formed as UCITS Funds (Undertakings for Collective Investment of Transferable Securities) or as Specialised Investment Funds (SIF).

A SICAV (Société d'Investissement à Capital Variable) in Luxembourg is an investment fund in the form of an Investment Company whose share capital is variable and the value of which at any time matches the value of the net assets of all the sub-funds, constituted as shares without a statement of their nominal value.

In contrast thereto, a SICAF Investment Fund (Société d'Investissement à Capital Fixe) in Luxembourg exists in the form of an Investment Company whose share capital is fixed.

Due to both of the afore-mentioned Investment Funds not having legal personality, they are either self-managed or externally managed Investment Companies.

The SICAV and SICAF Investment Funds are only permitted to manage the assets in their own portfolios.

2. Purpose

Their purpose is the investment of the share capital in securities or in other liquid financial investments in accordance with the principle of diversification to allow the shareholders to receive the income generated from the management of their assets.

3. Investment policy

Due to it being possible to mix both the SICAV and SICAF Investment Funds with other investment assets, they may be formed as, among others, Security-; Real Estate-; Money market- as well as Holding- Funds.

4. Investors

If a SICAV and SICAF in Luxembourg are formed as UCITS funds, no restrictions apply as to who may be an investor. In contrast thereto, Specialised Investment Funds (SIF) are reserved for “qualified investors” only.

5. Formation

The SICAV is formed as a Public Limited Company (PLC., Corp./SA).

In contrast, the SICAF can be formed as a corporation in Luxembourg in the form of the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL), Partnership Limited by Shares (SCA) or Co-operative in the form of the Public Limited Company (SCOSA). A SICAV and SICAF in Luxembourg are frequently formed as umbrella funds with several sub-funds. Therein, the different sub-funds can be structured in such a way that the assets and liabilities of each sub-funds are separate. This results in the independence of each of the different sub-funds to the greatest possible extent. Additionally, each sub-fund may have its own specific investment strategy and investment manager.

6. Minimum capital

The subscribed capital of a SICAV/SICAF Investment Fund in Luxembourg amounts to at least 1.25 million EUR and requires to be reached within a period of 6 months following the obtaining of approval from Luxembourg's Financial Market Authority (CSSF) if it is an UCITS Fund and within a period of 12 months in the case of a Specialised Investment Fund (SIF) respectively.

The minimum share capital depends upon the particular legal form chosen.

7. Registered office

The registered office and main place of control and management of a SICAV and SICAF under the articles of association must be located in Luxembourg. This includes, among others, the production and safekeeping of all documents provided to the investors as well as the issuance and redemption of shares.

8. Custodian

It is required that the assets of a SICAV/SICAF be transferred to a custodian resident in Luxembourg (depository bank). This is to ensure that shares are issued and redeemed in compliance with the statutory provisions. Moreover, the custodian is to ensure that the income and/or profits are used in accordance with the articles of association.

The custodian is liable to the SICAV/SICAF Investment Funds in Luxembourg as well as to the shareholders only for loss arising from the culpable non-performance or defective performance of its duties.

9. Investment and distribution policy

A SICAV and SICAF in Luxembourg can issue and cancel new shares at any time not exceeding its net asset value.

Both Funds may regulate freely the distribution of dividends or other repayments to their investors by way of formal conditions in the article of associations. Both Investment Funds in Luxembourg are not subject to a duty to create legal reserves.

10. Supervision aspects

10.1. Approval

A SICAV and SICAF in Luxembourg are subject to the supervision of Luxembourg's Financial Market Authority (CSSF). Both Investment Funds, as well as the investment managers and advisers of the said funds, require a licence prior to commencing business. Notwithstanding this, there exist no restrictions on the nationality of the person or the company managing or advising the said Funds.

10.2. Reports

A SICAV and SICAF must produce annual accounts and half-yearly accounts which must be audited by an independent auditor. The accounts are subsequently required to be published no later than 4 months (and no later than 6 months in the case of a Specialised Investment Fund (SIF) in Luxembourg) after the conclusion of the year.

Moreover, Investment Funds in Luxembourg are required to prepare, with the exception of those Investment Funds in the form of a closed UCITS Fund, a sale prospectus which must contain, among others, the founding documents in order to enable the investors to carry out an informed evaluation of the proposed investment and of the associated risks in particular.

II. Tax structure of a SICAV/SICAF Investment Fund in Luxembourg

1. Corporate taxation

SICAV and SICAF Investment Funds which are domiciled in Luxembourg are exempt from corporate taxation. They are liable to the so-called "subscription tax" at an annual rate of 0.05% on their net assets or at a rate of 0.01% if the Investment Funds are formed as a Specialised Investment Fund (SIF) in Luxembourg.

2. Tax exemptions

Both the SICAV and SICAF in Luxembourg are exempt from the net wealth tax and from withholding tax on the distribution of dividends to non-resident investors.

Moreover, Fund management services provided by a Management Company in Luxembourg are not liable to value-added tax (VAT). Notwithstanding this, other services may remain subject to value-added tax (VAT) in Luxembourg at a rate of 15%.

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SICAR Investment Company in Luxembourg

I. Legal structure of a SICAR Investment Company in Luxembourg

1. Concept

The SICAR Investment Company (Société d'investissement en capital à risqué) in Luxembourg is not a new company form. Instead, it is an instrument exclusively for risk capital investments which is regulated by the SICAR law. The SICAR Investment Company in Luxembourg has legal personality separate from its investors.

2. Purpose

The purpose of a SICAR Investment Company in Luxembourg is the investment of its resources in assets representing risk capital in order to distribute the result generated therefrom to qualified investors. The said result offsets the risk borne.

3. Investment policy

The Luxembourg investment vehicle SICAR is permitted to invest in risk capital only. This means that funding is directly or indirectly contributed to a company to assist it during its early stages, for its development or its flotation on the stock market (private equity investments).

Investments in real estate are only permitted under certain conditions. Investments through companies which invest in or hold real estate assets representing risk capital as well as investments in Real Estate Companies are possible. Notwithstanding this, the direct holding of real estate is not permitted.

A SICAR Investment Company in Luxembourg is not under a duty to comply with the principle of diversification when choosing its investments. It is therefore possible for it to invest in one or several companies active in a particularly crowded segment of the market.

Moreover, the method through which a SICAR finances companies may be freely chosen. Consequently, all methods of financing including, yet not limited to, investments, loans, interim credit and mezzanine finance are permissible under the condition that it represents the financing of a risk capital investment.

4. Investors

Under the SICAR law, the Luxembourg SICAR investment vehicle is exclusively reserved for "qualified investors", namely professional investors as well as institutional investors such as banks and insurance companies. Moreover, natural persons, who are wanting to invest at least

125,000 EUR, are required to submit written proof of their well-informed investment status. Such written proof may take the form of a letter from the bank or financial provider confirming the investor's having the requisite knowledge.

5. Formation

A SICAR in Luxembourg is formed either as a corporation or as a partnership. It is not permitted to be organised in contractual form, namely to be organised as an Investment Fund managed by a Management Company (fonds commun de placement, FCP). The following legal forms are consequently available for SICAR Investment Companies in Luxembourg:

the Public Limited Company (PLC., Corp./SA); Limited Liability Company (LLC., Ltd./SARL); Partnership Limited by Shares (SCA); Co-operative in the form of the Public Limited Company (SCOSA) and Limited Partnership (LP.)

In addition, a SICAR in Luxembourg may take the structure of a Holding Fund constituted by several sub-funds, each of which having their own specific investment strategy, investment manager and each of which being independent of the others. In this respect, the structuring possibilities are similar to those of the Specialised Investment Fund (SIF) in Luxembourg.

6. Minimum capital

The subscribed capital of a SICAR in Luxembourg must amount to at least 1 million EUR. The said amount requires to be reached within a period of 12 months from the date on which the SICAR was approved by Luxembourg's Financial Market Authority (CSSF).

Moreover, the minimum share capital that requires to be contributed depends upon the particular legal form chosen. In the case where a SICAR in Luxembourg is formed as a corporation, the shares issued require to be fully subscribed and each shares requires to be paid up at least as to 5% through a cash or non-cash contribution.

7. Registered office of the SICAR

The registered office and place of central control and management of a SICAR under its articles of association must be located in Luxembourg. This includes, among others, the production and safekeeping of all documents provided to the investors as well as the issuance and redemption of shares.

8. Custodian

It is required that the assets of a SICAR in Luxembourg be transferred to an independent custodian (financial institute) which is resident in Luxembourg. The latter will act exclusively in the interests of the investors and, within this framework, will ensure that the subscription price of shares in the company are received within the specified time. In the case of transactions involving

the said assets, the custodian will ensure that the consideration therefor is transferred or paid and that the resulting proceeds are used in accordance with the formation deeds.

9. Organisation

How a SICAR Investment Company in Luxembourg is organised depends upon the particular legal form chosen.

The company management and the custodian of a SICAR must be sufficiently qualified and it is required that they provide proof of their corresponding experience in the field of “private equity”. Notwithstanding this, a SICAR in Luxembourg does not necessarily require a “sponsor/promoter”. Furthermore, it is required that the investment manager obtain a licence from Luxembourg’s Financial Market Authority (CSSF).

10. Issuance and distribution policy

The provisions contained in the articles of association are wholly authoritative with regard to the issuance of new shares due to the SICAR law containing no specific provisions thereon.

This is also the case for the regulation of the formal criteria for the distribution of dividends or other repayments to the investors. Furthermore, a SICAR in Luxembourg is not required to create reserves.

A SICAR in Luxembourg may determine its method for the valuation of assets freely. Notwithstanding this, the said method should be noted in the founding documents.

11. Description

The name of a SICAR Company is required to include the abbreviation “SICAR”.

12. Supervision aspects

In comparison with other regulated investment vehicles in Luxembourg, the SICAR is subject to significantly less strict supervisory rules.

12.1. Approval and supervision

The SICAR in Luxembourg is subject to the permanent supervision of Luxembourg’s Financial Market Authority (CSSF) and requires to obtain prior approval from the latter.

Following the consent from the CSSF, a SICAR may be quoted on Luxembourg’s stock market.

12.2. Reports

The annual accounts of a SICAR in Luxembourg must be audited by an independent auditor and must be published no later than 6 months after the close of the year.

12.3. Minimum content of the sale prospectus

Furthermore, a SICAR in Luxembourg is required to prepare a sales prospectus which contains all the necessary information which enables the investors to carry out an informed evaluation of the investments and associated risks. The said prospectus requires to contain the foundation documents.

II. Tax structure of a SICAR Investment Company in Luxembourg

1. Corporate taxation

In principle, a SICAR corporation in Luxembourg is subject to corporate taxation at a rate of 29.22%. This said rate consists of the following components: corporate income tax at a rate of 21% on income exceeding 15,000 EUR (or a rate of 20% on income not exceeding 15,000 EUR); the solidarity surtax at a rate of 7% as well as the municipal business tax at a rate of 6.75%.

Notwithstanding this, income from securities as well as from the sale, contribution or liquidation of its securities is exempt from corporation tax.

If a SICAR in Luxembourg is formed as a Limited Partnership (LP), it is the persons carrying on business as partners and not the partnership itself which is liable to tax. The SICAR consequently remains exempt from corporate income and the municipal business tax. In contrast thereto, its investors remain liable to tax in the country in which they are resident.

2. Tax exemptions

A SICAR in Luxembourg is exempt from the net wealth tax and the withholding tax on the distribution of dividends to investors as well as investment income from the disposal of such investments. In addition, withholding tax does not require to be paid by non-resident investors on interest paid by a SICAR as well as on liquidation proceeds. It is likewise exempt from the so-called “subscription tax” (Tax d’Abonnement). Moreover, management services provided to a SICAR by a Management Company in Luxembourg remain exempt from value-added tax (VAT).

3. Double taxation agreements (DTA's)

Due to a SICAR in Luxembourg in the form of a corporation being fully liable to tax, it is able to benefit from Luxembourg’s network of double taxation agreements (DTA’s).

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Specialised Investment Fund (SIF) in Luxembourg

I. Legal Structure of a Specialised Investment Fund (SIF) in Luxembourg

1. Concept

The Specialised Investment Fund (SIF) in Luxembourg is a type of investment fund which is regulated and which is not intended for the general public. In contrast to UCITS Funds (Undertaking of Collective Investment of Transferable Securities) which fall within the scope of application of the EU Directive and which invest in securities such as shares and bonds, the Specialised Investment Fund (SIF) offers greater flexibility.

2. Investment policy

A Specialised Investment Fund (SIF) in Luxembourg is permitted to invest in all types of assets including traditional and alternative investment strategies. These include, for example, securities or money market Funds; real estate; private investment capital; infrastructure; private equity and hedge Funds.

A Specialised Investment Fund (SIF) in Luxembourg must comply with the diversification principle when choosing its investments in order to protect the investors. A Specialised Investment Fund (SIF) in Luxembourg is subsequently not permitted to invest more than 30% of its assets in securities of the same type and from the same issuer. This includes the use of derivatives.

3. Investors

The Luxembourg investment vehicle which is the Specialised Investment Fund (SIF) is reserved for qualified investors”, namely institutional investors and professional investors (such as, yet not limited to, banks and insurers) as well as all investors investing at least 125,000 EUR. The latter are required to provide proof that they are, in fact, experienced investors. The said proof may take the form of confirmation from a bank or financial provider.

4. Formation

A Specialised Investment Fund (SIF) in Luxembourg is formed either in contractual form and consequently as an Investment Fund represented by a Managing Company (fonds commun de placement, FCP) or in the form of a company, namely as an Investment Company whose capital is variable (SICAV) or fixed (SICAR). If a SIF is formed in the form of the latter, it may be formed in the following legal forms:

the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL); Partnership Limited by Shares (SCA) or Co-operative in the form of the Public Limited Company (SCOSA).

Moreover, a SIF in Luxembourg may take the structure of a Holding Fund constituted by several sub-funds. The said sub-funds will each have their own specific investment strategy, investment manager and each of which will be independent of the others.

5. Minimum capital

Beginning from the date when a Specialised Investment Fund (SIF) in Luxembourg was approved by Luxembourg's Financial Market Authority (CSSF), the net assets of a SIF must amount to at least 1.25 million EUR within 12 months.

The minimum share capital required for the formation of a Specialised Investment Fund (SIF) is dependent upon the particular legal form chosen.

6. Registered office

The registered office and main place of central management and control of a Specialised Investment Fund (SIF) under its partnership agreement/articles of association must be located in Luxembourg.

If a Specialised Investment Fund (SIF) is formed as an Investment Fund (FCP) in Luxembourg, it shall be managed by a Management Company in Luxembourg.

7. Custodian

It is required that the assets of a Specialised Investment Fund (SIF) in Luxembourg be transferred to an independent custodian (financial institute) which is resident in Luxembourg. The latter will act exclusively in the interests of the investors and, within this framework, will ensure that the subscription price of shares in the company are received within the specified time. In the case of transactions involving the said assets, the custodian will ensure that the consideration therefor is transferred or paid and that the resulting proceeds are used in accordance with the partnership agreement/articles of association.

8. Organisation

How a Specialised Investment Fund (SIF) in Luxembourg is organised depends upon the particular legal form chosen.

The company management or the Management Company (in the case of an Investment Fund (FCP)) and the custodian of a Specialised Investment Fund (SIF) in Luxembourg must be suf-

ficiently qualified and it is required that they provide proof of their corresponding experience in the relevant field. Notwithstanding this, it is not a mandatory requirement for a Specialised Investment Fund (SIF) in Luxembourg to have a “sponsor/promoter”. Furthermore, the investment manager is not required obtain a licence from Luxembourg’s Financial Market Authority (CSSF).

9. Issuance and distribution policy

The shares of a Specialised Investment Fund (SIF) in Luxembourg may be freely transferred to other qualified investors. The issuance of shares is simplified and subject to the provisions contained in the partnership agreement/articles of association.

Moreover, the requirements on the repayments and distribution of dividends may be freely regulated in the partnership agreement/articles of association and it is not required that reserves be created. Repayments and the distribution of dividends may be freely interpreted.

A Specialised Investment Fund (SIF) in Luxembourg may determine its method for the valuation of assets freely. Notwithstanding this, this should be noted in the partnership agreement/articles of association.

10. Supervision

10.1. Licence

A Specialised Investment Fund (SIF) in Luxembourg is subject to the supervision of Luxembourg’s Financial Market Authority (CSSF) and requires a licence prior to commencing business. Notwithstanding this, a SIF may commence activity before such time if its application for the said licence was submitted within 1 month following its formation.

A SIF can be quoted on Luxembourg’s stock market directly following obtaining the said licence from Luxembourg’s CSSF.

10.2. Reports

The annual accounts of a Specialised Investment Fund (SIF) in Luxembourg require to be audited by an independent auditor and must be published no later than 6 months after the close of the year.

10.3. Minimum content of the sale prospectus

Moreover, a Specialised Investment Fund (SIF) in Luxembourg must prepare a sale prospectus containing all the information necessary to enable investors to carry out an informed evaluation of the investment policy and the risks of investing.

II. Tax structure of a Specialised Investment Fund (SIF) in Luxembourg

1. Corporation tax

A Specialised Investment Fund (SIF) in Luxembourg is exempt from corporate income tax.

Instead, a Specialised Investment Fund (SIF) in Luxembourg is liable to the so-called subscription tax (Tax d'abonnement) at a rate of 0.01% on its net assets. Notwithstanding this, a range of investments, include pension pooling and Holding Funds for Funds in Luxembourg, are exempt therefrom.

2. Tax exemptions

A Specialised Investment Fund (SIF) in Luxembourg is not liable to the net wealth tax nor to withholding tax on the distribution of dividends to non-resident investors.

Furthermore, management services provided to a Specialised Investment Fund (SIF) by a Management Company in Luxembourg remain exempt from value-added tax (VAT). In contrast, other services may be liable to value-added tax (VAT) at a rate of 15%.

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Real Estate Company in Luxembourg

I. Concept

A Real Estate Company is a company carrying on and/or the purpose of which under its articles of association is exclusively or predominantly the acquisition, management, use of and sale of real estate.

1. Legal Form

A Real Estate Company in Luxembourg can be formed as a corporation and accordingly as a Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL) as well as a Partnership Limited by Shares (SCA) or as a Co-operative in the form of a Public Limited Company (SCOSA).

2. Formation

The particular formation requirements depend upon the particular legal form chosen.

II. Tax aspects

1. Taxation of income from the sale of real estate

In principle, income made from the sale of real estate is, for the purposes of tax law, taxed in accordance with the situs principle. Such income is accordingly liable to tax in the country in which the real estate is located.

2. Taxation of gains made from the sale of shares

2.1. General

In contrast to the above, profits from the sale of shares in a foreign Real Estate Company which owns the domestic real estate are usually taxed in the country in which the seller resides, namely where the registered office of this company is located.

2.2. Real Estate Company in Luxembourg

If the foreign real estate is a Luxembourg corporation, this will, in principle, be subject to the normal tax liability. Notwithstanding this, it can however benefit from the profits from the sale of the shares being exempt from taxation under the parent subsidiary Directive.

2.3. Exception

However, some of the new double taxation agreements (DTA's) which Luxembourg has entered into with many countries, including Germany for example, include an exception to the reversal of the situs principle.

Under the new provisions, the application of the situs principle is extended to include Real Estate Companies whose assets, directly or indirectly, consist of at least 50% real estate.

Profits from the sale of shares in such a Real Estate Company, which have hitherto been liable to tax in the country of the seller in accordance with the general provisions, are now liable to tax at the place where the real estate is located.

The consequence of this is that if the real estate is located abroad, Luxembourg Real Estate Companies cannot benefit from its country's preferential tax system in relation to the sale of the shares.

2.4. Solution

These provisions do not, however, apply to a parent company which has its registered office and the management of which is located abroad. Preferential taxation of a two-tier corporate structure in connection with investment in real estate remains possible.

Accordingly, if real estate owned by a resident Real Estate Company is to be held by a foreign corporation and shares in the resident Real Estate Company are to be sold, the tax liability remains in the country of the foreign company.

In practice in Luxembourg, the following tax efficient structure has developed in relation to the sale of shares in a Real Estate Company:

Firstly, a Luxembourg corporation is formed. This is most often in the form of a SOPARFI-Financial Holding Company in Luxembourg which takes the legal form of the Public Limited Company (PLC., Corp./SA). In particular, the Public Limited Company (PLC., Corp./SA) is a preferred legal form in Luxembourg due to it being possible to issue bearer shares which are easily transferable.

The SOPARFI-Financial Holding Company (Société de participations financières) in Luxembourg is a non-regulated Trading Company which is fully liable to tax and which benefits from the "inter-corporate privilege" under the parent subsidiary Directive. The SOPARFI primarily pursues the acquisition, management as well as the exploitation of financial investments of all types in companies in and outwith Luxembourg. Notwithstanding this, the SOPARFI can also carry on industrial or commercial activities.

The SOPARFI-Financial Holding Company is formed through the recording of its articles of association by a notary and their subsequent publication in the Official Bulletin (Mémorial C). The articles of association will be subsequently lodged with Luxembourg's Trade and Companies Register.

2.4.2. EU Real Estate Company

The Luxembourg SOPARFI-Financial Holding, on the other hand, forms an EU Real Estate Company or acquires its shares.

2.4.3. Sale of shares in an EU Real Estate Company

The Luxembourg SOPARFI-Financial Holding Company thereafter sells the shares in the EU Real Estate Company. The tax on the gains made from the said sale requires to be paid in Luxembourg. Notwithstanding this, dividends, profits from the sale and liquidations of investments are, among others, exempt from tax under the parent subsidiary Directive. In addition, the exemption of dividend distributions from withholding tax under the said Directive is also possible.

2.4.4. Liquidation of the Luxembourg Corporation

The distribution of the liquidation proceeds of a Luxembourg SOPARFI-Financial Holding Company, following its liquidation, is free from withholding tax.

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E-Commerce in Luxembourg

I. Concept

E-Commerce is the electronic trading of goods and services on the internet. A distinction is made between indirect and direct E-Commerce.

In the case of indirect E-Commerce, the contract is concluded on the internet (online) whilst the performance of the contract takes place outwith the internet (offline). For the purposes of value-added tax (VAT), indirect E-Commerce is treated in the same way as a conventional commercial transaction.

Direct E-Commerce is treated differently for value-added tax (VAT) purposes due to the conclusion of the contract as well as its performance, and accordingly the entire legal transaction, taking place on the internet (online). In particular, this means that the exchange of goods and services for value-added tax (VAT) purposes is effected on the internet (online).

In light of its special tax treatment, the remainder of this text will focus exclusively on direct E-Commerce:

II. Direct E-Commerce services

Direct E-Commerce includes, yet is not limited to, the following services:

- 1.1 The provision of websites, web hosting and the maintenance of programmes and equipment;
- 1.2 The provision of software and the updating thereof;
- 1.3 The provision of texts and information for, yet not limited to, e-books and other electronic publications as well as online advertisements;
- 1.4 The provision of databases such as those required for search engines;
- 1.5 The provision of music, films and games used for gambling and lotteries as well as for programmes and events from the worlds of politics; culture; sport; science and entertainment;
- 1.6 The provision of long-distance learning;
- 1.7 Online auctions, insofar as this is not already dealt with by web hosting services, through automated databases where the customer is required to input data and where no or minimal human intervention is necessary;
- 1.8 Internet service packages which include more than mere access to the internet, instead including – yet not limited to – news, the weather forecast; travel information; gaming forums; web hosting and access to chatlines.

III. The E-Commerce Company in Luxembourg

In Luxembourg, so-called E-Commerce Companies are formed for the performance of the aforementioned services. The said companies may be formed either as corporations or as partnerships. The particular formation requirements will be determined by the legal form that a particular E-Commerce Company takes.

IV. Tax Aspects of direct E-Commerce

In accordance with the European Directive on E-Commerce, direct E-Commerce services are subject to a special EU value-added tax (VAT) regime. The said regime will remain in force until January 1st, 2015:

1. The taxation of direct E-Commerce services

In principle, every E-Commerce services provider liable to pay value-added tax (VAT) on such activities is to be treated as a business person for value-added tax (VAT) purposes. The place of performance is the determining factor for taxation.

In respect of services which have been provided electronically, where the performing business person is resident as well as the status and place of residence of the purchaser are the material factors in determining the place of performance. In respect of the latter, the distinction thereafter requires to be made as to whether they are a business person (commercial customer) who has purchased the service(s) for business purposes or a non-business person (private person).

1.1 Business persons within the European Union (EU)

1.1.1 Services to customers in the same EU member state

In the case where an EU business person provides direct E-Commerce services to a private person (business to customer, b2c) or to a commercial customer (business to business, b2b) in the same EU member state, the place of taxation continues to be where the services provider is domiciled. The value-added tax (VAT) therefore requires to be paid by the EU business person providing the services.

1.1.2 Services to customers in other EU member states

a) Commercial customers

Where an EU business person provides direct E-Commerce services to a commercial customer in another EU member state, value-added tax (VAT) requires to be paid in the member state in which the commercial customer is resident. The value-added tax (VAT) therefore requires to be paid by the customer.

In cases such as this, the so-called “reverse charge” procedure will operate. This means that the commercial EU customer -as the recipient of the services- is to calculate the value-added tax

(VAT) liability in accordance with the tax rates in force in his country, within the framework of the reversal of the tax liability, and thereafter to pay the tax to the competent tax authority in the country in which he is resident. In so doing, the said commercial customer has the right to deduct input tax for the same amount. The performing business person is not required to show value-added tax (VAT) on his invoice.

This procedure applies uniformly to all EU member states.

b. Private persons

In the case where an EU business person provides direct E-Commerce services to a private person in another member state, the place of taxation will continue to be where the services provider is resident. The value-added tax (VAT) accordingly requires to be paid by the performing EU business person.

Notwithstanding this, in accordance with the European E-Commerce Directive, where a business person resident in the EU provides electronic services to a private person also resident in the EU, value-added tax (VAT) will require to be paid in the customer's member state from January 1st, 2015.

1.1.3 Services to customers outwith the EU

Where such services are provided by an EU business person to customers outwith the EU, the place of taxation is where the customer is resident. Accordingly, such services are not liable to value-added tax (VAT) in the EU.

1.2. Business persons domiciled outwith the EU

1.2.1 Commercial EU customers

In the case where a business person domiciled outwith the EU (abroad) provides direct E-Commerce services to commercial customers within the EU, the place of taxation will be within the EU. This consequently means that such services will be liable to value-added tax (VAT) within the EU. The tax will be collected from the commercial EU customer through the reverse charge procedure. The non-EU business person is not required to be registered in the EU for value-added tax (VAT) purposes due to the commercial customer himself paying the value-added tax (VAT) through the reverse charge procedure.

1.2.2. EU private persons

Where a business person domiciled outwith the EU provides direct E-Commerce services to a private person within the EU, value-added tax (VAT) is collected within the EU. However, the said business person must be registered in the EU for value-added tax (VAT) purposes in a member state of his choice in such cases. Thereafter, he must bill such non-commercial customers in the EU at the standard rate of value-added tax (VAT) in force in the EU member state in which the customers are resident.

The said business person is thereafter required to pay the agreed taxes every three months to the tax authority in the member state in which he is registered for value-added tax (VAT) purposes

and to simultaneously provide an electronic statement containing a breakdown of transactions according to member state during the relevant period. In accordance with the said statement, the taxes will thereafter be forwarded to the relevant member states of the customers by the member state in which the business person is registered.

2. Taxation of direct E-Commerce services in Luxembourg

Luxembourg is an attractive location for direct E-Commerce due to its favourable and, with respect to certain services, reduced rates of value-added tax (VAT). Indeed, the provision of all goods and services is subject to value-added tax (VAT) at a rate not exceeding 15% in Luxembourg.

Notwithstanding this, special provisions apply to the trade of e-books in Luxembourg, namely a reduced rate of value-added tax (VAT) of 3% applies to the supply of e-books to end-customers. The said reduced rate remains in force until January 1st, 2015.

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