

Real Estate Company in Luxembourg

I. Concept

1. Legal Form
2. Formation

II. Tax aspects

1. Taxation of income from the sale of real estate
2. Taxation of gains made from the sale of shares
 - 2.1. *General*
 - 2.2. *Real Estate Company in Luxembourg*
 - 2.3. *Exception*
 - 2.4. *Solution*

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The following text is an extract from LCG's brochure "Business Luxembourg Company Formation".

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Your LCG Team

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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