

# *The regime governing holding companies in Luxembourg*

January 2013





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# Foreword

This guide is intended to provide basic information to potential investors considering the set-up of a holding company in the Grand Duchy of Luxembourg. Players who have existing operations in Luxembourg and wish to extend their activities will also find useful information in this guide.

In particular, this booklet provides comprehensive information on family wealth management companies (known as “SPFs”) and on holding companies subject to the provisions of general legislation (Sociétés de participation financière, hereafter “Soparfis” for the sake of simplicity). This guide analyses the advantages that these types of companies may offer, examines how those companies could be used and what kind of supervision by the Luxembourg tax authorities they are likely subject to. The brochure also provides information on how they can be set up, what their activities are (principal, ancillary or prohibited activities) and provides an overview of some other legal considerations, including requirements governing the accounting and annual accounts of those companies (as those areas have been subject to significant changes since 2010).

This guide does not address the impact, if any, of the law of 21 June 2005 which transposed Council Directive 2003/48/EC of 3 June 2003 on the taxation of savings income in the form of interest payments into Luxembourg law.

This publication has been prepared by tax advisers and auditors of PwC Luxembourg. It takes into account the main legal provisions in force as at 1 January 2013. The contents of this publication are intended for information purposes only.

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# 1. General features

## **1.1. Advantages offered by Luxembourg**

The Grand Duchy of Luxembourg is a member of the European Union, located at the crossroads of Europe, between Belgium, France and Germany. The country has enjoyed political, economic and social stability for many years.

Prime features of the country include its small size, the fact that its officials are within easy reach, and the flexible and open approach that has been adopted by the authorities, as manifested by a readiness for dialogue. These factors mean that potential problems can be discussed easily and decisions may be taken within a short time-frame.

Luxembourg is a major financial centre with around 143 banking institutions (as at 30 November 2012), offering the full range of services of an international financial hub. There are no exchange controls, and the country has adopted a liberal attitude towards foreign capital while ensuring that the concept of strict integrity of the financial marketplace is not impaired. The Luxembourg Stock Exchange is easily accessible since the conditions for access are limited and the costs of obtaining a listing are reasonable. In this respect, we refer the reader to the booklet entitled “The Luxembourg Stock Exchange — A prime location for listing”, which we have published in cooperation with the Luxembourg Stock Exchange.

Finally, Luxembourg’s transport and communication network and the high level of professional qualifications held by staff have enabled Luxembourg to respond to the requirements of multilingual and multicultural investors, more features making Luxembourg an enviable financial location in an international context.

These features and assets have helped Luxembourg to become a prime location for holding companies in general. Currently, Luxembourg holding companies are used by international groups, private equity firms and investment funds.

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## 1.2. Types of holding companies

As mentioned above, there are two main categories of holding companies, namely:

- holding companies subject to the provisions of general income tax legislation, commonly known as Soparfis;
- family wealth management companies governed by the law of 11 May 2007, generally known as sociétés de gestion de patrimoine familial (hereafter “SPFs”).

The companies who used to be governed by the law of 31 July 1929 have been phased out and they ceased to exist on 31 December 2010.

SPFs were created in 2007 to meet the requirements of private banks’ individual clients. SPFs are governed by the provisions of a special law. The law covers SPFs’ shareholders and defines the scope of authorised activities. In return, these companies are granted a favourable tax status.

On the other hand, the scope of activities that may be undertaken by Soparfis is not limited. Soparfis are governed by the provisions of general legislation and qualify for the participation exemption regime. Their business activities mainly consist of holding and financing stakes in other companies.

Since Soparfis fall under the general income tax law, they can avail themselves of the provisions of double tax treaties and EU tax directives.

This is an advantage which is not available to SPFs.

The tax exemptions that Soparfis can claim when certain conditions are satisfied (dividends from shareholdings and capital gains arising on share transfers), combined, as the case may be, with the advantages offered by double tax treaties, have helped make this type of company a real alternative to former 1929 holding companies. Soparfis are also especially effective as part of an international structure.

## 2. The legal framework

***Holding companies subject to the ordinary tax regime (i.e. Soparfis) and SPFs do not in any way constitute a special company form, but are companies falling under the general law who, in certain cases, may benefit from a favourable tax status.***

An SPF and a Soparfi may take the form of a public limited company (“société anonyme”, hereafter referred to as SA), a private limited company (“société à responsabilité limitée”, hereafter referred to as SARL), a partnership limited by shares (“société en commandite par actions”) or a cooperative (“société coopérative”). However, an SPF may only be incorporated as a cooperative company if it is a cooperative company organised as a public limited company. The two categories of holding companies may also take the legal form of a European company — an alternative to the public limited company.

In practice, the two most commonly adopted legal forms are the public limited company and the private limited company. Their main characteristics are set out below.

The special features of SPFs are also detailed below.

### ***2.1. Characteristics of public and private limited companies***

The main features of public limited companies and private limited companies are described in the summary table below. The following remarks should be taken into account when consulting this table:

- this summary should not be regarded as an exhaustive presentation of the specific features of public limited companies and private limited companies;
- the “reference” column refers the reader to the comments following the table;
- this summary has been prepared on the basis of the provisions and requirements laid down in the consolidated law of 10 August 1915 governing commercial companies. Companies’ articles of association may contain more specific provisions than those set out below, provided that they do not breach legal provisions. In practice, there is great contractual freedom in Luxembourg.

<b>Features</b>	<b>Refer- ence</b>	<b>Public limited company ("Société anonyme")</b>	<b>Private limited company ("Société à responsabilité limitée")</b>
<b>Share capital</b>			
Minimum subscribed share capital	1	EUR 31,000 (rounded up)	EUR 12,500 (rounded up)
Paid-up capital		Minimum: 25%	100%
Currency of the share capital	2	Any freely convertible currency	Any freely convertible currency
Number of shareholders / partners	3	Minimum: 1	From 1 to 40
Legal form of shareholders / partners		Legal entity or natural person	Legal entity or natural person
Shares	4	Registered or bearer shares	Registered shares only
Transferability of shares	5	No legal restrictions	Subject to legal restrictions
Contribution in kind / quasi-contribution	6	Valuation report by a registered auditor is required (exemptions are available)	Valuation report by a registered auditor is not mandatory
Public issue of shares		Yes	No

<b>Features</b>	<b>Refer- ence</b>	<b>Public limited company</b>	<b>Private limited company</b>
<b>Management</b>			
Management	7	Board of Directors or Management Board under the oversight of a Supervisory Board	Manager(s)
Number		Directors: Minimum: 3 (1 for a single-shareholder SA) or Members of the Management Board: number set out in the articles of association or otherwise by the Supervisory Board Members: minimum 3 (1 for a single-shareholder SA)	Minimum: 1
Members of the management		Legal entities or natural persons	Legal entities or natural persons
Residence requirements for the management		None	None
Management powers	8	Unlimited within the scope of the company's objects	Unlimited within the scope of the company's objects

<b>Features</b>	<b>Refer- ence</b>	<b>Public limited company</b>	<b>Private limited company</b>
<b>Non consolidated and consolidated annual accounts</b>			
Non-consolidated annual accounts		Mandatory	Mandatory
Person responsible for preparing non-consolidated and consolidated annual accounts		Board of Directors or Management Board*	Manager
Consolidated annual accounts		Possible	Possible
Legal supervisory body or external audit		Commissaire or registered auditor (if the size thresholds are exceeded**)	Commissaire for companies having more than 25 partners (rarely applied) or registered auditor (if the size thresholds are exceeded**)
Approval of the non-consolidated and consolidated annual accounts	9		
• Responsibility		General meeting of shareholders	General meeting of partners for companies with more than 25 partners (legal requirement), or partners individually (general meeting is not mandatory, unless provided otherwise in the company's articles of association)
• Approval deadline		As provided for in the company's articles of association (at the latest 6 months after year-end)	As provided for in the company's articles of association (at the latest 6 months after year-end)
• Filing with the Luxembourg Trade and Companies Register and publication	10	Within one month after the accounts have been approved	Within one month after the accounts have been approved
Distribution of dividends	11	On the basis of the approved non-consolidated annual accounts	On the basis of the approved non-consolidated annual accounts
Interim dividend	12	Possible, provided that the legal requirements are met and that a registered auditor states the existence of retained reserves or distributable income in the report	Not provided for in the law; seen in practice

<b>Statutory records</b>	<b>Refer- ence</b>	<b>Public limited company</b>	<b>Private limited company</b>
	13	General provisions (keeping and retaining)	General provisions (keeping and retaining)

<b>Issuers of securities admitted to trading on a regulated market</b>	<b>Refer- ence</b>	<b>Public limited company</b>	<b>Private limited company</b>
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Please refer to our publication called “The Luxembourg stock exchange – A prime location for listing”

\* Management and supervisory bodies are jointly required to ensure that accounts are prepared and published.  
\*\* See section 4.6

## **Comments**

### **1. Minimum subscribed capital**

The minimum share capital of SAs and SARLs has not been specifically converted in any one of the provisions of the law of 1 August 2001 relating to the euro changeover. Consequently, in accordance with the provisions of article 1 of the abovementioned law, the conversion rules laid down in EC regulation No 1103/97 apply to both amounts. Accordingly, the minimum capital for an SA is EUR 30,986.69, rounded off in practice to EUR 31,000 and EUR 12,394.68 for an SARL, rounded off in practice to EUR 12,500. For the European company, which is a type of SA, the minimum share capital required is EUR 120,000.

As far as public limited companies are concerned, the shares issued in exchange for cash contributions may be paid up partially, as the law only requires that a quarter of each share be paid up immediately.

Shares in a public limited company which are issued in exchange for contributions other than in cash (generally referred to as contributions in kind) must be paid up within a period of five years from the date of issue. However, the law does not lay down any maximum period for paying up cash contributions.

### **2. Currency of the share capital**

The share capital of an SA or an SARL may be denominated in any foreign currency as long as it can be converted freely. The ability to denominate the share capital of these Luxembourg companies in foreign currencies is a substantial advantage over the rules applying in other countries.

### **3. Number of shareholders / partners**

As provided for by the law of 25 August 2006, an SA may be created by a single shareholder, which is a key advantage over other jurisdictions. This option has been available for SARLs since the law of 28 December 1992 entered into force. Luxembourg legislation has retained a key feature of the partnership in SARLs by allowing a maximum number of forty partners, save for a few exceptions<sup>1</sup>.

### **4. Types of shares**

Shares in an SA remain registered shares until they are entirely paid up. A list of those shareholders who have not yet fully paid up their shares, indicating the sums still owed, must be published annually in the Luxembourg gazette (the “Mémorial”).

Public limited companies offer broad flexibility as to how the share capital can be structured: they can issue non-voting shares, preferential voting and non-voting shares and redeemable shares. Moreover, they can have an authorised capital, lessening the formalities required for capital increases. Lastly, they may issue founders' shares which do not require a contribution on behalf of beneficiaries.

### **5. Share transfers**

Transfers of registered shares in SAs are effective when duly recorded in the register of shareholders. Transfers of bearer shares are effective by simple delivery of the share certificate.

For SARLs, share transfers are subject to the following general principles:

- “inter vivos” transfers of shares to non-partners will only be valid if those members holding at least three-quarters of the company’s capital give their approval thereto in a general meeting;
- the transfer of shares must be recorded in a private agreement or a notarised deed;
- the company must be notified of the share transfer or accept the said transfer.

The law lays down other, more detailed provisions covering transfers of shares in an SARL, including share transfers in the event of a partner’s death. It should also be pointed out that any changes to the partners must be officially registered with the Trade and Companies Register and the information must be published in the Mémorial.

<sup>1</sup> These exceptions only apply to partners who are natural persons and whose shares would be distributed among several persons (in the event of the death of a partner or the liquidation of marital property).

## 6. Contributions in kind and quasi contributions

As far as SAs are concerned, the consolidated law of 10 August 1915 governing commercial companies provides that certain transactions are subject to review by a registered auditor, in particular:

- the contributions other than in cash made to an SA upon its incorporation or in connection with an increase in its capital is subject to a reports drawn up by a registered auditor. However, in certain conditions, the SA may be exempted from producing a registered auditor's report (e.g. contribution of listed securities, existence of a recent fair value valuation report or the inclusion of the assets contributed in accounts prepared on a fair value basis, renunciation to the special report subject to conditions);
- a registered auditor's report must be drawn up if assets are acquired during the two years following the incorporation of the SA, where these have been acquired from an individual or a legal entity that has signed, personally or by proxy, the deed of incorporation and their value is equal to at least one tenth of the subscribed capital.

In both cases mentioned above, the involvement of a registered auditor is not required for limited liability companies. However, a number of SARLs do call on the services of registered auditors for contributions other than in cash in order to have independent external oversight with regard to the minimal value of the assets contributed.

## 7. Management

Besides the traditional management system where management is entrusted with the board of directors, Luxembourg legislation now provides for a two-tier management structure where management is entrusted with the management board under the permanent control of the supervisory board.

## 8. Management powers

The members of the board of directors of public limited companies and the managers of limited liability companies are appointed by the shareholders / partners of these companies.

In instances where SAs have decided to replace the board of directors with a management board, the number of management board members is to be set by the articles of association or, failing that, by the supervisory board. In single-person SAs or in SAs whose share capital is less than EUR 500,000, the management board's powers can be vested in a single person.

The management board members are appointed by the supervisory board (or, if so provided by the articles of association, by the general meeting of shareholders).

The board of directors, the management board or the management of these companies has all powers, which are not specifically allocated to the general meeting of shareholders, to the partners or to the supervisory board under the law or the articles of association, to carry out all deeds that are necessary or expedient to further the company's objects.

In principle, any restrictions on the directors' or management board's powers that are contained in the articles of association or have been decided by the relevant corporate bodies are unenforceable against third parties, even if they have been published.

## 9. Approval of the annual accounts

The annual accounts of public limited companies are subject to the approval of the shareholders attending the annual general meeting provided for by the articles of association.

The annual accounts of limited liability companies are also subject to the approval of their partners. Nevertheless, they are only required to hold a general meeting if the number of partners exceeds 25. Otherwise, the approval of the partners attending the general meeting may be replaced by the written approval of each partner.

For both types of company, the law requires that the accounts be approved no later than six months after year-end.

## 10. Luxembourg filing and publication requirements

All SAs and SARLs must file the following documents with the Trade and Companies Register within the month following approval of the accounts by the shareholders or partners:

- the non-consolidated annual accounts;
- the management report (including, as the case may be, a statement on corporate governance) and the commissaire's report or the registered auditor's report (if those documents are required for the company)<sup>2</sup> ;
- the contemplated allocation of profits if this is not clearly stated in the annual accounts;
- where applicable, the trial balance on the balance sheet date in the Standard Chart of Accounts (Plan comptable normalisé, PCN) format;
- where applicable, the consolidated annual accounts, including the consolidated management report and the registered auditor's report;
- the surnames, first names, occupations and addresses of the directors, members of the management board or of the supervisory board, managers and current "commissaires" / registered auditors must be attached to the annual accounts being filed;
- for public limited companies: the status of the share capital, listing the number of shares subscribed for or (if there is a capital increase) not yet subscribed for. Moreover, for companies whose initial subscribed capital has not been entirely paid up, information must be provided on the payments which have been made and a list of the shareholders who have not yet fully paid up their shares, including the amounts owed, must also be included.

<sup>2</sup> See section 4.6.

In Luxembourg, publication of the non-consolidated annual accounts and the consolidated accounts is made via filing of a notice in the Mémorial (the accounts are not published in full).

Public limited companies and limited liability companies are required to publish the following information in the Mémorial:

- a filing notice stating that the non-consolidated annual accounts and (if applicable) the consolidated annual accounts<sup>3</sup> as well as any other relevant document and information (in particular, the proposed profit allocation and the commissaire's report or registered auditor's report if applicable) have been filed with the Trade and Companies Register;
- their articles of association and any amendments thereto;
- any appointment or departure, replacement of any director, member of the management board and the supervisory board, manager, persons entrusted with day-to-day management or *commissaire*.<sup>3bis</sup>

<sup>3</sup> Companies who are exempted from sub consolidation are required to publish their parent company's consolidated accounts in Luxembourg

<sup>3bis</sup> See also comment 5 for SARLs

For the past few years, the Trade and Companies Register has been able to receive and communicate annual accounts electronically.

Things were even further modernised with the grand-ducal regulation of 14 December 2011. Starting 1 January 2012, those companies required to file their closing balances in SCA format and financial holding companies within the meaning of article 31 of the law of 19 December 2002 are required to use structured documents<sup>4</sup> for the following components:

- the balance sheet of annual accounts (see appendix E);
- the profit and loss account (see appendix E)
- the closing trial balance in SCA format (for those companies required to file it in SCA format).

Accounting legislation currently still requires or allows certain deviations from those templates in order to comply with the "true and fair view" principle.

<sup>4</sup> These are editable PDF documents available on the Trade and Companies Register's website

**11. Distribution of dividends** Annual accounts of Luxembourg companies are prepared prior to the allocation of the year's profit.

The shareholders of SAs may, in the course of a general meeting, decide to distribute dividends. This distribution is only authorised if the following requirements are fulfilled:

- at least 5% of the profit for the year has been allocated to the legal reserve. This allocation ceases to be mandatory when the reserve amounts to at least 10% of the company's share capital;
- following the planned distribution, the company's net assets must at least be equal to the sum of the subscribed, called-up capital and of the non-distributable reserves.

Partners of limited liability companies may only decide to distribute dividends once the legal reserve requirement has been met (under the same conditions as for public limited companies).

There is no limit in relation to the net asset amount, but specific legal provisions govern excessive distributions.

## 12. Interim dividends

If provided by the articles of association of public limited companies, the board of directors or the management board may be authorised to pay an interim dividend, subject to the approval of the "commissaire" or registered auditor and provided certain requirements are met. These requirements were relaxed by the law dated 23 March 2007, which removed restrictions on how many interim dividends can be distributed and on when the interim dividend distribution may take place. Now, an unspecified number of interim dividends may be distributed starting from the beginning of the financial year and even before the previous year's accounts have been approved.

The law on commercial companies is silent on the payment of interim dividends by a limited liability company. However, this happens in practice.

The rules governing distributions are usually described in the company's articles of association.

## 13. Statutory records

Certain documents must be kept at the registered offices of public limited companies and of limited liability companies, in particular:

- a register of registered shares, if applicable;
- minutes of the ordinary and extraordinary general meetings;
- minutes of the board of directors' meetings and management meetings;
- accounting records (books, accounts and other supporting documents)<sup>5</sup>.

## 2.2. Special features of SPFs

The articles of association of SPFs must provide explicitly that such companies are governed by the law dated 11 May 2007 governing the creation of family wealth management companies.

### 2.2.1. Shareholders

The shares or units in SPFs can only be held by:

- natural persons managing their private assets; or
- entities acting exclusively in the interest of one or more individuals in the domain of private asset management (e.g. trusts, private foundations, stichting administratiekantoor); or
- intermediaries acting on behalf of the eligible investors mentioned above (e.g. domiciliation).

Investors must submit a declaration of eligibility; its existence and compliance with the law must be certified annually by the domiciliary agent or, in his/her absence, a registered auditor or chartered accountant.

The shares issued by SPFs may not be publicly traded or listed on a stock exchange.

<sup>5</sup> Article 8 of the Commercial Code provides that records must be kept in Luxembourg and therefore not necessarily at the registered office.

### 2.2.2. Activities

The exclusive objects of SPFs are to acquire, hold, manage and realise financial assets. They may not carry on commercial activity. The concept of financial assets includes:

- financial instruments in the broadest sense of the word as defined by the law dated 5 August 2005 governing financial guarantee agreements, e.g. transferable and other securities, shares, bonds, units in undertakings for collective investment, debt securities, certificates of deposit, cash vouchers, bills of exchange, commercial papers, derivatives and structured products
- cash and assets held in a bank account (e.g. precious metals).

An SPF may hold a shareholding (even a majority shareholding) in a company, provided that it is not involved in its management. That restriction does not impact shareholders' rights, in particular their voting rights.

In accordance with parliamentary proceedings, the ban on commercial activities would prohibit SPFs from:

- granting interest-bearing loans, but not from granting advances or guarantees to a subsidiary from time to time and at no cost;
- making a direct acquisition of real estate properties.

### 2.3. Restructuring opportunities for international groups

A wide range of restructuring options is available to all types of Luxembourg commercial companies or civil commercial partnerships, to Luxembourg and European economic interest groupings and to foreign companies<sup>6</sup>. This includes the following transactions:

- a merger whereby a company is merged into another or whereby a new company is created;
- cross-border mergers (to Luxembourg or outside Luxembourg);
- a division of a Luxembourg company into several companies, which may be Luxembourg or foreign-based companies;
- a partial division (part of the assets of the Luxembourg company are transferred to another Luxembourg or foreign-based company; the latter issuing securities to the shareholders of the company being divided);
- a transfer of line of business<sup>7</sup>;
- a transfer of assets and liabilities;

- a transfer of the entire assets and liabilities of a company;
- a transfer of business assets (based on Swiss law and also available to transfers made by natural persons).

The accounting treatment of the abovementioned transactions is not dealt with specifically in Luxembourg company law or accounting legislation. Therefore, the book value or the market value may be used, regardless of whether companies who are controlled by the same entity are involved in the restructuring.

In addition to restructuring transactions, the following transactions may also take place:

- transformation of one type of company into another (for instance, transformation of a public limited company into a limited liability company) while maintaining the company's legal personality;
- migration from Luxembourg or to Luxembourg while maintaining the company's legal personality.

<sup>6</sup> Not only companies based in European Union Member States but also in any other country (as long as local law does not forbid it). Under certain conditions, a bankrupt company or a company in the process of being liquidated may take part in mergers, divisions and related transactions.

<sup>7</sup> As a rule, mergers / divisions enable assets and liabilities, rights and commitments as well as contracts to be transferred automatically.

## 3. The tax framework

*Soparfis and SPFs are both subject to the same registration duty regime.*

*Nevertheless, they are governed by a different set of tax rules.*

### 3.1. Incorporation of companies and capital duty

The law dated 19 December 2008 abolished capital duty from 1 January 2009. Since that date, Soparfis and SPFs are only liable to a lump-sum registration duty of EUR 75 upon incorporation. Said duty also applies to any subsequent changes to their articles of association (in particular within the framework of a capital increase).

As regards real-estate transactions (involving buildings located in Luxembourg), contributions made in exchange for securities are now subject to a proportional registration duty of 0.6 % and to a transcription duty of 0.5 % (plus a 0.3% city surtax if the building is located in Luxembourg City). The contributions of domestic buildings which are paid for other than by shares are still subject to a proportional registration duty of 6 % and a transcription duty of 1 % (plus a 0.3% city surtax if the building is located in Luxembourg City).

Contributions made as part of restructuring transactions are not subject to the proportional registration duty, provided certain requirements are met.

### 3.2. Tax rules to be met by SPFs

The law dated 11 May 2007 governing SPFs provides a specific set of tax rules to be complied with by those companies.

#### 3.2.1. Exemptions

SPFs are exempt from corporate income tax, municipal business tax and net wealth tax.

#### 3.2.2. Subscription tax

Subscription tax is a yearly mandatory tax which is payable on a quarterly basis. SPFs are liable to a 0.25% subscription tax. As far as SPFs are concerned, the tax is assessed as at 1 January, or, for the first financial year, upon incorporation, on the following tax base:

- the amount of paid-up share capital;
- the share premium;
- the part of the debts exceeding eight times the amount of paid-up capital plus the share premium.

The minimum amount of subscription tax due is EUR 100 and the maximum amount of tax due is EUR 125,000 per annum. The tax is prorated if the SPF is incorporated or liquidated after the calendar year begins.

### 3.2.3. Double taxation

Since SPFs enjoy a special tax-exempt status, they cannot avail themselves of the provisions of double tax treaties (see appendix A) or of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

### 3.2.4. Withholding tax

The dividends paid by SPFs are not subject to withholding tax. In addition, generally, the interest paid by SPFs is not subject to a debtor's withholding tax in Luxembourg (the potential impact of the provisions transposing the European Union Savings Directive is not discussed in this brochure).

### 3.2.5. Value added tax

Based on the criteria defined by the Court of Justice of the European Union, SPFs should in principle not be treated as taxable persons for the purposes of VAT. As a result, SPFs should not be required to register for VAT purposes and should not be entitled to recover input VAT. Nevertheless, non-recurring intra-community acquisitions should be analysed separately.

### 3.2.6. Conclusion

SPFs have been designed as a replacement vehicle for 1929 holding companies and they offer both a legal framework for private asset management and a neutral tax status. While there are limitations on eligible shareholders and permitted activities, in exchange, SPFs are exempt from corporate income tax, municipal business tax, net wealth tax and withholding tax on distributed dividends. They are only liable to:

- a flat registration duty of EUR 75 on certain transactions (please refer to section 3.1 for contributions of buildings located in Luxembourg);
- an annual subscription tax of 0.25 % (on paid-up capital, share premiums and the part of the debts exceeding eight times the sum of the two preceding amounts) within the maximum limit of EUR 125,000;
- input VAT on operating expenses, which is not recoverable, to the extent that the company's income falls outside the scope of VAT and which does not give rise to the right to deduct such a tax.

Nevertheless, as SPFs are exempt from corporate income tax, they cannot avail themselves of the provisions of double tax treaties or of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. Depending on the nature and source of the income derived by SPFs, this exception may generate an additional tax liability compared to the one which would be incurred through direct investment or through the use of a Soparfi.

The use of the structure within its statutory scope is subject to an annual certification by the domiciliation agent or, failing that, a registered auditor or a chartered accountant. These certifications concern the company's eligible investors, the adequacy of its income and compliance with the provisions of the European Union Savings Directive (2003/48/EC) (directly or by proxy).

Provided they are used appropriately, SPFs can be highly tax effective structures for the management of private assets.

### 3.3. Tax system governing ordinary companies known as Sociétés de participations financières (Soparfis)

The Société de Participations Financière (hereafter “Soparfi”) is not governed by any specific law. It is defined as a Luxembourg joint-stock company and, as such, is subject to the same tax provisions as any other commercial joint-stock company.

To the extent that Soparfis only hold eligible shares within the meaning of the participation exemption regime, they may reduce their tax burden if they satisfy the requirements set out in:

- article 166 of the Luxembourg Income Tax Law (LITL) and the relevant grand-ducal regulation relating to the substantial shareholdings regime for both the income derived from the shareholdings and the capital gains arising on share transfers;
- article 147 LITL on the withholding tax on dividends paid.

The exemptions also apply to all joint-stock companies, regardless of their business activities, and to Luxembourg branches, as shown below.

From a VAT standpoint, the Court of Justice of the European Union differentiates between “active” or mixed holding companies, considered to be VAT taxable persons, and “passive” holding companies considered not to be VAT taxable persons. Because they perform activities deemed to be economic activities for VAT purposes (see 3.3.4.), mixed holding companies are usually required to register for VAT and may, under certain conditions, recover input VAT.

#### 3.3.1. Corporate income tax (CIT)

##### Minimum taxation

Since tax year 2011, the following fully taxable collective entities (*organismes à caractère collectif*) have been subject to a minimum taxation of EUR 1,500 (increased to EUR 1,575 by the 5% contribution to the employment fund):

- those whose business activities do not require a business license or the approval of a regulatory authority
- and in the hands of which the sum of financial assets, transferable securities and cash at bank, cash in postal cheque accounts, cheques and cash in hand (i.e. items 23, 50 or 51 of the Luxembourg Standard Chart of Accounts) exceeds 90% of the total gross assets.

As from tax year 2013, the minimum taxation is increased up to EUR 3,000 (EUR 3,210 when considering the contribution employment fund which is also increased to 7% as from tax year 2013). The scope of the minimum tax is further extended to also include receivables in affiliated (item 41) in the list of assets to be considered when assessing the above 90% threshold. Also, the absence of requirement of a business license or the approval of a supervisory activity condition has been removed.

All other companies (i.e., the ones which does not meet the above 90% threshold) are subject to minimum taxation from EUR 535 to EUR 21,400 (including the contribution to the employment fund), depending on the value of their gross total assets as it appears in the accounting balance sheet, as from tax year 2013.

For tax-consolidated entities, the head of the tax unity will, as from tax year 2013, bear the aggregate amount of minimum taxation that would have been borne by each member of the tax unity had these not been consolidated, with a cap at EUR 20,000 (increased to EUR 21,400 by the 7% contribution to the unemployment fund).

The minimum taxation is to be considered as an advance tax payment of any present or future corporate income tax that will be due by the corporation. As an exception to article 154 LITL, this minimum corporate income tax will not be reimbursed to the taxpayer.

### Exemption of dividends received

Luxembourg tax law provides for a dedicated tax regime for parent and subsidiary companies also known as “*Schachtelprivileg*” or “*privilège d’affiliation*” (art. 166 LITL).

Income from the shareholding (dividends) is exempt if:

a) the distributing entity is:

- a collective entity referred to in article 2 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (see appendix D); or
- a fully taxable joint-stock company which is not listed in paragraph 10 of article 166 LITL (see appendix C); or
- a non-resident joint-stock company fully liable to a tax corresponding to Luxembourg corporate income tax.

b) the receiving entity is:

- a resident and fully taxable collective entity which has adopted one of the forms listed in paragraph 10 of article 166 LITL (see appendix C) or
- a fully taxable joint-stock company which is not listed in paragraph 10 of article 166 LITL; or
- a domestic permanent establishment of a collective entity referred to in article 2 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States; or

- a domestic permanent establishment of a joint-stock company which is resident in a country with which Luxembourg entered into a double tax treaty; or
- a domestic permanent establishment of a joint-stock company or cooperative company which is resident in a member state of the European Economic Area (EEA) other than an EU Member State.

c) at the date on which the income is made available, the beneficiary has been holding or undertakes to hold the said participation for an uninterrupted period of at least 12 months, and if, during the entire period, the level of the participation does not fall below the threshold of 10% or if the acquisition price does not fall below EUR 1,200,000.

A participation held indirectly through a tax transparent entity (according to Luxembourg tax provisions) is considered a direct shareholding in proportion to the fraction held in that entity’s net assets.

A further benefit of the regime compared with those implemented in other countries is the ability to deduct expenses related to the participation (for instance, interest expenses incurred in financing the shares and provisions). However, the expenses related to a dividend received during the financial year are not tax deductible up to the amount of that dividend.

Should the Soparfi not benefit from this exemption on received dividends, it may still benefit from an exemption of 50% of this income under certain conditions (in compliance with article 115.15a of the LITL).

To benefit from this 50 % exemption, the capital income received must be distributed by:

- a fully taxable resident joint-stock company;
- a joint-stock company which is resident in a country with which Luxembourg entered into a double tax treaty and which is fully liable to a tax corresponding to Luxembourg corporate income tax; or
- a company which is resident in a Member State of the European Union and which is referred to in article 2 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

### Exemption of capital gains upon disposal of shares

The participation exemption regime also provides for the exemption of capital gains arising on the disposal of shares from a substantial shareholding.

The eligibility requirements under these rules are similar to those for the dividend exemption:

- a) The receiving entity is:
- a fully taxable resident collective entity which has adopted one of the forms referred to in paragraph 10 of article 166 LITL (see appendix C); or
  - a fully taxable resident joint-stock company which is not listed in paragraph 10 of article 166 LITL; or
  - a domestic permanent establishment of a collective entity referred to in article 2 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member State (see appendix D); or
  - a domestic permanent establishment of a joint-stock company which is resident in a country with which Luxembourg entered into a double tax treaty; or
  - a domestic permanent establishment of a joint-stock company or of a cooperative company which is resident in a member state of the European Economic Area (EEA) other than an EU Member State.

- b) The entity whose shares are transferred is:
- a collective entity referred to in article 2 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (see appendix D); or
  - a fully taxable resident joint-stock company which is not listed in paragraph 10 of article 166 LITL (see appendix C); or
  - a fully taxable non-resident joint-stock company which is liable to a tax corresponding to Luxembourg corporate income tax.
- c) The income arising on the disposal of shares is exempt if, at the date of the share transfer, the transferor has been holding or undertakes to hold the said participation for an uninterrupted period of at least 12 months. During this entire period, the level of the participation must not fall below the threshold of 10% or the acquisition price below EUR 6,000,000.

A participation held indirectly through a tax-transparent entity (according to Luxembourg tax provisions) is considered a direct shareholding in proportion to the fraction held in that entity's net assets.

As from 2002, the main remaining difference between the eligibility requirements for the dividend exemption and those for the capital gains exemption lies in the acquisition price threshold (EUR 1,200,000 for dividends and EUR 6,000,000 for capital gains).

Furthermore, the losses incurred upon the disposal of shares are still deductible or may be offset against other income of the company even though the gains arising on the disposal qualify for a tax exemption.

Finally, the amount of tax-exempt capital gains is reduced by the algebraic sum of expenses related to the participation (mainly expenses related to the participation and potential downward value adjustments on the participation), insofar as these expenses have reduced the tax base of the current financial year or that of previous years. Thus, capital gains remain taxable up to the total amount of expenses and value adjustments related to the participation which was offset for tax purposes during the current and previous years.

However, in certain cases it is possible to overcome the disadvantage generated by this restriction, when its application is not neutral.

### Withholding tax exemption on the dividends paid

Article 147 LITL provides for a withholding tax exemption upon the distribution of dividends and other share proceeds if the following conditions are met:

- a) the distributing entity is:
- a fully taxable resident collective entity which has adopted one of the forms listed in paragraph 10 of article 166 LITL; or
  - a fully taxable resident joint-stock company which is not listed in paragraph 10 of article 166 LITL (see appendix C).
- b) the entity receiving the dividends and other income is:
- another collective entity referred to in Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (see appendix D); or
  - another fully taxable resident joint-stock company which is not listed in paragraph 10 of article 166 LITL; or
  - the government, a municipality, a collective group of municipalities or an operation of a domestic public entity; or
  - a permanent establishment of one of the above-mentioned collective entities; or
- c) at the date on which the income is made available, the beneficiary has been holding or undertakes to hold, directly, for an uninterrupted period of at least 12 months a participation of at least 10%, or of an acquisition price of at least EUR 1,200,000, in the income debtor's share capital.

A participation held indirectly through a tax-transparent entity (according to Luxembourg tax provisions) is considered a direct shareholding in proportion to the fraction held in that entity's net assets.

- a collective entity fully liable to a tax corresponding to Luxembourg corporate income tax which is resident in a country with which Luxembourg entered into a double tax treaty on a domestic permanent establishment of such entity; or
- a joint-stock company which is resident in the Swiss Confederation, liable to Swiss corporate income tax and which is not eligible for any exemption; or
- a joint-stock company or a cooperative company which is resident in a member state of the European Economic Area (EEA) other than an EU Member State and which is fully taxable to a tax corresponding to Luxembourg corporate income tax; or
- a permanent establishment of a joint stock company or a cooperative company which is resident in a Member State of the European Economic Area (EEA) other than a EU Member State.

### Directors' fees

Directors' fees paid by the companies to their resident or non-resident directors are subject to withholding tax at the rate of 20% for the purposes of income tax. For resident taxpayers, this withholding tax on directors' fees is credited against income tax. Under certain conditions, this withholding may be in full discharge of income tax for non-resident taxpayers.

### Example Assumptions

Let us assume that we have a joint-stock company established in an EU Member State (hereafter "EurCo") which is fully taxable in that country. Let us assume that EurCo incorporates a Luxembourg joint-stock company (hereafter "LuxCo") on 15 March of year N, in which it has a shareholding of over 10%.

Let us assume that on 20 March of year N, LuxCo acquires a 6 % holding in a fully taxable joint-stock company established in a country with a regular tax system (hereafter "SubCo") for a price of EUR 7,500,000.

LuxCo's financial year ends on 31 December of each year, and the first year ends on 31 December of year N.

#### Taxation of the dividends paid by SubCo to LuxCo

As from financial year N, the dividends received from SubCo will not be taxed in the hands of LuxCo, provided that, at the date on which the income is made available, LuxCo holds or undertakes to hold the shares acquired at a price of at least EUR 1,200,000 for an uninterrupted period of at least twelve months (i.e. until 20 March of year N+1).

#### Taxation of capital gains

The capital gains arising on the transfer will be tax exempt, provided that LuxCo holds or undertakes to hold a shareholding of at least 10 % in the capital of the aforementioned subsidiary – or has acquired said shareholding for at least EUR 6,000,000 (which is the case here) – for an uninterrupted period of twelve months (i.e. until 20 March of year N+1).

#### Withholding tax

Any dividends paid by LuxCo to EurCo starting from tax year N will be exempt from withholding tax provided that, at the date on which the income is made available, EurCo has held or undertakes to hold the shares directly for an uninterrupted period of at least twelve months (i.e. until 15 March of year N+1).

If EurCo does not satisfy the requirements set out in article 147 LITL, the dividends received from LuxCo will be liable to withholding tax at the rate of 15% or possibly at a lower rate based on the double tax treaty entered into between Luxembourg and EurCo's country of residence.

#### 3.3.2. Net wealth tax (NWT)

The basis for this tax as assessed against a joint-stock company is the net operating assets, which are themselves reflected by the unitary value of the company as determined in accordance with the law governing the valuation of property and securities (Bewertungsgesetz, BewG).

For NWT purposes, the unitary value of the company is always determined on 1 January of each financial year.

Paragraph 60 of the law governing the valuation of property and securities lays down that certain holdings may be excluded from the net operating assets as long as:

a) the subsidiary is:

- a collective entity referred to in article 2 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (see appendix D); or
- a fully taxable resident joint-stock company which is not listed in paragraph 60 (4) BewG (see appendix C); or
- a fully taxable non-resident joint-stock company liable to a tax corresponding to Luxembourg corporate income tax.

b) the company holding the participation is:

- a resident fully taxable collective entity which has adopted one of the forms listed in paragraph 60 (4) BewG (see appendix C); or
- a fully taxable resident joint-stock company which is not listed in paragraph 60 (4) BewG (see appendix C); or
- a domestic permanent establishment of a collective entity referred to in article 2 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (see appendix D); or

- a domestic permanent establishment of a joint-stock company which is resident in a country with which Luxembourg entered into a double tax treaty; or
  - a domestic permanent establishment of a joint-stock company or a cooperative company which is resident in a Member State of the European Economic Area (EEA) other than a EU Member State.
- c) the direct participation held at the end of the financial year preceding the key date for fixing the company's net wealth value is at least 10% or has been acquired at a price of at least EUR 1,200,000.

A participation held indirectly through a tax transparent entity (according to Luxembourg tax provisions) is considered a direct shareholding in proportion to the fraction held in that entity's net assets.

The net wealth tax is fixed at a minimum annual amount of EUR 62.5 for SAs and EUR 25 for SARLs.

In addition, resident taxpayers may reduce their net wealth tax burden upon request.

Taxpayers must commit themselves to allocating a reserve to be kept on the company's balance sheet for the five tax years following the year in which the tax was reduced. Then, they may reduce their NWT by one fifth of the allocated reserve, without exceeding the corporate income tax owed for the tax year in question. As from tax year 2013, no reduction will however be granted up to the amount of the minimum taxation described in section 3.3.1.

### 3.3.3. Municipal business tax (MBT)

MBT is a tax which is assessed on a company's operating profits. Since, in the case of joint-stock companies, MBT is calculated on the taxable income as computed under the corporate income tax rules and because none of the exemptions mentioned above in relation to corporation tax gives rise to any claw-back in assessing the basis for MBT on operating profits, any exemption under the corporate income tax rules will result in a "de facto" exemption under the MBT rules.

Furthermore, under certain conditions, the MBT rules provide for an exemption of certain income derived from participations which can be advantageous to dividends which are not exempt from corporate income tax. In particular, this specific exemption may apply in the event of non-compliance with the 12-month holding requirement, insofar as it applies to distributions of income derived from participations amounting to 10% at the beginning of the tax year.

### 3.3.4. Value added tax

Soparfis whose activity is limited to passive holding of shares (without being actively involved in the management of their subsidiaries) are not considered as VAT taxable persons based on Luxembourg and EU rules. The main consequences of this are:

- Soparfis are not entitled to recover input VAT incurred on costs;
- Supplies of services received by Soparfis are generally deemed to be located in the country of the service provider for the purposes of VAT; as a result, they should be subject to VAT in that country;
- Soparfis are not required to register for VAT in Luxembourg, unless they perform intra-community acquisitions of goods in Luxembourg for an amount exceeding EUR 10,000 in a calendar year.

If, in addition to holding shares, Soparfis are also involved in the management of their subsidiaries, for instance, by providing administrative, financial or management services, in exchange for a fee (other than dividends), they are then considered to be partial VAT taxable persons under the abovementioned VAT rules.

According to criteria set by the Court of Justice of the European Union, a financing activity carried out by a Luxembourg Soparfi may qualify as a business activity for the purposes of VAT to the extent that:

- that activity is a direct, permanent and necessary extension of a taxable activity; or
- that activity is not carried out merely on an occasional basis and is carried out with a business or commercial purpose.

A case-by-case analysis is therefore required.

Soparfis who are considered to be active holding companies are required to register for VAT in Luxembourg:

- under the normal regime if their activities are taxable (for instance, if they provide their subsidiaries with taxable services) or exempt but giving rise to the right to deduct input VAT (for instance, if they grant interest-bearing loans to borrowers established outside the European Union);
- under the simplified regime if 1) their activities are exempt and do not give rise to the right to deduct input VAT and 2) if they receive services from abroad which are deemed to be taxable in Luxembourg under the reverse charge mechanism or if they perform intra-community acquisitions of goods in Luxembourg.

Soparfis who are considered to be active holding companies are entitled to deduct:

- the entire amount of VAT paid on goods and services received in direct and immediate link with their economic activities, where those activities give rise to the right to deduct VAT;
- VAT paid on general expenses, in proportion to the share of their activities which give rise to the right to deduct VAT.

Soparfis who qualify as VAT taxable persons are required to apply Luxembourg VAT (under the reverse charge mechanism) on services received from foreign service providers, where such services are deemed taxable in Luxembourg (e.g. legal services, consultancy services, etc.).

### 3.3.5. Conclusion

Where the conditions set out above relating to exemptions for income derived from shareholdings, from capital gains on disposals of shareholdings and from withholding at source are met, and provided the company restricts its activities to holding and disposing of shares, holding companies under the general law may benefit from international double taxation treaties (since they are subject to the normal tax provisions) and thereby limit their taxation in Luxembourg to:

- a lump sum registration duty of EUR 75 for certain transactions (however, please refer to section 3.1 regarding contributions of buildings located in Luxembourg);
- the minimal annual assessment for the purposes of corporate income tax, i.e. EUR 3,000 (EUR 3,210 when considering the contribution to the employment fund which is also increased to 7% as from tax year 2013). The scope of the minimum tax will further be extended to also include receivables in affiliated (item 41) in the list of assets to be considered when assessing the above 90% threshold.
- the minimal annual assessment for the purposes of net wealth tax, i.e. EUR 62.5 for a public limited company and EUR 25 for a limited liability company;

- VAT incurred on their charges; said VAT will nevertheless be deductible if those charges are in direct and immediate link with their economic activities which give rise to the right to deduct input VAT.

If the company is held by a company which is not resident in the EU, EEA, Swiss Confederation or in a country which has signed a double tax treaty with Luxembourg, withholding tax will be levied in Luxembourg on dividends at the rate of 15% or at such lower rate as may be specified in any double taxation treaty that has been signed between Luxembourg and the shareholder's country. A list of the countries with which Luxembourg has signed such treaties is provided in appendix A.

Exemption eligibility requirements are summarised in appendix B.

As far as VAT is concerned, if a Soparfi renders management services and receives a remuneration (other than dividends) for this function, it should be considered as a VAT taxable person. In such case, the company will be required to register for VAT and may be entitled to deduct input VAT.



## 4. The accounting framework

*Soparfis and SPFs are subject to the legal provisions of general law covering accounting and annual accounts.*

*However, Soparfis whose business activities are limited to holding interests as well as SPFs need to comply with fewer requirements than other undertakings when preparing their annual accounts.*

### **4.1. Legal and regulatory accounting provisions**

The provisions of the Commercial Code (book 1, title II, articles 8 through 21) define in broad terms how companies should keep and organise their accounts and what type of reporting information they should provide.

In Luxembourg, the accounting practice is mainly developed from non-written practice regarding double-entry bookkeeping and from the laws governing annual accounts. It is based on the Fourth European Union Directive relating to Annual Accounts and does not rely on detailed authoritative accounting pronouncements, but allows the use of foreign accounting treatments, as long as they are in line with its basic principles.

Luxembourg accounting practice is also characterised by an approach that is often pragmatic. It gives company managers considerable discretion in defining accounting treatments but results in making annual accounts somewhat heterogeneous.

It should be noted that for financial years starting on or after 31 December 2010, the use of the Luxembourg Standard Chart of Accounts (Plan Comptable Normalisé luxembourgeois) may help introduce greater homogeneity (see paragraph 4.3).

### **4.2. Legal and regulatory provisions regarding non-consolidated annual accounts**

#### **4.2.1. Two types of annual accounts**

The law governing commercial companies provides that the board of directors (or supervisory board) of public limited companies and the manager (or managers) of limited liability companies are required to prepare annual accounts.

Commercial companies, including public limited companies and limited liability companies, are required to prepare their annual accounts in compliance with the consolidated version of the law of 19 December 2002 relating to the Trade and Companies Register and the accounting and annual accounts of companies (the relevant provisions are mainly based on the transposition of the Fourth European Union Accounting Directive)<sup>8</sup>.

In principle, those companies apply articles 34 and 46 of the abovementioned law<sup>9</sup> for their balance sheets and profit and loss accounts, respectively.

However, financial holding companies – within the meaning of the definition found in article 31<sup>10</sup> of this law – are required to comply with a specific layout when preparing their balance sheets and profit and loss accounts. This layout is described in a grand-ducal regulation dated 29 June 1984. The use of this layout is mandatory for companies subject to this requirement.

<sup>8</sup> The law of 10 December 2010 modifying the law of 19 December 2002 incorporates the latest consolidated version of that directive (78/660/EEC).

<sup>9</sup> Those articles correspond to articles 9 and 24, respectively, of the consolidated version of the Fourth European Union Accounting Directive, as transposed into Luxembourg legislation.

<sup>10</sup> Article 31. – (2) The financial holding companies referred to above are companies whose sole object is to take interests in other undertakings and to manage and develop those interests without being involved, directly or indirectly, in the management of those undertakings, without prejudice to the rights of financial holding companies in their capacity as shareholders or partners.

As regards the layout of annual accounts, the law therefore distinguishes between two types of financial holding companies:

- those whose sole object is to manage and develop shareholdings, as defined in article 31 (mentioned above);
- those whose main object is to hold participating interests, but which can also carry on other business (e.g. commercial business or group financing activities).

We refer the reader to CNC opinion 1-1 issued by the Accounting Standards Committee (Commission des Normes Comptables) in 2009, which specifies how article 31 should be interpreted (see section 4.2.3 for further information).

#### 4.2.2. The layout and content of the annual accounts (common system)

For further information on how annual accounts should be prepared in accordance with the law dated 19 December 2002, we refer the reader to the brochure entitled “Handbook for the preparation of annual accounts under Luxembourg accounting framework”.

The above brochure provides a detailed description of the layout and contents of the annual accounts. This format will generally not be used by holding companies who are “small companies” according to the size criteria set out in Luxembourg legislation.

Therefore, we thought it relevant to also include in this brochure the abridged version of annual accounts that “small companies” are allowed to use.

It should be noted that companies whose securities are listed on a regulated market of an EU Member State may not prepare abridged annual accounts or be exempted from issuing a management report and from having their accounts audited by a registered auditor.

Whether they use the accounts layout provided for in articles 34 and 46 of the law dated 19 December 2002 or that described in the grand-ducal regulation dated 29 June 1984, unlisted holding companies are usually considered to be “small-sized” companies<sup>11</sup>.

As a result, those companies might thus be allowed to prepare abridged notes to the accounts which do not provide the information included in the following articles of the law dated 19 December 2002: article 65 (1), subparagraphs 5°, 7° to 12°, 14°, 16° and 17°a) (in addition, the information for subparagraph 6 is presented as a whole); article 39, paragraphs (3) a) and (4); article 49, paragraph (2); article 50<sup>12</sup>; article 53, paragraph (2); article 62, paragraph (2), article 64, second paragraph and article 65 paragraph (1) subparagraph 14°.

Below, we describe briefly what information must be provided in the notes to the accounts.

Notwithstanding any information which may be required in specific cases to comply with the “true and fair view” principle, the following information must be provided in the notes to the accounts:

**Article 65 (1):** the items in this article cover most of the notes to the accounts required under the law. For “small companies”, the following information must be provided:

- 1° The valuation methods for the various headings of the annual accounts and the computation methods used for valuation allowances. Where relevant, conversion bases for those items in the annual accounts initially denominated in a foreign currency must be disclosed.
- 2° Save for the exceptions set out in the law, a description of the undertakings in which the company holds at least 20% of the share capital. Similarly, the company is also required to provide information on all shareholdings in which its liability as a shareholder is not limited.
- 3° Information on capital increases taking place in the financial year.
- 4° Information on the various share classes (where applicable).
- 6° The aggregate debt amount becoming due and payable after more than five years and the debt amount covered by the real securities provided by the company, with information on the nature and form of the securities.
- 7°bis Nature and business purpose of off-balance sheet transactions.
- 7°ter Description of non-arm’s length related-party transactions (this only applies to public limited companies). This item only relates to transactions between the company and its main shareholders and between the company and the members of the board of directors, members of management and members of the supervisory bodies.

<sup>11</sup> Based on the same criteria as those mentioned in section 4.6 relating to the requirement to appoint a registered auditor.

<sup>12</sup> One should read “article 50”, because in the latest consolidated version of the law dated 10 December 2002, article 50 only has one paragraph.

- 13° Advances and loans to members of the administrative, managerial or supervisory bodies, along with information on interest rates, maturities, repayments and collaterals provided by the company to the directors. This information must be provided as a whole (per corporate body).
- 14° Information on income (expense) relating to the financial year but accruing (payable) after the balance sheet date and which is included in the receivables (debts), where this revenue (expense) is of a significant amount.
- 15° Disclosure of the names and registered offices of the companies preparing consolidated accounts of the largest group of companies of which the holding company is a subsidiary (ultimate parent company) and of the smallest group of companies of which the holding company is a subsidiary (direct parent company). Information on where the consolidated accounts are available for inspection must also be provided.
- 17° b) Where financial assets are recorded at a book value greater than their fair market value, the fair value of either the individual assets or appropriate grouping of those individual assets and the reasons for not reducing the book value must be provided.

**Article 29 (6):** this article has been included in the consolidated version of the law dated 19 December 2002 as a result of the law of 10 December 2010. This article introduces the “substance over form” principle (which is also known as the “reality principle”). Where this principle is used, relevant explanations will be required in the notes to the accounts.

**Article 38:** information on the commitments and guarantees provided by the company, with separate information for those relating to affiliated undertakings. Therefore, the exemption from providing the information required by articles 65(1) 7° and 7°bis does not mean companies are not required to comply with any requirements as regards commitments (off-balance sheet or on-balance sheet commitments).

**Article 68 (3):** “small companies” are not required to prepare a management report<sup>13</sup>. Where there is no management report, the notes to the annual accounts must nevertheless provide the statutory information required relating to the acquisition of own shares (under article 49-5 (2) of the law dated 10 August 1915 governing commercial companies).

Finally, “small companies” are also exempted from providing detailed information on the transactions conducted in the financial year for the “formation expenses” item and for the “long-term assets” items. They are also exempted from explaining the amount and nature of the following items: “other provisions”, “extraordinary income”, “extraordinary charges” and “income tax”.

#### **4.2.3. Layout and contents of the annual accounts (grand-ducal regulation dated 29 June 1984)**

The layout provided for in the abovementioned grand-ducal regulation is shown in appendix E.2 to this brochure. The regulation allows the use of a simplified layout for the balance sheet and, more importantly, for the profit and loss account.

The other provisions (contents of the notes to the accounts, valuation rules for certain balance sheet and profit and loss items, etc.) of the law dated 19 December 2002 still apply.

There is, however, a noteworthy difference as regards the notes to the accounts: those companies subject to article 31 are not required to provide the information set out in article 65 (1) 2° relating to the undertakings in which they hold at least 20% of the share capital<sup>14</sup>.

<sup>13</sup> For a description of this document, please refer to our brochure called “Handbook for the preparation of annual accounts under Luxembourg accounting framework”.

<sup>14</sup> Name and registered office; percentage held in the share capital; net equity amount and profit (loss) for the financial year.

The combined differences between the layout described in the grand-ducal regulation and the abridged layout (common system) enable financial holding companies to disclose only general information about their investments and financial transactions.

#### **4.2.4. The IFRS alternative**

Since the law dated 10 December 2010 came into force, Luxembourg companies have been able to legally use the international financial reporting standards (IFRS) (as adopted by the European Union) instead of the Luxembourg generally accepted accounting principles (GAAP) (new article 72bis). However, the tax legislation has not yet been adapted accordingly and the tax consequences of this option remain uncertain.

Where applicable, the management report, the registered auditor's report and some information included in the notes to the accounts are still governed by the 2002 accounting law.

#### **4.3. The requirement or absence thereof to use the Standard Chart of Accounts**

The initial version of the law dated 19 December 2002 provided for the use of a standard chart of accounts (SCA) for the bookkeeping and for the filing of trial balance on the closing date in SCA format together with the annual accounts.

Those two provisions apply to financial years starting on or after 31 December 2010, which is the date on which the grand-ducal regulation dated 10 June 2009 on the SCA came into force.

The first provision is optional: the grand-ducal regulation allows companies who prepare their annual accounts under Lux GAAP to keep their existing chart of accounts, provided that they implement a system that enables them to file the abovementioned trial balance in SCA format.

Companies who publish their accounts under IFRS or who are individually exempted from using the SCA are not governed by the abovementioned grand-ducal regulation.

Other exemptions are available. The initial version of the law dated 19 December 2002 already provided an exemption from using the SCA for financial holding companies as defined by article 31 of the said law.

CNC opinion 1-1<sup>15</sup> considers that the term "Soparfi" in the accounting legislation refers solely to the defunct 1929 holding companies and to private wealth management companies (SPFs). In other words, all other types of holding companies would be required to file a trial balance in SCA format. This interpretation is based on the fact that the Soparfis' objects are usually not limited to the holding of interests.

<sup>15</sup> Opinion 1-1 dated 18 February 2009.

The CNC opinion is challenged by certain companies. Indeed, previous practice used to be that the companies' actual business activities would be considered rather than those described in the companies' objects. Furthermore, while it did not call into question the exclusion of commercial or industrial activities, that practice also admitted that the holding of interests was not the only type of business activity that a financial holding company could carry on. The "shareholding management and shareholding development" concepts found in the accounting law should therefore be interpreted quite broadly<sup>16</sup>. This view seemed to be confirmed by the balance sheet structure described in the grand-ducal regulation dated 29 June 1984 (see appendix E.2) which did not restrict the assets held by financial holding companies to shareholdings only. In a recent circular relating to the use of the SCA, the Tax Authorities still seemed to consider that there are two types of Soparfis<sup>17</sup>.

Since the CNC opinion reflects a position taken by experts, it is up to the company's management to assess whether its activities are in line with the "financial holding company" concept found in the 2002 accounting law.

If they are, the company will be required to use the layout for balance sheets and profit and loss accounts set out in the 1984 grand-ducal regulation. As a result, it will be exempted from using the SCA and from filing a trial balance at the closing date.

Otherwise, the company will be required to use the layout for balance sheets and profit and loss accounts set out in the 2002 law and it will be governed by the SCA regulation dated 10 June 2009.

#### 4.4. Legal and regulatory provisions regarding consolidated annual accounts

Since the adoption of the law of 11 July 1988 transposing the Seventh EU Directive relating to consolidated annual accounts into domestic law, Luxembourg companies and their subsidiaries have been required to prepare consolidated accounts on a yearly basis.

This law is included in section XVI of the consolidated law dated 10 August 1915 governing commercial companies. It was amended by the law dated 10 December 2010, which introduced, mutatis mutandis, the same changes as those described for the consolidated version of the law dated 19 December 2002 (see paragraphs 4.2.1 and 4.5.3).

Since 1 January 2005, Luxembourg companies listed on a regulated EU market have been required to prepare their consolidated accounts based on IFRS as adopted by the European Union.

As a reminder, since 20 December 2010, unlisted companies have also had the option to use IFRS instead of Luxembourg GAAP.

Such groups may also obtain an individual exemption from the Ministry of Justice (based on a substantiated opinion from the CNC)<sup>18</sup> that enables them to use other internationally recognised accounting standards (US GAAP for instance). In practice, today, this exemption entails a reconciliation of the company's own funds

and of the financial year's profit (loss) with the Luxembourg GAAP in the notes to the accounts.

In Luxembourg, for them to be a group, there must be capital ties between the parent company and at least one major subsidiary (the control over the subsidiary may result from factors other than the parent company holding a majority of voting shares). There is no consolidation requirement for the consortium.

Nevertheless, the law provides for a certain number of exemptions from preparing consolidated accounts. These exemptions are based on the following:

- **exemption for small, unlisted groups (size criteria)**<sup>19</sup>

Holding companies are exempted from preparing consolidated annual accounts where two out of the three criteria set out below are not exceeded for two consecutive financial years for all of the group companies based on their latest annual accounts:

- balance sheet total: EUR 17,500,000
- net turnover: EUR 35,000,000
- headcount<sup>20</sup>: 250

This exemption does not apply if one of the companies to be consolidated is a company whose securities are admitted to official listing on a stock exchange located in a Member State of the European Union.

<sup>16</sup> See note 10, page 24.

<sup>17</sup> Circular No. 751 of 23 December 2010 relating to the entry into force of the standard chart of accounts.

<sup>18</sup> This request for an exemption is governed by article 27 of the law dated 19 December 2002.

<sup>19</sup> Article 313 of the law dated 10 August 1915 governing commercial companies, as amended.

<sup>20</sup> The computation is made on the basis of the average number of employees during the financial year expressed in terms of full time equivalent employees.

- **absence of actual control over the subsidiaries and supervision of companies**<sup>21</sup>

The exemption may also be granted if the holding company is not involved directly or indirectly in the management and supervision of its subsidiaries. Due to the number of legal restrictions applying to obtaining this exemption, it is rarely applied for in practice. This exemption is granted by the indirect tax authorities (Administration de l'enregistrement et des domaines).

- **exemption from sub-consolidation**<sup>22</sup>

Where the holding company is included in the consolidation of another company, it may be exempted from preparing consolidated accounts, provided that certain requirements are met.<sup>23</sup>

Such an exemption is possible if its parent company issues consolidated accounts in compliance with accounting standards in force in Luxembourg or in another Member State of the European Union (since they are all based on Directive 83/349/EEC of 13 June 1983, also known as the Seventh Directive) or with other accounting standards, provided that they are least equivalent to the Seventh Directive.

Accounting standards which provide a similar level of requirements – such as the IFRS or US GAAP for instance – are deemed to be equivalent in practice.

Since the introduction of the law dated 10 December 2010, the exemption from sub-consolidation has no longer been available to companies who are listed on a regulated market of the European Union.

## 4.5. Main characteristics of Lux GAAP

### 4.5.1. Reporting currency

Although the law does not specify it, annual accounts are usually prepared in the currency of the capital.

Luxembourg accounting practice also allows the use of a foreign currency other than the one in which the share capital is denominated for the annual accounts if this serves to reflect the company's financial position more accurately.

### 4.5.2. Valuing balance sheet items and transactions in the profit and loss account

#### The historical cost principle

Until 20 December 2010, Lux GAAP were based solely on the historical acquisition cost, which could be written down (or up) on the closing date, and on the ban on revaluation increases.

This prudent approach (deemed to be overly conservative by some) was also reflected in the profit and loss account where it was not possible to record unrealised gains.

Companies who wish to continue following this accounting principle will be able to do so, since the fair value option introduced in Luxembourg accounting legislation is just an option.

### 4.5.3 “Fair value” options

As part of the drive to modernise its accounting legislation, Luxembourg has introduced the optional “fair value” concept in a new section VII bis of the law dated 10 December 2010.

There are three types of “fair value” options:

- fair value for derivatives and for certain financial instruments based on Directive 2001/65/EC;
- fair value for derivative instruments and for certain financial instruments based on the IFRS as adopted by the European Union (method which can be used instead of the first option and which is allowed by Directive 2006/46/EC);
- fair value for asset categories other than financial instruments based on Directive 2003/51/EC.

The use of the fair value option is governed by certain conditions which should be examined carefully.

<sup>21</sup> Article 312 of the law dated 10 August 1915 governing commercial companies, as amended.

<sup>22</sup> Articles 314 to 316 of the law dated 10 August 1915 governing commercial companies, as amended.

<sup>23</sup> One of these requirements is to file consolidated accounts for the parent company in Luxembourg.

#### **4.6. Supervision of the company and control of the non-consolidated or consolidated annual accounts**

The annual accounts of “small companies” (see criteria below) are subject to the oversight of one or several auditors (“commissaires”).

Public limited companies must comply with this requirement. As regards limited liability companies, however, only those having more than 25 partners are required to appoint a commissaire.

For both types of companies, partners and shareholders may contract this duty out to a registered auditor. However, the position of commissaire is maintained in small companies if such companies are legally required to have one. The Luxembourg MPs’ intention is to remove the position of commissaire in this instance, as expressed in article 2(27) of bill No 6376, which was tabled on 20 December 2011.

Other companies (“medium-sized” or “large” companies), which are defined as those who exceed two out of the three size criteria below:

- balance sheet total: EUR 4,400,000
- net turnover: EUR 8,800,000
- headcount: 50<sup>24</sup>

must have their annual accounts audited by a registered auditor. In that case, there is no requirement to call upon the services of a commissaire.

This requirement rarely applies in practice, since holding companies seldom exceed 2 out of the 3 abovementioned criteria: they usually have no turnover within the meaning of Luxembourg accounting legislation<sup>25</sup> and they rarely have more than 50 employees. That being said, in practice, a number of holding companies do call upon audit professionals to audit their annual accounts.

On the other hand, where consolidated annual accounts are required by the law, those accounts always come with a management report and a registered auditor’s report.

#### **4.7. Specific requirements to be met by listed companies**

The periodic disclosure requirements provided for by the law dated 11 January 2008 come in the form of three reports to be issued on a regular basis:

- an annual financial report to be issued within four months of the financial year-end;
- a half-yearly financial report which covers the first six months of the financial year and which is to be issued within two months of the six-month reporting period in question;
- interim statements from the management during the first and second half-year periods, to be prepared within a time frame starting ten weeks after the beginning of the half-year concerned and ending six weeks before the end of that half-year. Alternatively, quarterly reports may be prepared within sixty days following the end of the first and third quarters of each financial year.

Along with the requirement to disclose regulated information comes the requirement to file that information with the Commission de Surveillance du Secteur Financier and to make it available for inspection at an officially designated repository for centralised storage of regulated information. Annual and half-yearly reports must be available to the general public for a period of at least five years.

<sup>24</sup> The computation is made on the basis of the average number of employees during the financial year expressed in terms of full-time equivalent employees.

<sup>25</sup> The turnover is only made up of the sales of goods resulting from commercial or industrial activities or from the provision of services.



# Appendices

## Appendix A

### List of double tax treaties

Luxembourg has entered into double tax treaties with the following countries:

Albania*	Malta
Argentina**	Mauritius
Armenia	Mexico
Austria	Moldova
Azerbaijan	Monaco
Bahrain	Mongolia
Barbados	Morocco
Belgium	Netherlands
Brazil	Norway
Bulgaria	Panama
Canada	Poland
China	Portugal
Czech Republic	Qatar
Denmark	Romania
Estonia	Russia
Finland	San Marino
France	Singapore
Georgia	Slovakia
Germany	Slovenia
Greece	Spain
Hong Kong	South Africa
Hungary	South Korea
Iceland	Sweden
India	Switzerland
Indonesia	Tajikistan*
Ireland	Thailand
Israel	Trinidad and Tobago
Italy	Tunisia
Japan	Turkey
Kazakhstan*	Ukraine**
Kuwait*	United Arab Emirates
Latvia	United Kingdom
Liechtenstein	United States of America
Lithuania	Uzbekistan
Malaysia	Vietnam

Double tax treaties are also being discussed with the following countries:

Cyprus, Macedonia, Kyrgyzstan, Lebanon, Montenegro, Oman, Pakistan, Saudi Arabia, Serbia, Seychelles, Sri Lanka, Syria and Uruguay

\* Treaty was signed but not yet approved or published in the Luxembourg Gazette at the time this brochure went to press.

\*\* Treaty was signed but had not yet entered into force at the time this brochure went to press.

## Appendix B

Summary of exemption eligibility requirements to be met by holding companies governed by the provisions of general legislation (Soparfis)

	Level of shareholding	Shareholding period
<b>Corporate income tax (CIT)</b>		
Shareholding income	10% or EUR 1,200,000	Hold or undertake to hold the shareholding for an uninterrupted period of at least 12 months
Capital gains	10% or EUR 6,000,000	Hold or undertake to hold the shareholding for an uninterrupted period of at least 12 months
<b>Net wealth tax</b>		
	10% or EUR 1,200,000	Hold that level of shareholding at the end of the financial year which precedes the key date for setting the value (1 January of every year)
<b>Municipal business tax</b>		
Shareholding income	10% or EUR 1,200,000	Hold or undertake to hold the shareholding for an uninterrupted period of at least 12 months
	or	At the beginning of the financial year
Capital gains	10% or EUR 6,000,000	Hold or undertake to hold the shareholding for an uninterrupted period of at least 12 months

## Appendix C

List of companies referred to in paragraph 10 of article 166 LITL and in paragraph 60 (4) BewG

- a) Luxembourg companies known as “société anonyme”, “société en commandite par actions”, “société à responsabilité limitée”, “société coopérative”, “société coopérative organisée comme une société anonyme”, “association d’assurances mutuelles”, “association d’épargne-pension”, “entreprise de nature commerciale, industrielle ou minière de l’État, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public”, and other companies formed under Luxembourg law;
- b) German companies known as “Aktiengesellschaft”, “Kommanditgesellschaft auf Aktien”, “Gesellschaft mit beschränkter Haftung”, “Versicherungsverein auf Gegenseitigkeit”, “Erwerbs- und Wirtschaftsgenossenschaft”, and “Betriebe gewerblicher Art von juristischen Personen des öffentlichen Rechts”;
- c) Austrian companies known as “Aktiengesellschaft”, “Gesellschaft mit beschränkter Haftung”, “Versicherungsvereine auf Gegenseitigkeit”, “Erwerbs- und Wirtschaftsgenossenschaften”, “Betriebe gewerblicher Art von Körperschaften des öffentlichen Rechts” and “Sparkassen”;
- c) Belgian companies known as “société anonyme”/“naamloze vennootschap”, “société en commandite par actions”/“commanditaire vennootschap op aandelen”, “société privée à responsabilité limitée”/“besloten vennootschap met beperkte aansprakelijkheid” “société coopérative à responsabilité limitée”/“coöperatieve vennootschap met beperkte aansprakelijkheid”, “société coopérative à responsabilité illimitée”/“coöperatieve vennootschap met onbeperkte aansprakelijkheid”, “société en nom collectif”/“vennootschap onder firma”, “société en commandite simple”/“gewone commanditaire vennootschap” as well as public undertakings which have adopted one of the abovementioned legal forms,
- d) Bulgarian companies known as “събирателно дружество”, “командитно дружество”, “дружество с ограничена отговорност”, “акционерно дружество”, “командитно дружество с акции”, “неперсонифицирано дружество”, “кооперации”, “кооперативни съюзи” and “държавни предприятия”.
- e) Cypriot companies known as “εταιρείες”;
- f) Danish companies known as “aktieselskab” and “anpartsselskab
- g) Spanish companies known as “sociedad anónima”, “sociedad comanditaria por acciones”, “sociedad de responsabilidad limitada”, and those public law bodies which operate under private law;
- h) Estonian companies known as: “täisühing”, “usaldusühing”, “osühing”, “aktsiaselts”, “tulundusühistu”;
- i) Finnish companies known as “osakeyhtiö”/“aktiebolag”, “osuuskunta”/“andelslag”, “säästöpankki”/“sparbank” and “vakuutusyhtiö”/“försäkringsbolag”;
- j) French companies known as “société anonyme”, “société en commandite par actions”, “société à responsabilité limitée”, “société par actions simplifiée”, “société d’assurance mutuelle”, “caisses d’épargne et de prévoyance”, “coopératives” and “unions de coopératives” as well as industrial and commercial public establishments and undertakings;
- k) Greek companies known as “ανώνυμη εταιρεία”, “εταιρεία περιορισμένης ευθύνης (Ε.Π.Ε.)”;
- l) Hungarian companies known as: “közkereseti társaság”, “betéti társaság”, “közös vállalat”, “korlátolt felelősségű társaság”, “résztvénytársaság”, “egyesülés”, “közhasznú társaság”, “szövetkezet”;
- m) companies incorporated or existing under Irish law, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts and trustee savings banks within the meaning of the Trustee Savings Banks Act, 1989;

- n) Italian companies known as “società per azioni”, “società in accomandita per azioni”, “società a responsabilità limitata”, “società cooperativa”, “società di mutua assicurazione”, and private and public entities whose activity is wholly or principally commercial;
- o) Latvian companies known as: “akciju sabiedrība”, “sabiedrība ar ierobežotu atbildību”;
- p) Lithuanian companies
- q) Maltese companies known as: “Kumpaniji ta’ Responsabilità Limitata”, “Soċjetajiet en commandite li l-kapital tagħhom maqsum f’azzjonijiet”;
- r) Dutch companies known as “naamloze vennootschap”, “besloten vennootschap met beperkte aansprakelijkheid”, “Open commanditaire vennootschap”, “Coöperatie”, “onderlinge waarborgmaatschappij”, “Fonds voor gemene rekening”, “vereniging op coöperatieve grondslag” and “vereniging welke op onderlinge grondslag als verzekeraar of kredietinstelling optreed”;
- s) Polish companies known as: “spółka akcyjna”, “spółka z ograniczoną odpowiedzialnością”, “spółdzielnia”, “przedsiębiorstwo państwowe”;
- t) commercial companies or civil law companies having a commercial form, cooperatives and public undertakings incorporated in accordance with Portuguese law;
- t’) Romanian companies known as: “societăți pe acțiuni”, “societăți în comandită pe acțiuni”, “societăți cu răspundere limitată”;
- u) United Kingdom companies;
- v) Slovak companies known as: “akciová spoločnosť”, “spoločnosť s ručením obmedzeným”, “komanditná spoločnosť”;
- w) Slovenian companies known as “delniška družba”, “komanditna družba”, “družba z omejeno odgovornostjo”;
- x) Swedish companies known as “aktiebolag”, “försäkringsaktiebolag”, “ekonomiska föreningar”, “sparbanker”, “ömsesidiga försäkringsbolag”;
- y) Czech companies known as “akciová společnost”, “společnost s ručením omezeným”;
- z) companies formed in accordance with European Council regulation No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees and cooperative companies incorporated under Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

## Appendix D

List of companies referred to in article 2 of Council Directive 2011/96/EU of 30 November 2011 (2011/96/EU)

- a) companies incorporated under Council Regulation (EC) no. 2157/2001 of 8 October 2001 on the Statute for a European company (SE) and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees and cooperative societies incorporated under Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.
- b) companies under Belgian law known as “société anonyme”/“naamloze vennootschap”, “société en commandite par actions”/“commanditaire vennootschap op aandelen”, “société privée à responsabilité limitée”/“besloten vennootschap met beperkte aansprakelijkheid”, “société coopérative à responsabilité limitée”/“coöperatieve vennootschap met beperkte aansprakelijkheid”, “société coopérative à responsabilité illimitée”/“coöperatieve vennootschap met onbeperkte aansprakelijkheid”, “société en nom collectif”/“vennootschap onder firma”, “société en commandite simple”/“gewone commanditaire vennootschap”, public undertakings which have adopted one of the abovementioned legal forms, and other companies constituted under Belgian law subject to Belgian corporate tax
- c) companies under Bulgarian law known as: “събирателно дружество”, “командитно дружество”, “дружество с ограничена отговорност”, “акционерно дружество”, “командитно дружество с акции”, “неперсонифицирано дружество”, “кооперации”, “кооперативни съюзи”, “държавни предприятия” constituted under Bulgarian law and carrying on commercial activities;
- d) companies under Czech law known as: “akciová společnost”, “společnost s ručením omezeným”;
- e) companies under Danish law known as “aktieselskab” and “anpartsselskab”. Other companies subject to tax under the Corporation Tax Act, in so far as their taxable income is calculated and taxed in accordance with the general tax legislation rules applicable to “aktieselskaber”;
- f) companies under German law known as “Aktiengesellschaft”, “Kommanditgesellschaft auf Aktien”, “Gesellschaft mit beschränkter Haftung”, “Versicherungsverein auf Gegenseitigkeit”, “Erwerbs- und Wirtschaftsgenossenschaft”, “Betriebe gewerblicher Art von juristischen Personen des öffentlichen Rechts”, and other companies constituted under German law subject to German corporate tax;
- g) companies under Estonian law known as: “täisühing”, “usaldusühing”, “osühing”, “aktsiaselts”, “tulundusühistu”;
- h) companies under Greek law known as “ανώνυμη εταιρεία”, “εταιρεία περιορισμένης ευθύνης (Ε.Π.Ε.)” and other companies constituted under Greek law subject to Greek corporate tax;
- i) companies under Spanish law known as: “sociedad anónima”, “sociedad comanditaria por acciones”, “sociedad de responsabilidad limitada”, public law bodies which operate under private law. Other entities constituted under Spanish law subject to Spanish corporate tax (“Impuesto sobre Sociedades”);
- j) companies under French law known as “société anonyme”, “société en commandite par actions”, “société à responsabilité limitée”, “sociétés par actions simplifiées”, “sociétés d’assurances mutuelles”, “caisses d’épargne et de prévoyance”, “sociétés civiles” which are automatically subject to corporation tax, “coopératives”, “unions de coopératives”, industrial and commercial public establishments and undertakings, and other companies constituted under French law subject to the French Corporate Tax;
- k) companies incorporated or existing under Irish law, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts and trustee savings banks within the meaning of the Trustee Savings Banks Act, 1989;
- l) companies under Italian law known as “società per azioni”, “società in accomandita per azioni”, “società a responsabilità limitata”, “società cooperativa”, “società di mutua assicurazione”, and private and public entities whose activity is wholly or principally commercial;
- m) under Cypriot law: “εταιρείες” as defined in the Income Tax laws;

- n) companies under Latvian law known as: “akciju sabiedrība”, “sabiedrība ar ierobežotu atbildību”;
- o) companies incorporated under the law of Lithuania;
- p) companies under Luxembourg law known as “société anonyme”, “société en commandite par actions”, “société à responsabilité limitée”; “société coopérative”, “société coopérative organisée comme une société anonyme”, “association d’assurances mutuelles”, “association d’épargne-pension”, “entreprise de nature commerciale, industrielle ou minière de l’Etat, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public”, and other companies constituted under Luxembourg law subject to Luxembourg corporate tax;
- q) companies under Hungarian law known as: “közkereseti társaság”, “betéti társaság”, “közös vállalat”, “korlátolt felelősségű társaság”, “részvénytársaság”, “egyesülés”, “szövetkezet”;
- r) companies under Maltese law known as: “Kumpaniji ta’ Responsabilita’ Limitata”, “Soċjetajiet en commandite li l-kapital tagħhom maqsum f’azzjonijiet”;
- s) companies under Dutch law known as “naamloze vennootschap”, “besloten vennootschap met beperkte aansprakelijkheid”, “open commanditaire vennootschap”, “coöperatie”, “onderlinge waarborgmaatschappij”, “fonds voor gemene rekening”, “vereniging op coöperatieve grondslag”, “vereniging welke op onderlinge grondslag als verzekeraar of kredietinstelling optreedt”, and other companies constituted under Dutch law subject to Dutch corporate tax;
- t) companies under Austrian law known as “Aktiengesellschaft”, “Gesellschaft mit beschränkter Haftung”, “Versicherungsvereine auf Gegenseitigkeit”, “Erwerbs- und Wirtschaftsgenossenschaften”, “Betriebe gewerblicher Art von Körperschaften des öffentlichen Rechts”, “Sparkassen”, and other companies constituted under Austrian law subject to Austrian corporate tax;
- u) companies under Polish law known as: “spółka akcyjna”, “spółka z ograniczoną odpowiedzialnością”;
- v) commercial companies or civil law companies having a commercial form and cooperatives and public undertakings incorporated in accordance with Portuguese law;
- w) companies under Romanian law known as: “societăți pe acțiuni”, “societăți în comandită pe acțiuni”, “societăți cu răspundere limitată”;
- x) companies under Slovenian law known as: “delniška družba”, “komanditna družba”, “družba z omejeno odgovornostjo”;
- y) companies under Slovak law known as: “akciová spoločnosť”, “spoločnosť s ručením obmedzeným”, “komanditná spoločnosť”;
- z) companies under Finnish law known as “osakeyhtiö”/”aktiebolag”, “osuuskunta”/”andelslag”, “säästöpankki”/”sparbank” and “vakuumusyhtiö”/”försäkringsbolag”;
- aa) companies under Swedish law known as “aktiebolag”, “försäkringsaktiebolag”, “ekonomiska föreningar”, “sparbanker”, “ömsesidiga försäkringsbolag”, “försäkringsföreningar
- ab) companies incorporated under the law of the United Kingdom.

## Appendix E

### Layout of the balance sheet and the profit and loss account for financial holding companies

#### E.1 Non-consolidated annual accounts under the law of 19 December 2002\*

##### Abridged version of the balance sheet\*\*

ASSETS		Financial year	Previous financial year
<b>A. Subscribed capital unpaid</b>	101	_____	102 _____
I. Subscribed capital not called	103	_____	104 _____
II. Subscribed capital called but unpaid	105	_____	106 _____
<b>B. Formation expenses</b>	107	_____	108 _____
<b>C. Fixed assets</b>	109	_____	110 _____
I. Intangible assets	111	_____	112 _____
II. Tangible assets	125	_____	126 _____
III. Financial assets	135	_____	136 _____
<b>D. Current assets</b>	151	_____	152 _____
I. Stocks	153	_____	154 _____
II. Debtors	163	_____	164 _____
a) becoming due and payable after less than one year	203	_____	204 _____
b) becoming due and payable after more than one year	205	_____	206 _____
III. Investments	189	_____	190 _____
IV. Cash at bank and in hand	197	_____	198 _____
<b>E. Prepayments</b>	199	_____	200 _____
<b>TOTAL (ASSETS)</b>		201 _____	202 _____

\*For further information on the layout to be adopted for annual accounts in accordance with the law dated 19 December 2002, please refer to the brochure entitled "Handbook for the preparation of annual accounts under Luxembourg accounting framework".

\*\*Translation as available on the eCDF website.

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**LIABILITIES**

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	Financial year	Previous financial year
<b>A. Capital and reserves</b>	301 _____	302 _____
I. Subscribed capital	303 _____	304 _____
II. Share premium and similar premiums	305 _____	306 _____
III. Revaluation reserves	307 _____	308 _____
IV. Reserves	309 _____	310 _____
V. Profit or loss brought forward	319 _____	320 _____
VI. Result for the financial year	321 _____	322 _____
VII. Interim dividends	323 _____	324 _____
VIII. Subsidies of capital in investment	325 _____	326 _____
IX. Immunised increases in value/appreciation	327 _____	328 _____
<b>B. Subordinated creditors</b>	329 _____	330 _____
<b>C. Provisions</b>	331 _____	332 _____
<b>D. Non-subordinated debts</b>	339 _____	340 _____
a) becoming due and payable after less than one year	407 _____	408 _____
b) becoming due and payable after more than one year	409 _____	410 _____
<b>E. Deferred income</b>	403 _____	404 _____
<b>TOTAL (LIABILITIES)</b>	405 _____	406 _____

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## Abridged version of the profit and loss account

### A. CHARGES

	Financial year	Previous financial year
<b>1. to 2. Gross profit or loss</b>	643 _____	644 _____
<b>3. Staff costs</b>	605 _____	606 _____
a) Wages and salaries	607 _____	608 _____
b) Social security costs	609 _____	610 _____
c) Social security costs relating to pensions	611 _____	612 _____
d) Other social security costs	613 _____	614 _____
<b>4. Value adjustments</b>	615 _____	616 _____
a) on formation expenses and on tangible and intangible fixed assets	617 _____	618 _____
b) on elements of current assets	619 _____	620 _____
<b>5. Other operating charges</b>	621 _____	622 _____
<b>6. Value adjustments and fair value adjustments on financial fixed assets</b>	623 _____	624 _____
<b>7. Value adjustments and fair value adjustments on financial fixed assets. Loss on disposal of transferable securities</b>	625 _____	626 _____
<b>8. Interest payable and similar charges</b>	627 _____	628 _____
a) concerning affiliated undertakings	629 _____	630 _____
b) other interest payable and similar charges	631 _____	632 _____
<b>9. Extraordinary charges</b>	633 _____	634 _____
<b>10. Tax on profit or loss</b>	635 _____	636 _____
<b>11. Other taxes</b> not included in the previous caption	637 _____	638 _____
<b>12. Profit for the financial year</b>	639 _____	640 _____
<b>TOTAL CHARGES</b>	641 _____	642 _____

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**B. INCOME**

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	Financial year	Previous financial year
<b>1 to 5 Gross profit or loss*</b>	739 _____	740 _____
<b>6. Income from financial fixed assets</b>	715 _____	716 _____
a) derived from affiliated undertakings	717 _____	718 _____
b) other income from participating interests	719 _____	720 _____
<b>7. Income from financial current assets</b>	721 _____	722 _____
a) derived from affiliated undertakings	723 _____	724 _____
b) other income	725 _____	726 _____
<b>8. Other interest and other financial income</b>	727 _____	728 _____
a) derived from affiliated undertakings	729 _____	730 _____
b) other interest receivable and similar income	731 _____	732 _____
<b>9. Extraordinary income</b>	733 _____	734 _____
<b>10. Loss for the financial year</b>	735 _____	736 _____
<b>TOTAL INCOME</b>	737 _____	738 _____

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\* On the Luxembourg government's eCDF platform (electronic platform for the collection of financial data), the form currently made available to businesses groups together items B.1. through B.5. However, according to article 47(1) of the law dated 19 December 2002 on the trade and companies register and the accounting and annual accounts of companies, only items B.1. through B.4. may be grouped together in a single item called "Gross income" and item B.5., i.e. "Other operating income", must be shown separately. Since it is not possible to adapt the form and XML files in question at this stage, a circular issued by the Ministry of Justice on 20 April 2012 provides that the undertakings concerned should use the PDF and XML files in their current version and group together items B.1. through B.5. as suggested. They will have to provide the information regarding item B.5. separately in the appendix (there is no imposed format for this).

E.2 Layout for non-consolidated annual accounts set out under the grand-ducal regulation dated 29 June 1984\*

Balance sheet (SPF)

<b>ASSETS</b>		
	Financial year	Previous financial year
<b>A. Subscribed capital unpaid, of which there has been called</b>	101 _____	102 _____
<b>B. Formation expenses</b>	107 _____	108 _____
<b>C. Fixed assets</b>	109 _____	110 _____
I. Intangible assets	111 _____	112 _____
II. Tangible assets	125 _____	126 _____
III. Financial assets	135 _____	136 _____
<b>D. Current assets</b>	151 _____	152 _____
I. Debtors	163 _____	164 _____
II. Investments	189 _____	170 _____
III. Cash in bank and in hand	197 _____	198 _____
<b>E. Prepayments</b>	199 _____	200 _____
<b>F. Loss for the financial year</b>	207 _____	208 _____
<b>TOTAL (ASSETS)</b>	201 _____	202 _____

\*Translation as available on the eCDF website.

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**LIABILITIES**

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	Financial year	Previous financial year
<b>A. Capital and reserves</b>	301 _____	302 _____
I. Subscribed capital	303 _____	304 _____
II. Share premium account	305 _____	306 _____
III. Revaluation reserve	307 _____	308 _____
IV. Reserves	309 _____	310 _____
1. Legal reserve	311 _____	312 _____
2. Reserve for own shares	313 _____	314 _____
3. Reserves provided for by the articles of association	315 _____	316 _____
4. Other reserves	317 _____	318 _____
V. Profit or loss brought forward	319 _____	320 _____
<b>B. Provisions for liabilities and charges</b>	331 _____	332 _____
<b>C. Creditors, other than subordinated</b>	339 _____	340 _____
1. Debenture loans	341 _____	342 _____
2. Other creditors	397 _____	398 _____
<b>D. Accrual and deferred income</b>	403 _____	404 _____
<b>E. Profit for the financial year</b>	411 _____	412 _____
<b>TOTAL (LIABILITIES)</b>	405 _____	406 _____

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**Profit and loss account (SPF)**

<b>A. CHARGES</b>		
	Financial year	Previous financial year
1. Value adjustments of assets	645 _____	646 _____
2. Interest payable and similar charges	627 _____	628 _____
3. Other charges	647 _____	648 _____
4. Result for the financial year	639 _____	640 _____
<b>TOTAL CHARGES</b>		
	641 _____	642 _____

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**B. INCOME**

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	Financial year	Previous financial year
1. Income from fixed assets	741 _____	742 _____
2. Income from current assets	743 _____	744 _____
3. Extraordinary income	733 _____	734 _____
4. Result for the financial year	735 _____	736 _____
<b>TOTAL INCOME</b>	<b>737</b> _____	<b>738</b> _____

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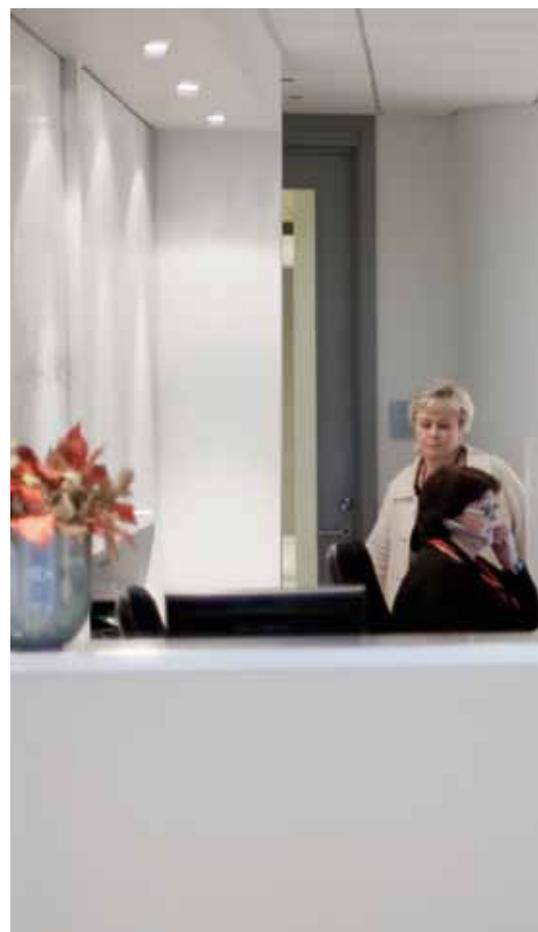
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