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Civil and Tax law Planning in M&A Today

Focus on Luxembourg Private Banking

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ING Luxembourg Private Banking

Contents

Introduction on Luxembourg

Advantages of the Grand Duchy of Luxembourg:

•Political Stability (AAA-country in the centre of Europe)

•Fiscal & Financial Expertise (2nd largest investment fund centre in the world)

•Social environment (43.2% of foreigners)

•Specific legislations (IP Law)

•Economic growth (real GDP growth in 2011 = 2.0%)

Introduction on Private Banking

- Tailor-made financial services.
- International aspects (residence, relocation, corporate growth)
- Long-term relationship built on trust (KYC)
- ING group is a universal bank with an international network.

Private Banking and M&A: focus on Luxembourg

- Civil law planning in PB

  – Marital Status
  – Residence
  – Family

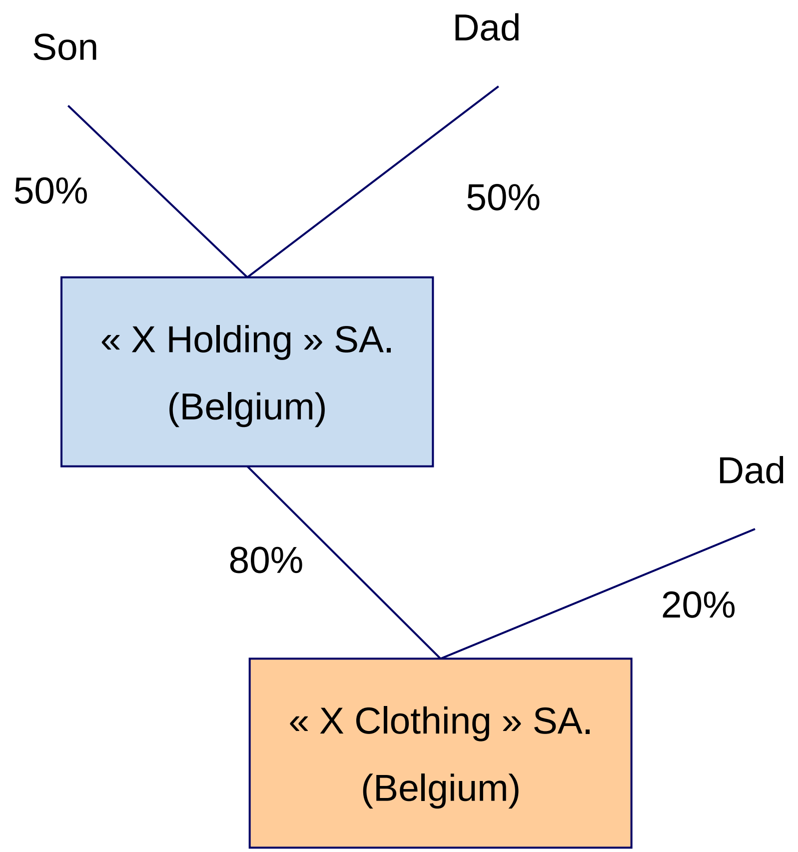
=> To an SME, a M&A deal will quite possibly be a once-in-a-lifetime one. Civil aspects of the seller and/or buyer and their consequences are crucial when building the transfer deal. The private banker has become one of the trusted adviser of the client through the years and therefore has a global view on the client's civil situation. The private banker's expertise will be of high added value.

Private Banking and M&A: focus on Luxembourg

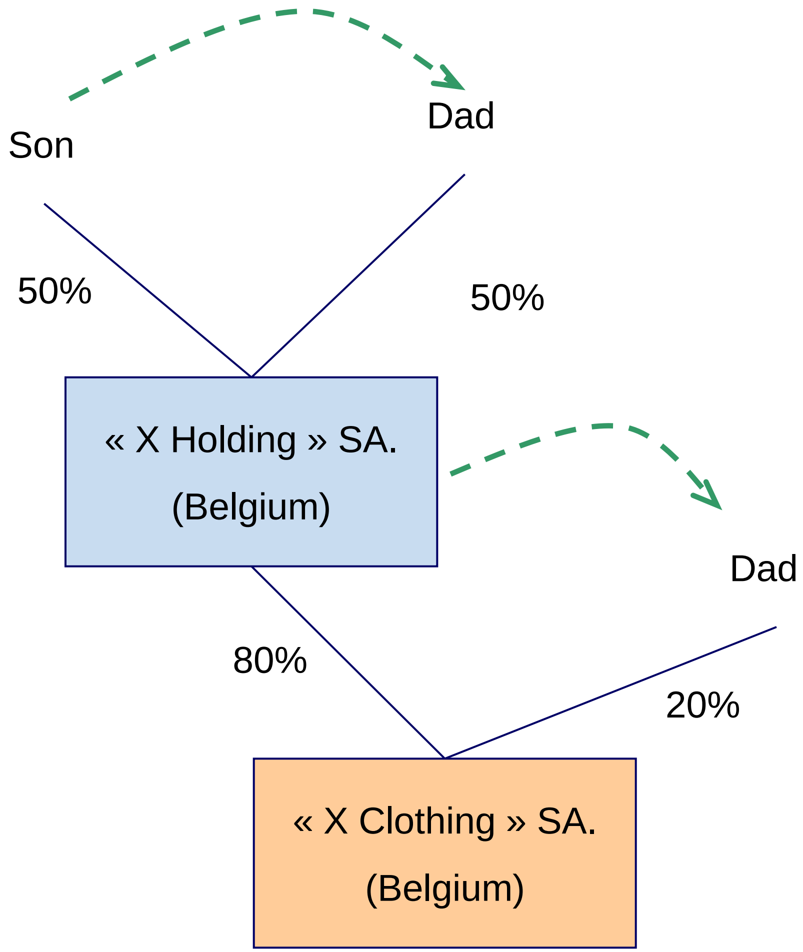
- **PB & LBOs:**
  - Looking for growth through expertise:
    - credit
    - family matters
    - investments / portfolio management
  - Opening doors:
    - Fiscal advantages
    - International growth strategy
    - High-added value employees

- Building an LMBO through a Luxco : practical example and details

Step 0:



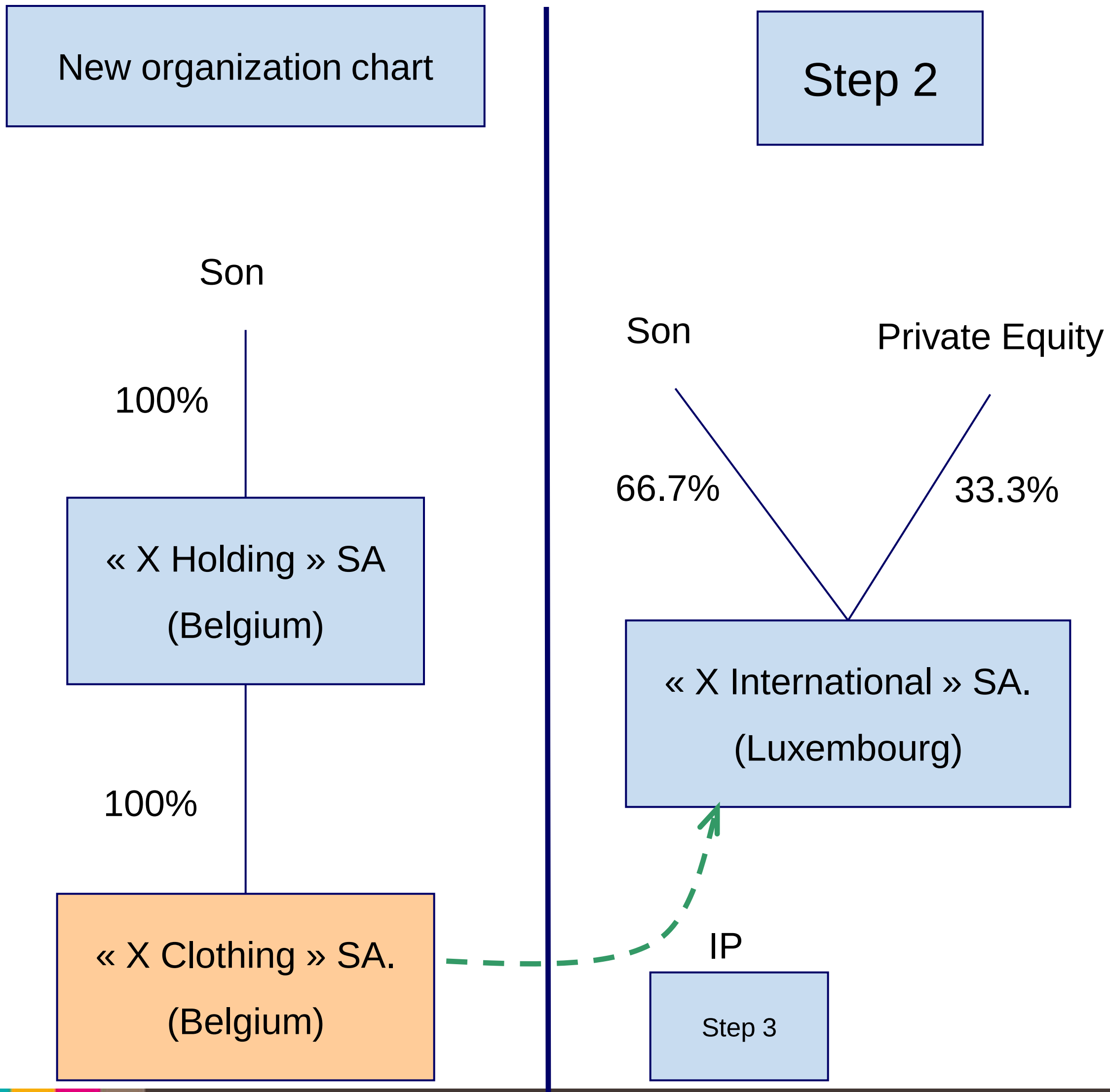
Private Banking and M&A: focus on Luxembourg



Step 1 : Junior wants to acquire 100% of the operating company. To do so, he is going to buy the shares of his father via bank credit, personal cash or vendor loan.

NB: Vendor loan => tax on interest for a Luxembourg resident = 10%.

Private Banking and M&A: focus on Luxembourg

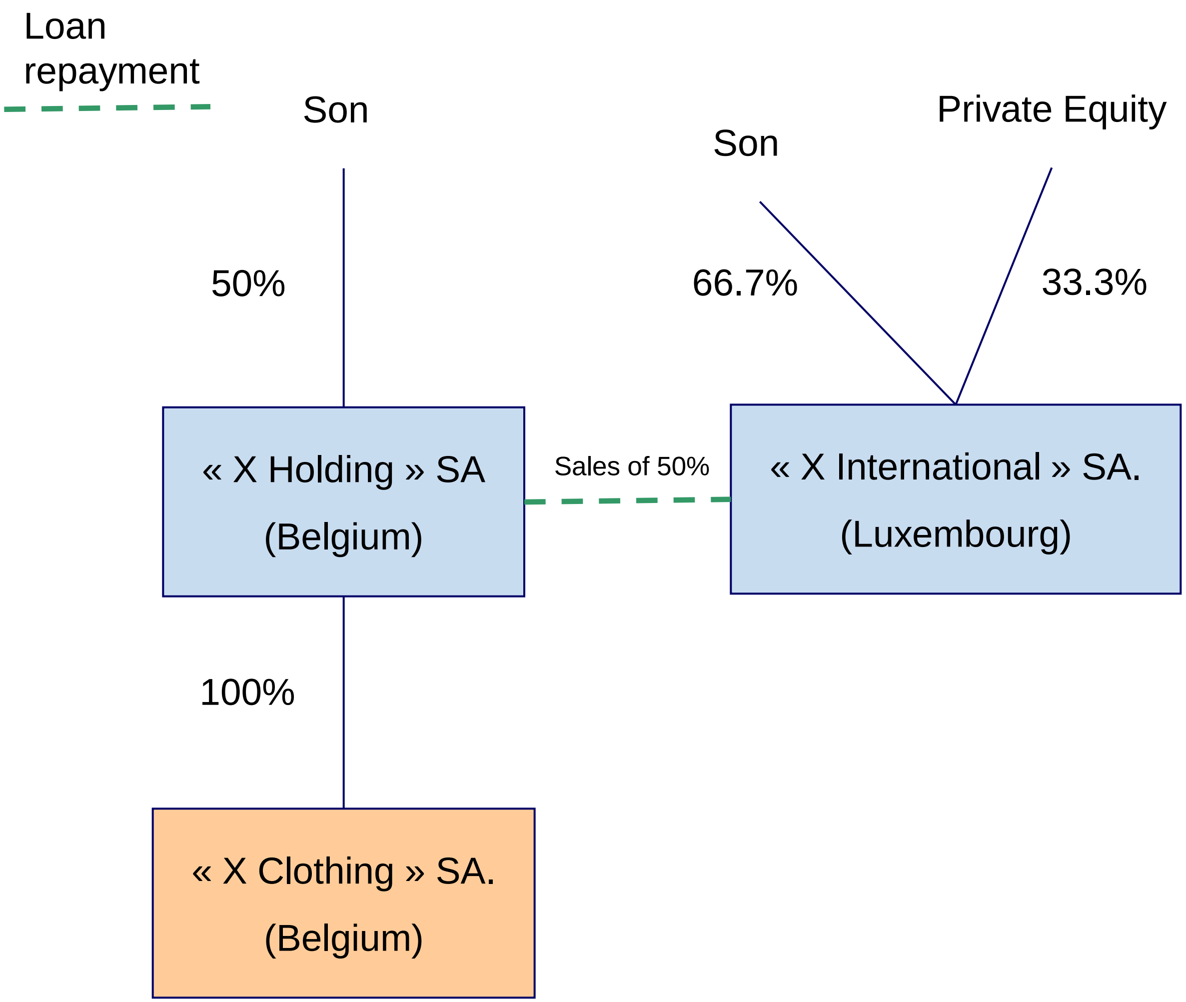


Step 2 : Junior will establish a holding company in Luxembourg (Soparfi) through a Private Equity deal.

This newco will be used to develop the activities internationally. (purchasing targets, prospecting new markets and developing new products).

Step 3: “X Intl sa” buys « X clothing »’s intangible assets
NB: An audit and valuation of the assets is mandatory in order to benefit from the Luxembourgish IP Law

Private Banking and M&A: focus on Luxembourg

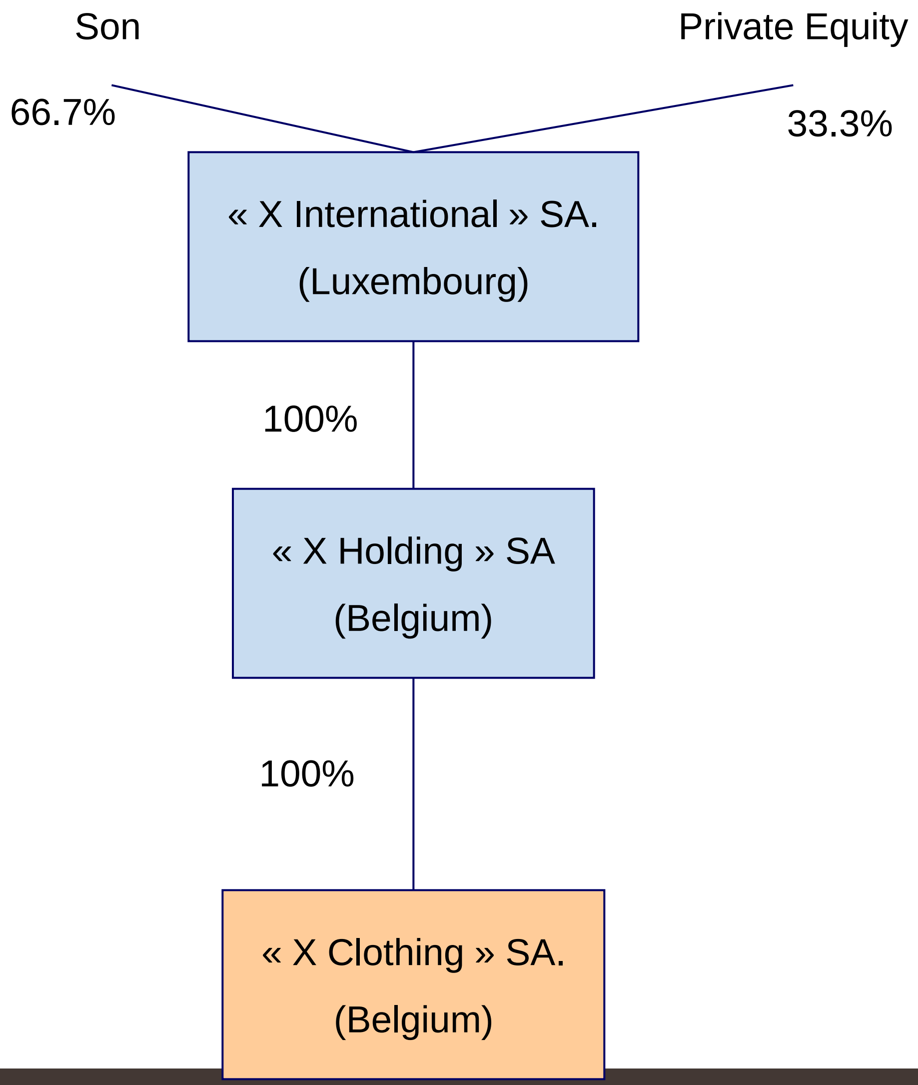


Step 4: Private Equity brings liquidity in the newly established Luxembourg Cy.

Step 5: Junior sells the former 50% shares owned by his father to the Luxco and uses the money to repay the loans.

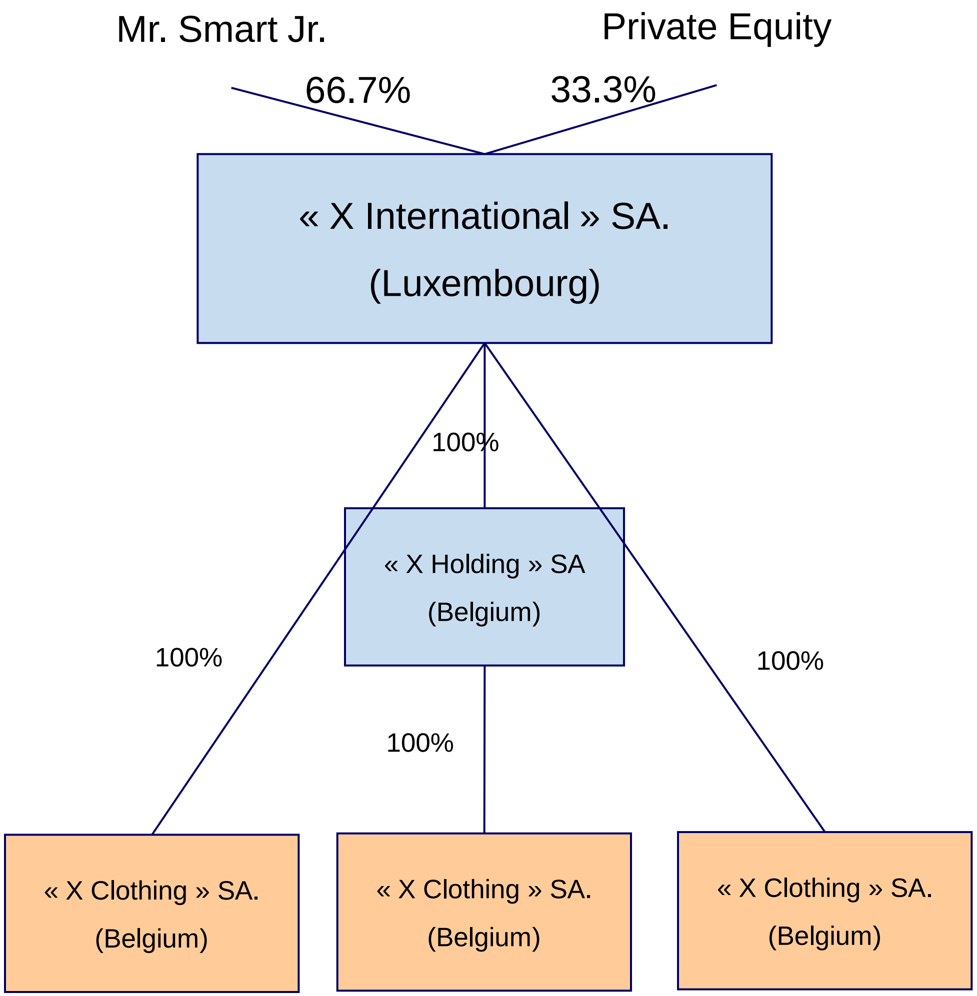
NB: To avoid any capital gain/loss, the selling price of the shares will be the same as the price agreed with the father (fair market price).

Private Banking and M&A: focus on Luxembourg



Step 6: The son brings his other 50% of the shares of "X holding SA" into the Soparfi as partner current account at the same value than the one used for the previous donation.

Private Banking and M&A: focus on Luxembourg



Step 7: The son can now easily develop new markets, new products, new clients.

The Luxembourg Soparfi:

- gave access to high level leverage (via P.E., funds located in GDL)
- will collect dividends from all subsidiaries
- benefits from a 80% tax-exemption on pre-tax result coming from royalties.
- can employ the high added value employees.
- allows our client to easily sell a subsidiary if needed

Private Banking and M&A: focus on Luxembourg

- **PB & Estate Planning:**

- Expect the unexpected:
  - death or a divorce before the deal
  - death during the process of the deal
  - death after the deal

=> Wealth planning must be a part of any M&A deal. It allows your client to be aware of his current situation and the actions he may want to take to optimise the transfer.

Private Banking and M&A: focus on Luxembourg

PB and Civil impacts : Application of article 922 CC

Example:

- Mr. Smart Sr has 2 children a son and a daughter. The son wishes to continue the family-business.
  - 2012:
    - Mr. Smart Sr has donated by praecipuum and out of share 1000 shares of ‘X-Holding’ to his son. The value of a share is 4000 €.
    - Mr. Smart Sr sold the other 1000 shares to his son for the same price.
  - 2015:
    - 3 years later Mr. Smart Sr deceases. The value of the shares at the time of the death = 5.000.000 €. The value of Mr Smart Sr’s estate at the time of his death = 2.000.000 €.

Private Banking and M&A: focus on Luxembourg

- Civil consequences when his estate is liquidated (art: 922 CC):
  - A fictitious mass has to be calculated in order to see whether the reserve of one of the children is not affected.
  - The donated shares have to be valuated at the time of the death of the donator.
  - Fictitious mass = 5000.000 € + 2.000.000 € (the rest of the estate)
  - Maximum part that one child can receive = reserve + available state = 2/3 of the fictitious mass = 4.666.666 €
  - Mr. Smart Jr has to give back shares for 333.334 Euro to his sister .

Private Banking and M&A: focus on Luxembourg

- Solution:
  - Donation of a company with application of the reduced rate according to art. 140 bis Reg.C
  - For the calculation of the fictitious mass the value of the shares at the moment of the donation is taken into account = 4.000.000
  - Fictitious mass = 4000.000 + 2000.000 (the rest of the estate)
  - Maximum part that one child can receive = reserve + available state = 2/3 of the fictitious mass = 4.000.000
  - Mr. Smart Jr can keep the shares donated by his father.

Private Banking and M&A: focus on Luxembourg

- But art. 140 bis C.Reg is not always applicable:

  – Exemples how application conditions vary in the 3 different Belgian regions:
    - Donation of an holding-company is possible in Wallonia but not possible in Brussels;
    - Donation of shares, warrants, subscription-rights, profit-shares, certificates is possible in Wallonia. In Brussels you can only donate shares;
    - Donation of a partner current-account in Wallonia is possible but not in Brussels;
    - The shares of the company can't be alienated for a periode of 5 years in Brussels
    - Flanders changed the application conditions completely in 2012

Fiscal status :

- The SOPARFI company is fully submitted to the Luxembourg tax law and its gains are taxed at a global rate of 28,80 % (since the 1/1/2011 in Luxembourg City) and therefore can benefit from the reduced rates through the double taxation agreements or treaties (DTT).

- However some of the SOPARFI income are exempted under certain conditions :

    - Dividends : the dividends paid by the following subsidiaries ((i) fully taxable resident company, (ii) company benefiting from the EEC parent-subsidiary directive, (iii) non-resident company submitted to a similar company tax (>10,5%)) owned at more than 10 % (or purchase price > 1,2 M€) whose shares are held for an uninterrupted period of 12 months at least or for which the Soparfi has committed itself to hold the participation for a minimum 12-month-period, are fully exempted;
    - Capital gains : capital gains obtained by equity transfer of a ((i) fully taxable resident company, (ii) company benefiting from the EEC parent-subsidiary directive, (iii) non-resident company submitted to a similar company tax (>10,5%)) owned at more than 10 % (or purchase price > 6 M€) whose shares are held for an uninterrupted period of 12 months at least, are fully exempted;

Characteristics of the SOPARFI

- The SOPARFI is submitted to the Wealth net tax (IF) at the 0,5 % rate. The tax base corresponds to the net assets by the 1st of January reduced by the shareholdings eligible to exemption as well as by some IP rights ;

- The SOPARFI is subjected to a 15% withholding tax when paying out dividends. However it may benefit from exemption if it meets certain conditions :
  - The paying company is fully taxable ;
  - The beneficiary is (i) a fully taxable resident corporation, (ii) a company (or a permanent establishment of the company) benefiting from the parent-subsidiary directive, (iii) or a fully taxable company established in a country having signed a DTT with Luxembourg, (iv) or a capital company established in Switzerland and submitted to the Swiss tax without exemption, (v) or a company (or a permanent establishment of the company) EEE resident fully taxable at a similar tax rate ;
  - And at the moment of the receipt of the dividends, the SOPARFI must hold or commit itself to hold a participation of at least 10% of the subsidiary’s capital (or purchase price of at least EUR 1.200.200) for a minimum 12-month-period.

Characteristics of the SOPARFI

IP regime :

The 21st December 2007 law introduced a new article (50 bis LIR) providing a favourable regime for the exploitation of IP rights actually an 80% exemption on the total amount of patent royalties received and the achieved capital gains when transferring the rights.

The rights concerned are :

-Copyrights on computer software ;

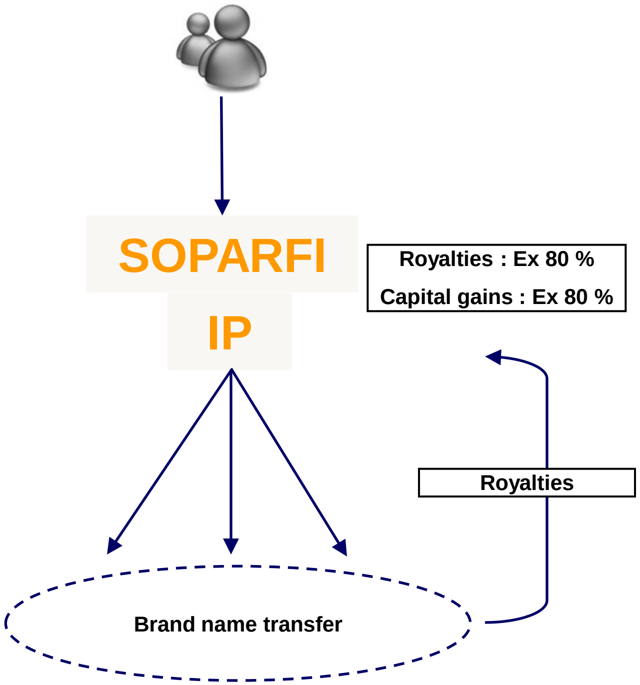
-Patents ;

-Trade/brand names or marks ;

-Designs ;

-Domain names.

To be eligible, the IP must have been acquired or deposited after 31st December 2007.



IP regimes in Benelux

DPI	Luxembourg	Belgium	The Netherlands
Copyrights	✓	✓	✓
Softwares	✓	✗	✓
Brands	✓	✗	✗
Websites	✓	✗	✗
Design	✓	✗	✗
Others	✗	✗	✓

Overview on personal taxation in Luxembourg (1/4)

- Personal taxes - basics:
  - Progressive tax rate
  - 18 brackets
    - The first EUR 11.265 are exempted
    - 17 brackets from 8% to 39% for income between EUR 11.265 and 39.885

- Income tax:
  - Dividends
    - Exempted up to 50% if paid by a fully taxed company established in Luxembourg, EU or any country party to the Convention
    - Tax credits possible if foreign withholding tax
  - Interests
    - Final/flat withholding tax of 10%

Overview on personal taxation in Luxembourg(2/4)

- **Tax on capital gains:**
  - **Shareholding**
    - **Portfolio of assets (<10%):**
      - **Speculative (less than 6 months): fully taxable**
      - **Non speculative (more than 6 months): non taxable**
    - **Important (>10%) : capital gains are taxed at the global half-rate applicable to the person's total revenues / rebate/allowance of EUR 50.000 (EUR 100.000 for taxpayers charged collectively)**
  - **On additional estate**
    - **Speculative (less than 6 months): fully taxable**
    - **Non speculative (more than 6 months): non taxable**
  - **On real estate**
    - **Speculative (less than 2 years): fully taxable**
    - **Non speculative (more than 2 years): capital gains are taxed at the global half-rate applicable to the person's total revenues / rebate/allowance of EUR 50.000 (EUR 100.000 for taxpayers charged collectively)**

- **Tax on bonus fees paid to non-residents:**
  - **Flat/final withholding tax of 20% as long as the Luxembourg bonus fees do not exceed EUR 100.000 brut / year and the taxpayer does not receive any other professional income in Luxembourg**

The Belgian private entrepreneur
Overview on personal taxation in Luxembourg (3/4)

- Inheritance rights/tax:

Kinship	Particular circumstances		Rates	Real rates (including increase)
Between spouses	**With common children**		**0%**	**0%**
	Without common children		5% (but rebate of EUR 38.000)	5,5% à 16%
Ascending line	**On the legal part**		**0%**	**0%**
	On the part exceeding the legal part	Fraction within the available estate	2,5%	2,75% à 8%
		Exceeding part	5%	5,5 à 16%
Between brothers and sisters	On the legal part		6%	6,6% à 19,2%
	On the part exceeding the legal part		15%	16,5% à 48%
Between uncles/aunts and nephews	On the legal part		9%	9,9% à 28,8%
	On the part exceeding the legal part		15%	16,5% à 48%
Between grand-uncles/aunts and grand-nephews	On the legal part		10%	11% à 32%
	On the part exceeding the legal part		15%	16,5% à 48%
Between any other relatives and thirds			15%	16,5% à 48%

Overview on personal taxation in Luxembourg (4/4)

- **Gift rights:**
  - **Gift by hand or indirect donation: no registration fees (but inheritance rights are due if the gift has taken place in the year preceeding death)**
  - **Rates of gift rights:**

Kinship	Particular circumstances	Real rates
Ascending line	Non-recoverable	1,8%
	By praecipuum and out of share	2,4%
Between brothers and sisters		6%
Between uncles/aunts and nephews		8,4%
Between grand-uncles/aunts and grand-nephews		9,6%
Between any other relatives and thirds		14,4%

The Belgian investor
Salary deductions : comparison between Belgium and Luxembourg

- Example of a Belgian resident worker with a gross annual income of EUR 75.000.
- The employee is married and his/her spouse works in Belgium.
- They have 3 children.

	The employee works in Belgium	**The employee works in Luxembourg**
Remuneration expenses due by employer	*EUR 101.250*	*EUR 84.232*
Employer's contributions	*- EUR 26.250* ***(35%)***	*- EUR 9.232* ***(12,31%)***
Gross salary paid to the employee	**EUR 75.000**	**EUR 75.000**
Employees' contributions	- EUR 9.802 **(13,07%)**	- EUR 8.288 **(11,05%)**
Income tax	- EUR 24.492	- EUR 7.181
Total net income received:	**EUR 40.706**	**EUR 59.531**

Conclusions:

In a fast changing international environment, Luxembourg provides a stable and high-growth base to transfer a company.
To best serve a client, it is vital to know the evolving economical, fiscal and political framework with its risks and opportunities.

When it comes to transferring an SME, civil and fiscal consequences (buyer/seller) are therefore of the highest importance.
M&A is more than ever a cross-border business requiring tailor-made solutions. Luxembourg can provide that.

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Questions

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