

The Luxembourg SPF: A private wealth management company of choice

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The Luxembourg private wealth management company (hereafter: SPF – société de gestion de patrimoine familial), governed by the Law of 11 May 2007, is a private wealth management vehicle which enables individuals to structure their estate in a simple, flexible, unregulated and tax-efficient manner and for numerous purposes, thereby appealing to various types of investors. Ultimately, with Luxembourg being a highly developed centre of legal and financial services, private individuals wishing to structure their assets' holding and financing benefit from a one-stop-shop meeting all their expectations.

Main characteristics and benefits of the SPF

- Private character and design – certainty regarding co-investor(s) and targeted approach to risk allocation
- Separate legal personality - limited liability
- Advantages of a holding company instead of a direct placement of capital for private individuals
- Flexibility in investment structuring
- Simplified and attractive taxation
- Simplified incorporation – low procedural and initial share capital requirements

Private character & design

Eligible investors are either:

1. private individuals managing their own private wealth; or
2. private wealth management entities acting exclusively for the estate of one or more

individuals, which may be resident and non-resident entities, such as foundations, trusts or stichtings. The eligibility of those entities is interpreted in a wide sense, with their sole purpose required to be the management of assets of one or more physical persons; or

3. intermediaries (including fiduciaries) acting on behalf of the persons listed under (i) and (ii) above.

Although its name might imply that it is limited to families and their members, the SPF only serves to denominate investors' access to private individuals, and there is in fact no family tie required.

Moreover, the SPF is an ideal vehicle for both investment clubs and/or beginner and non-professional investors who wish to test the functioning of their relationships with potential co-investors. A great deal of discretion and anonymity can also be achieved if the SPF is structured properly.

Finally, shares of an SPF may not be listed on a stock exchange, or be subject to public placement.

Separate legal personality – limited liability

The SPF's legal personality, by being separate from that of its investors, limits their liability to their respective contributions, and consequently greatly improves their position regarding liability towards third parties, especially in the case of borrowing operations as a means of estate planning.

Flexible investment structuring

The SPF itself represents a passive investment vehicle conceived for family asset and succession planning, matrimonial property management and similar purposes. Its permitted activities are therefore limited to the acquisition, holding and sale of financial assets, as defined by the Law of 5 August 2005 on financial collateral arrangements (equities, transferable securities and other debt instruments, structured investments, shares, options, derivatives etc.), cash and other assets kept in an account with professional financial service providers.

Due to its particular status:

- the SPF is not allowed to render services, including the granting of interest-bearing loans; it may however make cash advances or guarantee the liabilities of an entity in which it holds a participation, but only in an incidental manner and free of charge;
- the SPF may not be involved in the management of the entities in which it holds a participation, even if the proportion of capital held by the SPF would form a majority and

provide it with certain management rights. The related voting rights may be exercised, as long as this does not interfere with the above. Those limitations are, however, not applicable to shareholders or other investors in an SPF, who can freely participate in the aforementioned operations;

- any type of commercial activity is prohibited (but the entities in which the SPF holds participations may freely perform commercial activities, subject to their own corporate purpose);
- the direct holding of real estate or intellectual property is not permitted (but their indirect detention through other fiscally opaque entities is);
- the SPF may also not enter into life insurance contracts.

The law does not impose any direct limitation to financing and indebtedness, and the SPF financing may be performed through borrowing operations, whether from credit institutions, its shareholders or other investors. Contributions in cash or in kind are permitted, in euros or not.

Simplified taxation

Considered as a particular extension of an individual's private property and not being involved in commercial activities, an SPF is a tax neutral company, exempt from corporate income tax, municipal business tax and net wealth tax. This benefit is explained by its strict instrumental nature regarding private asset management, and the intention to avoid double taxation of the same assets due to the change in ownership.

An annual subscription tax of 0,25%, capped to a yearly amount of EUR 125,000, applies to all SPFs. The tax base is calculated as a sum of the paid share capital and share premiums, and (if applicable) the part of the debt that exceeds eight times the aforementioned sum.

As a consequence of its fiscal neutrality, an SPF does not benefit from the provisions of Luxembourg's bilateral double tax treaty network or the EU Parent Subsidiary Directive (Directive 2011/96/EU as amended from time to time) Therefore, an SPF may be subject to irrecoverable foreign withholding taxes in the country where its investments are situated.

Dividends and interest, paid by an SPF are not subject to withholding tax, except where the Luxembourg law dated 23 December 2005 introducing a domestic withholding tax on certain interest income on interest payments to resident individuals (**RELIBI Law**) applies. Such dividend and interest payment may, however, be taxed in the hands of the recipient under income tax laws for Luxembourg residents, and non-residents might be taxed in their country. Capital gains in the case of share transfer and liquidation surpluses of non-residents will not be taxed in Luxembourg.

Given the absence of any commercial activity, an SPF should not be a taxable person for

Luxembourg value added tax purposes.

The supervision of the SPF for tax purposes is carried by the indirect tax authorities (*Administration de l'Enregistrement, des Domaines et de la TVA*) who may inform the direct tax authorities in case the SPF no longer fulfils the conditions to benefit from the SPF regime (turning it into a fully taxable company subject to corporate income taxes).

Simplified incorporation – low procedural and initial share capital requirements

The SPF may be set up as a private limited company (*société à responsabilité limitée - SARL*), a public limited company (*société anonyme - S.A.*), a partnership limited by shares (*société en commandite par actions - S.C.A.*) or, finally, a cooperative company (*société coopérative - S.C.*) organised as a S.A. Requirements regarding incorporation, minimum share capital, representation, annual general meetings, annual accounts etc., according to the Law of 10 August 1915 on commercial companies, shall apply according to the specificities of the chosen corporate form, but with important structuring options in order to offer tailor-made vehicles to investors.

There is no specific authorisation or license for the SPF to be obtained before its inception or during its lifetime.

In order to fulfil its corporate purpose, the SPF may hire personnel, rent property and enter into contracts with various service providers, such as investment and financial advisers and financial institutions.

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