

Private Wealth Management Company

SPF - Société de gestion de patrimoine familiale

Introduction

The Luxembourg private wealth management company, the so-called “SPF” (*société de gestion de patrimoine familiale*) is (1) an unregulated special purpose corporate vehicle in accordance with the law of May 11, 2007 (the “SPF-Law”) and designed to enable individuals or private investors to accede to a corporate holding vehicle and the advantages which the corporate veil offers (limitation of liability to the assets contributed) whilst managing their private wealth in (2) a tax neutral way further to a special tax regime.

The special tax regime exempting the *SPF* from almost all taxes leads however to certain restrictions with regard to eligible investors and to the corporate object.

Result of the special tax exemption regime is further that a *SPF* does not qualify under the Luxembourg nor EU participation exemption on dividends, capital gains, interest nor does it have access to Luxembourg’s double-tax-treaty network.

Corporate Governance

(1) Legal Form

The *SPF* is mandatorily a corporation, i.e. a company with its own legal personality and capacity, which means that it needs to have a capital divided into/limited by shares (*‘société à capital’*) as opposed to the ordinary partnership.

The *SPF* may therefore take the legal form of a public or joint stock company (*société anonyme – S.A.*), a private limited liability company (*‘société à responsabilité limitée – S.à.r.l.’*), of a partnership limited by shares (*‘société en commandite par actions – SCA’*) or of a cooperative in the form of a public company.

Despite taking the legal form of a public company, a *SPF* may not be listed.

(2) Eligible shareholders / investors

Eligible shareholders / investors within the meaning of the SPF-Law are:

- / Individuals
- / Private wealth managers acting exclusively in the interest for one or more individuals (e.g. trusts, foundations)
- / Intermediaries acting on behalf of the eligible investors (e.g. fiduciaries, domiciliation agents holding the shares on behalf of).

Investors must prove their eligibility by submitting a **declaration of eligibility** which must be confirmed annually by wealth manager, intermediary, registered auditor or chartered account of the *SPF*.

(3) Corporate Object

The *SPF* may **not** engage in any **commercial activity** nor may the *SPF* **actively** intervene or be involved in the management of its subsidiaries, be the latter commercial or not.

Sole eligible purpose of the *SPF* is a **purely passive holding of financial assets**.

Financial assets within the meaning of the SPF-Law are in essence:

- / Shares or other securities equivalent to shares/ member units in other companies and collective investment undertakings
- / Debt instruments (e.g. bonds)
- / Structured products
- / Derivatives
- / Cash or any assets held in a bank account

Excluded activities within the meaning of the SPF-Law are:

- / Any type of commercial activity
- / Granting of loans or any other type remunerated (interest bearing) debt instrument

- / Holding of intellectual property
- / Direct investment into real estate.

(4) General Taxation

The *SPF* is a company **exempted** from

- / Corporate income tax
- / Municipal business tax
- / Wealth tax.

In turn, the *SPF* is subject to a **subscription tax** (*taxe d'abonnement*) of **0.25%** which is levied on the company's **capital** (statutory share capital and premium) and, in case of debt exceeding 8x the paid-up share capital on the debt excess portion. In so far, although not formally laid down in the *SPF-Law*, the tax practice applies a **debt-equity ratio of 8:1**.

The minimum annual subscription tax payable is of EUR 100.- and up to a maximum of EUR 125,000.- .

The *SPF* is not eligible for **VAT** deductions.

All **profit distributions** (dividends, capital gains) made by the *SPF* to its shareholders / investors are **free of withholding tax** in Luxembourg.

In turn, **interest payments** made by the *SPF* **can** be under circumstance and in certain cases be subject to **withholding tax**.

(5) Accounting

As each Luxembourg company, the *SPF* must draw up and file annual accounts in accordance with LuxGAAP and file annual subscription tax returns.

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