

SPF – Private Wealth Management Company

A) Background

SPF is the acronym for “Société de Gestion de Patrimoine Familial”, the French term for “Private Wealth Management Company”. A SPF is a pure holding company under the legal form of a Luxembourg corporation aimed for the management of an individual’s private wealth. The SPF, therefore, may not perform any type of commercial activity.

The SPF is not a regulated legal entity and does not require any prior authorization. The articles of association provide that a SPF is subject to the provisions of the SPF law and they have to be published in the Luxembourg official journal within one month following the beginning of the activities. Luxembourg’s Indirect Tax Administration is the fiscal supervisor of the Private Wealth Management Company in Luxembourg. The SPF requires a domiciliation agent (or a comparably regulated service provider) who submits a report on an annual basis to verify that the SPF’s operation in Luxembourg remains within the legal framework.

Eligible activities

The corporate purpose exclusively covers the acquisition, holding, management and disposal of private liquid financial assets. The latter are defined as any kind of shares, other securities equivalent to shares or participations in companies, undertakings for collective investments, bonds or other debt instruments as well as cash and any kind of assets held in bank accounts. This includes investments in structured products or derivatives, options, indexes and currencies.

A SPF may not render any kind of services or carry out any kind of economic activity, nor can be actively involved in the management of its subsidiaries. Since intellectual property rights or real estate are not considered as financial instruments, the SPF is not allowed to hold such assets directly. However, it may acquire shares in corporations or other non-transparent entities that own real estate. There are no restrictions regarding the activities of the corporations in which the SPF holds a participation but only to the extent that the SPF is not involved in the management of such companies. On the other side, the SPF is not allowed to hold non-financial assets through a fiscally transparent company (partnership), as the SPF would then be deemed to hold these assets directly.

In the same spirit, the SPF is not permitted to grant any loans, not even to its own subsidiaries. Advances or guarantee liabilities are accepted towards companies in which the SPF holds a participation, under the condition that these are interest-free and on an ancillary basis. The SPF itself can, however, receive loans from its shareholders or from third parties.



Eligible investors

- Private individuals

The number of individual shareholders is not limited and a family relationship amongst them is not required.

- Patrimonial entities

These entities must act exclusively for the interest of the wealth of one or more individuals (e.g. trusts, private foundations or other similar entities with or without a corporate body).

In general, corporate investors cannot invest in SPFs. However, pure holding companies / intermediaries acting on behalf of individuals or patrimonial entities can be shareholders of a SPF in case all shareholders of this holding are individuals. Such holding must not perform any commercial activity.

B) Tax facts

Company incorporation and share transfer

Capital duty

There is no stamp duty on subscription of share capital or transfers of shares, except a fixed registration fee of EUR 75. The minimum capital depends on the legal form and amounts for an S.A. / S.C.A. to EUR 31.000 and for an S.à r.l. to EUR 12.000.

General tax features

The SPF is not considered being a fully taxable company. Therefore, neither international double tax treaties nor the European directives can be applied.

Net Wealth Tax

The SPF is not subject to Net Wealth Tax and Minimum Tax.

Corporate Income Tax / Municipal Business Tax

The SPF is not subject to Corporate Income Tax and Municipal Business Tax.

Subscription Tax

The SPF is subject to an annual subscription tax at a rate of 0.25% on share capital and certain debt. The taxable basis arises out of the paid-in share capital plus share premium and assimilated equity contributions, plus the part of the debt exceeding eight times the value of the share capital and the

share premium. The subscription tax return needs to be filed and is payable on a quarterly basis and the tax payable annually cannot be lower than EUR 100 and is capped at a maximum amount of EUR 125.000.

Value Added Tax

The SPF is not considered being a taxable person for VAT purposes.

C) Withholding Taxes

Dividends

Distributions in the form of dividend payments to investors are not subject to any withholding tax.

Interest payments

Interest payments are exempt from withholding tax.

Liquidation proceeds

No withholding tax becomes due in Luxembourg on liquidation proceeds received by the investors.

D) Conclusion

The SPF is an attractive vehicle for individuals that can be used to manage and pool private assets in a tax neutral way within the restrictions of the SPF law.

Payments to the investors do, in general, not suffer any withholding taxes. However, interest payments may fall in the scope of the EU Interest Directive and corresponding payments will be reported to other European countries or to countries with which Luxembourg has agreed on an exchange of information in this respect.

Considering the general tax exemption, CFC rules may apply in the country of tax residency of the investor and dividends as well as interest received by the SPF may be subject to withholding taxes based on the domestic tax law of the respective source country. A careful tax planning is required as the SPF does not benefit from double tax treaties and EU directives.

Irrespective of the tax exempt status of the SPF, the tax treatment of any payments to its shareholder has to be analyzed under the tax laws of the country of residence of the recipient of such payment.

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