

Luxembourg Family Wealth Management Company

Introduced by the law of 11 May 2007, the Family Wealth Management Company, commonly known as “SPF” (*Société de Gestion de Patrimoine Familial*), is the response of the Luxembourg financial sector to the abolition of the 1929 holding company regime. The SPF is the appropriate vehicle for private individual investors who seek to set a portfolio of securities in a European vehicle.

At a glance

- ▶ Wealth management vehicle exclusively intended to private individuals
- ▶ Limitation of the activity to the acquisition, holding and management of financial assets
- ▶ Exemption from any direct income tax. Only a subscription tax of 0.25% applies to the paid-up capital and share premium (capped to EUR 125.000)
- ▶ In conformity with EU requirements in terms of State aid

1. Legal aspects

1.1 Legal form

There are no restrictions on the form of an SPF. It can adopt the form of a public limited liability company (*Société Anonyme*, “SA”), a private limited liability company (*Société à Responsabilité Limitée*, “SARL”), a partnership limited by shares (*Société en Commandite par Actions*, “SCA”) and even a cooperative company organised in the form of an SA. In practice, however, the SPF is generally incorporated in the form of an SA due to the flexibility of this type of company.

The SA must meet the following criteria:

- ▶ The SA can be incorporated by a single or more eligible investors (see Section 1.2 below). No condition of nationality or residence is required;
- ▶ The SA must hold a shareholders general meeting at its registered office on the date specified in the articles of incorporation;
- ▶ The SA must be managed either by a board of directors composed of at least three members (one member in case the SA has only one shareholder) or by a supervisory board associated to a management board;
- ▶ The SA must be controlled by a statutory auditor or an independent auditor if certain size criteria are exceeded;
- ▶ The SA must have a minimum subscribed capital of at least EUR 31,000;
- ▶ The SA can issue registered and bearer shares.

1.2 Eligible investors

There are three types of eligible investors:

- ▶ Private individuals acting within the framework of the management of their private wealth;
- ▶ Wealth management entities acting exclusively in the interests of the private wealth of individuals (e.g. trusts, private foundations, pure holding companies, *stichting administratiekantors* and similar entities);
- ▶ Intermediaries holding shares in the SPF on a fiduciary basis on behalf of investors who are themselves eligible investors.

2. Scope of activity

2.1 Authorized activities

The exclusive purpose of the SPF is the acquisition, holding, management and sale of financial assets (shares, bonds, bank assets, Sicars, FCPs, warrants, put/call options on securities, any derivatives, etc) excluding any type of commercial activity. The SPF may, furthermore, hold participating interests in other companies provided it does not intervene in their management.

2.2 Prohibited activities

The SPF is not allowed to exercise any type of commercial activity. It may not, therefore, carry out the following activities:

- ▶ Trading in financial assets outside the framework of their private wealth's management;
- ▶ Any financial services;
- ▶ Granting of remunerated loans as long as they are considered as “non-tradable”;
- ▶ Holding of IP rights;
- ▶ Acquisition and direct holding of real estate properties.

3. Tax aspects

3.1 Direct taxation

The SPF is exempt from corporate income tax, municipal business tax and net wealth tax.

Further to the amendment of the Luxembourg law on SPF approved by the “Conseil d’Etat” on February 14th, 2012, the 5% dividend limitation has been removed with retroactive effect as from January 1st, 2012. In this context, the SPF may no longer lose the benefit of this tax exemption if more than 5% of the dividends received annually originate from shareholdings in unlisted non-resident companies, which are not subject to tax at a rate of at least 10.5%.

As for income distributed by the SPF, no withholding tax applies in principle, notably on dividends and liquidation proceeds. However, in the event of interest payment to Luxembourg or EU resident individuals, a withholding tax will be levied. The withholding tax rate is 35% for EU resident individuals under the provisions of the EU Savings Directive and 10% for Luxembourg resident individuals (final withholding tax).

Gains realized by non-resident shareholders on the disposal of the shares in the SPF are not subject to tax in Luxembourg.

It must be noted that due to its specific tax regime, the SPF is not entitled to benefit neither from the double tax treaties concluded by Luxembourg nor the EU Parent-Subsidiary Directive.

3.2. Indirect taxation

► Subscription tax

The only tax to which the SPF is subject is a subscription tax of 0.25% on the paid-up capital plus, where applicable, (i) the share premium and (ii) the part of the debt which exceeds eight times the paid-up capital and the share premium.

An annual minimum tax of EUR 100 applies with a maximum up to EUR 125,000. This tax is payable on a quarterly basis.

► VAT

A SPF is not considered by the Luxembourg tax authorities as a taxable person for VAT purposes. As such, it can neither obtain a Luxembourg VAT registration nor a VAT number.

4. Thin capitalization rules

No debt to equity ratio is formally required by Luxembourg law. The part of the debt of the SPF exceeding eight times the paid-up capital and the share premium is however added to the taxable base for the calculation of the subscription tax.

5. Control and supervision

The SPF is subject to the tax supervision from the indirect tax authorities ("l'Administration de l'Enregistrement et des Domaines"). Since the SPF is not a regulated entity, no authorization is required prior to its constitution.

The domiciliary agent (or, if none, the auditor) is responsible for certifying that the SPF complies with the legislation in force. They should, accordingly, issue on an annual basis a non-objection certificate in which they would confirm that:

- ▶ the shareholders are eligible investors;
- ▶ the SPF has complied with the obligations of paying agent as set up in the EU Savings Directive.

6. Accounting aspects

The SPF must keep regular accounts in accordance with Luxembourg commercial law. The annual accounts, which may be presented in any currency, must include a balance sheet, a profit and loss account and notes to the accounts. However, in practice, the SPF may establish a summary balance sheet and profit and loss account, which do not provide detailed information on the assets and liabilities.

The annual accounts duly approved must be presented to the Company Register. The SPF which owns subsidiaries may be required to present consolidated accounts in application of the law of 11 July 1988 adopting the seventh European Directive on consolidated accounts as domestic law. However, there are exceptions which allow the SPF to avoid the requirement to draw up such accounts.

7. Services provided by Experta Luxembourg

Experta Luxembourg is a provider of services related to corporate and investment structures, as well as financial and estate planning. Experta Luxembourg assists private individuals, corporate clients and institutional investors with tailor-made solutions making use of creative planning techniques from various jurisdictions.

Experta Luxembourg may assist clients with the incorporation and management of a SPF. These services include the set up of a corporate structure organised through Luxembourg, administrative work at the incorporation of the company, as well as day-to-day administrative aspects, such as accounting, tax work and corporate secretarial services.

For inquiries please contact us at **+352.26.92.55-1** or email us at experta@experta.lu.

April 2013

The objective of this fact sheet is to provide the reader with a general view of relevant aspects relating to the SPF. No action shall be taken without prior consultation with Experta Luxembourg, as this document alone cannot cover all aspects relating to the incorporation and administration of the SPF. Finally, please note that this document is provided for information purposes only and should not be understood as legal or fiscal advice.

**Experta Corporate and Trust Services S.A.,
Luxembourg**
Website: www.experta.lu

Address: 42, rue de la Vallée, L-2661 Luxembourg
Phone: +352 269 255 1
Fax: +352 269 255 3366