

SPF

(Private Wealth Investment Vehicle)

Purpose and main features

Shortly after the European Commission qualified the Luxembourg “Holding 29” as a “state aid” which eventually drove to its abolition, the Luxembourg government launched a new holding company called SPF (Société de Gestion de Patrimoine Familial) on 11 May 2007.

The SPF is a pure holding company under the form of a Luxembourg capital company aimed for financial investments; thus it is not allowed to perform any commercial activities.

The corporate purpose exclusively covers the acquisition, holding and management of financial instruments. 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. An SPF may not carry out any kind of economic activity, nor can it use its voting rights in order to influence the management of its subsidiaries, and it may not actively trade with its financial assets. Since intellectual property rights or properties are not considered as financial instruments, the SPF is not allowed to hold these directly. Further on, the SPF must not hold non financial assets through a fiscally transparent company, as the SPF would then be deemed to have a commercial activity.

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 done on an ancillary basis. However, an SPF can have a 100% participation in a subsidiary, independent of the corporate purpose of the latter. The SPF itself can receive loans from its shareholders or from third parties, but a debt/equity ratio of 8/1 is applicable in order to avoid an increase of the yearly subscription tax.

The SPF is not considered as a fully taxable company. Therefore, neither international double tax treaties nor the EU mother/daughter directive can be applied.



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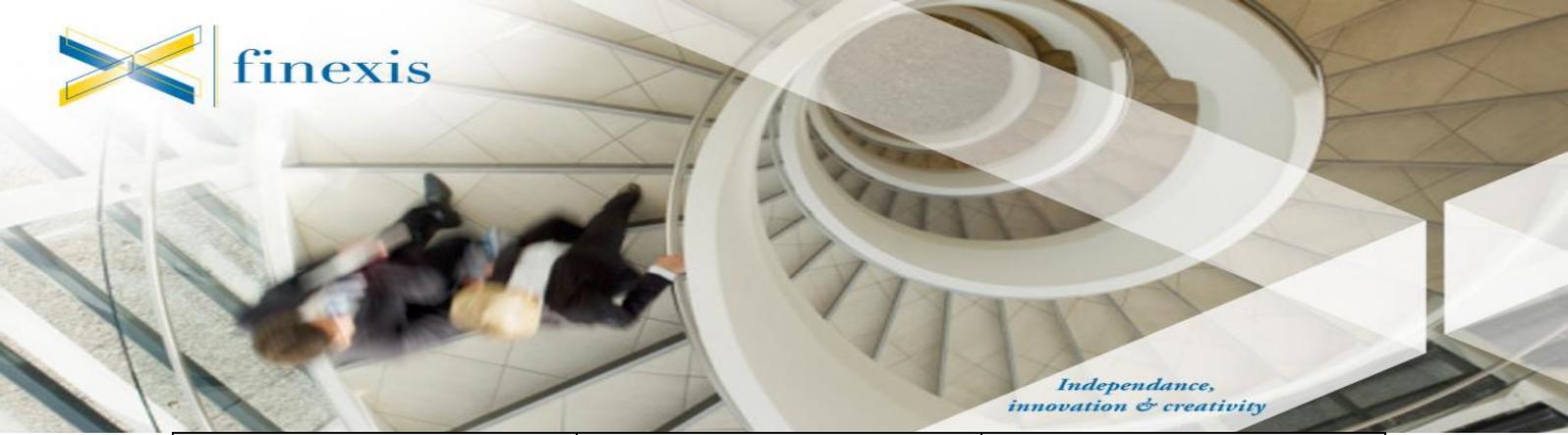
Tax facts

A. Company incorporation

| Tax | Treatment for SPF |
|--------------|-------------------|
| Capital duty | EUR 75,- flat |

B. General tax features

| Tax | Treatment for SPF | Remarks |
|------------------------------|--|---|
| VAT | Not subject to VAT | The corporate purpose of the SPF is incompatible with a VAT activity |
| Annual Subscription Tax | 0.25% of - the paid-in capital, plus - share premiums, plus - the part of the debts exceeding eight times the value of the paidin capital and the share premiums (debt/equity ratio: 8/1) | The minimum of the subscription tax is EUR 100,- and the maximum is leveled at EUR 125.000,- |
| Net Worth Tax (ISF) | Exemption BUT: subject to the “anti-abuse” rule hereunder | 0,5% of the net assets determined on January 1st of that year if “anti-abuse” clause is not respected |
| Corporate Income Tax (IRC) | Exemption BUT: subject to the “anti-abuse” rule hereunder | 21,84% of the taxable profits if “antiabuse” clause is not respected |
| Municipal Business Tax (ICC) | Exemption BUT: subject to the “anti-abuse” rule hereunder | 6,75% (average, depending on the municipalities) of the taxable profits if “anti-abuse” clause is not respected |
| Anti-abuse rule | In case the SPF receives during one year 5% or more of dividends from subsidiaries | - The company will not definitively lose the SPF status - A “fully taxable” subsidiary |



| | | |
|--|---|---------------------------------|
| | <p>that are:</p> <ul style="list-style-type: none"> - non Luxembourg resident and - not quoted and - not considered as “fully taxable” <p>→ the SPF becomes subject to Luxembourg net worth tax, corporate income tax and municipal business tax, but only for that year</p> | shall have a tax rate above 11% |
|--|---|---------------------------------|

C. Incoming flows

| Operation | Treatment for SPF |
|------------------------|--|
| Dividends received | Exemption |
| Capital gains received | Exemption |
| Interests received | Not applicable → The SPF is not allowed to grant any loans with interests |

D. Outgoing flows

| Operation | Treatment for SPF | Remarks |
|----------------|--------------------|--|
| Dividends paid | No withholding tax | |
| Interests paid | No withholding tax | But: “Savings Directive” “ is applicable → Withholding tax of 20% if paid to EU-resident individuals (rate applicable until 2011) |



E. Liquidation of the company

| Operation | Treatment for SPF |
|----------------------|--------------------|
| Liquidation proceeds | No withholding tax |

Eligible investors

- Individuals :

- The number of individual shareholders is not limited
- No family relationship between the shareholders is required

- Patrimonial entities :

- These entities must act exclusively for the interests of the wealth of private individuals e.g. trusts, private foundations or other similar entities with or without a corporate body
- Excluded are all kind of commercial companies

- Pure Holdings :

- A pure holding company can be a shareholder of an SPF in case the shareholders of this holding are individuals
- Such holding must not perform any commercial activity

- Intermediates :

- Intermediates are entities acting on behalf of private individuals
- Fiduciaries can be qualified as intermediaries

Both nominative and bearer shares can be issued.

Supervision

An SPF needs to be supervised either by its domiciliation agent, or in case it has no domiciliation contract, by an auditor or by a chartered accountant. This supervisor has to certify towards the Luxembourg authorities, that the conditions of the eligible investors as well as the anti-abuse clause are met, and if the SPF is considered a “paying agent” as per the European “Savings Directive”.

Transformation of a “Holding 29” into an SPF

In order to transform an existing “Holding 29” into an SPF, an extraordinary general meeting has to be held in presence of a notary in order to adapt the corporate purpose and the denomination of the company. The continuation of the legal entity remains unchanged after the transformation of a Holding 29 into an SPF.



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Conclusion

The SPF is a tax exempt structure for holding financial assets at an individual or a family level. It enables structuring and organizing family or individual financial portfolios for an efficient and optimized management and transmission.

The Luxembourg government has successfully transposed a holding regime that is both close to the famous “Holding 29” and compatible with the EU regulations. Since the transformation procedure for “Holding 29” companies is made very easy, the SPF should become a real success story in the years to come.

Last update, 2012