

Tax alert

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SPF in Luxembourg: Improvement of the Tax Regime as of 2012



Introduction

Pursuant to the law of May 11, 2007 (the “**2007 SPF Law**”) Luxembourg introduced the SPF regime (i.e. Private Wealth Management Companies or *Société de Gestion de Patrimoine Familial*) allowing high net wealth individuals (“**HNWI**”) to use a new type of company to manage their private wealth in replacement of the Holding 1929 company, which is now abolished (“**the Law of 2007**”).

I. **PROBLEMATIC PROVISIONS OF THE 2007 SPF LAW**

Pursuant to the 2007 SPF Law, a company that has adopted the SPF regime is exempt from corporate income tax (“**CIT**”), municipal business tax (“**MBT**”) and net wealth tax (“**NWT**”) on profits and capital gains for a specific year, provided that the SPF does not receive more than 5% of its dividends during this particular accounting year from non-resident companies which are not listed on a stock exchange and not subject to a tax comparable to the Luxembourg tax (i.e. rate of at least 10.5% and computed on the same basis and using the same methodology as used in Luxembourg).

The compliance of a SPF with the above conditions is to be certified annually by its domiciliation agent, an auditor or by a chartered accountant.

II. **REASONS FOR THE AMENDMENTS TO THE 2007 SPF LAW**

The European Commission informed the Luxembourg authorities, in a letter dated February 9, 2010, that it considered those problematic tax provisions of the 2007 SPF Law an infringement on the freedoms set out in the Treaty on the Functioning of the European Union and the Agreement on the European Economic Area.

According to the European Commission, such provision may encourage, for example, Luxembourg SPFs to invest in Luxembourg UCITS rather than in foreign unlisted companies that may have a regime similar to Luxembourg companies (e.g. foreign UCITS). Indeed, a SPF can invest without any restrictions in Luxembourg resident vehicles (subject to tax or not, listed or not).

III. **CONSEQUENCES: A MORE ATTRACTIVE TAX REGIME FOR THE SPF?**

In order to comply with the EU Law, the Luxembourg Government submitted a Bill (n°6305) to the Parliament (“*Chambre des Députés*”) in order to abolish the criticised provision as well as the certification requirement linked to such provision.

The Parliament approved the Bill on February 1, 2012 (the “**2012 Amendment Law**”). As from January 1, 2012, SPFs will be allowed to receive dividends from non-resident companies without any restrictions. The certificate will be requested only to confirm that the investors in the SPF fall within the scope of the 2007 SPF Law as amended by the 2012 Amendment Law, (the “**Amended SPF Law**”).

Pursuant to the Amended SPF Law, the scope of potential authorised investments for a SPF is extended and the SPF is a more tax efficient vehicle for HNWI in the management of their private wealth.



IV. BRIEF SUMMARY OF THE APPLICABLE TAX REGIME OF THE LUXEMBOURG SPF AS OF JANUARY 1, 2012, PURSUANT TO THE AMENDED SPF LAW

The purpose of the SPF will remain limited to the acquisition, holding, management and disposal of the financial assets but excludes any commercial activity. A SPF is not allowed to involve itself in the management of its subsidiaries.

The investors in a SPF should be: (i) individuals acting within the scope of the management of their own private wealth, (ii) an asset management vehicle acting exclusively for the benefit of the private wealth of one or more individuals or (iii) an intermediary entity acting on behalf of such individuals/vehicles, described in (i) or (ii) above.

Pursuant to the Amended SPF Law, the SPF will be exempt from CIT, MBT and NWT and from Luxembourg withholding tax on distributions based on the Luxembourg Income Tax Law, without any threshold of dividends received from “offshore” companies. Nevertheless, income deriving from the SPF may be subject to tax at the level of the shareholders, depending on the tax treatment applicable to them in their country of residence.

Interest payments made by a SPF to non Luxembourg residents may fall within the scope of the “Savings Directive” and income payments made by a SPF to Luxembourg resident investors may be subject to a final 10% withholding tax.

Even if the SPF is not subject to CIT, MBT and NWT, the SPF is subject to a subscription tax at a rate of 0.25% of its fully paid up share capital increased by:

- the share premium, and
- the part of the debts exceeding eight times the fully paid up share capital plus the share premium as existing as of January 1st of each year.

The minimum subscription tax amounts to EUR 100 and the maximum amounts to EUR 125,000.- per year.

The SPFs do not qualify for the benefit of the double tax treaties concluded by Luxembourg.

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