

LUXEMBOURG PRIVATE WEALTH MANAGEMENT COMPANIES

In May 2007 Luxembourg introduced a law on private wealth management companies, or sociétés de gestion de patrimoine familial (SPF).

This law's aim was to provide a vehicle that could replace the so-called holding 1929 companies that had fallen foul of the EU state aid rules.

DEFINITION

An SPF is any company that (i) has as its sole objective to acquire, hold, manage and sell certain financial assets, (ii) has only eligible investors as defined below, and (iii) has specifically opted into the regime by referring to it in its articles of association.

ELIGIBLE INVESTORS

SPFs are open only to certain investors. These are defined by law to be an institutional investor, a professional investor or any other investor who meets the following conditions:

- a) an individual or group of closely related individuals managing his / their private wealth; or
- b) private wealth entities acting for one or more individuals (which include trusts, foundations, anstalts, stichtings etc.); or
- c) intermediaries acting for shareholders as mentioned under a) and b).

INVESTMENT RESTRICTIONS

A SPF can passively invest in any type of security, such as shares, bonds, warrants, and derivatives. It may hold significant stakes in other companies, provided that it does not exercise any sort of management activity in that company.

An SPF cannot hold real estate directly, cannot grant interest-bearing loans and cannot provide services or be involved in the management of any other company.

It is not subject to any risk-spreading requirement.

LEGAL FORMS

Since the SPF regime is in essence a tax regime, in relation to most other matters regular Luxembourg company law applies. As such, all legal forms of companies in Luxembourg are possible for SPFs.

AUTHORISATION AND SUPERVISION

All SPFs are subject to supervision and authorisation by the Luxembourg tax authority, the Administration de l'Enregistrement et des Domaines. However, this oversight is limited to facts and data related to the tax position of the SPF. There is no approval from the Administration required prior to setting up an SPF.

Annually, the domiciliation agent of an SPF, such as Praxis Luxembourg SA, or the SPF's auditor, must certify that the SPF complies with rules and regulations.

CAPITAL

Again, regular Luxembourg company law applies. The level of minimum capital depends on the legal form chosen.

DOMICILIATION AGENT AND AUDITOR

DOMICILIATION AGENT

If the SPF does not possess or rent its own office space in Luxembourg, it will have to engage a Luxembourg domiciliation agent.

AUDITOR

In principle, in accordance with Luxembourg company law, the annual accounts of a SPF must be audited by a Luxembourg independent auditor. However, in most cases the SPF will qualify for an exemption from the audit requirement by virtue of being deemed to be a 'small company'.

OTHER REQUIREMENTS

Since SPFs take the form of a regular company, they must comply with all provisions of Luxembourg company law unless specifically stated otherwise.

They must therefore issue an annual report with financial statements for each financial year within six months from the end of the financial year to which it relates.

LUXEMBOURG TAXATION

SPFs are exempt from Luxembourg corporate income tax, municipal business tax and net worth tax. SPFs are not subject to withholding tax on dividend distributions, liquidation proceeds or interest payments.

SPFs are subject to an annual subscription tax at a rate of 0.25% applicable on its share capital, including any share premium. The minimum tax is €100 and the maximum tax is €125,000 a year. Subscription tax will also apply to that part of the debt (if any) that exceeds an equity-to-debt ratio of 1 to 8.

SPFs will not qualify for treaty protection under most, if not all, double tax treaties concluded by Luxembourg.

SPFs are not qualified as a taxable person for VAT purposes.

SHAREHOLDERS' TAXATION

For foreign investors, profits derived from a SPF are not taxable in Luxembourg.

PRAXIS LUXEMBOURG SA SERVICES

Praxis Luxembourg SA offers a full range of formation and administration services for SPFs that include:

- assistance / advice on set-up of the SPF,
- formation,
- shareholder due diligence,
- restriction checking,
- compliance,
- provision of directors,
- periodic financial reporting,
- preparation of financial statements,
- fee and expense payment,
- regulatory and statutory returns,
- shareholder meetings, board meetings and minutes,
- subscription tax returns and payment.

In addition, if the fund requires underlying Luxembourg special purpose vehicles for tax or other reasons, Praxis Luxembourg will be able to provide a full package of services to these as well.

CONTACT US

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