

# CHEVALIER & SCIALES

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THE PRIVATE WEALTH MANAGEMENT COMPANY (SPF)



## SUMMARY

As the European Commission announced on 19 July 2006 that the Holding 1929 Company violated EU state aid rules (Article 87 EC Treaty) and distorted competition, the Luxembourg government has created by the law of 11 May 2007 relating to the creation of a private wealth management company (the “SPF Law”) a new investment vehicle for private wealth management (société de gestion de patrimoine familial, also referred to as “SPF”) that would replace the Holding 1929 Company, the tax exempt Luxembourg holding company. We will hereafter briefly outline the key features and the tax issues related to the SPF.

## I. KEY FEATURES

### (A) LEGAL FORM

A SPF can either adopt one of the following forms: (i) a public limited liability company (*société anonyme*), (ii) a private limited liability company (*société à responsabilité limitée*), (iii) a partnership limited by shares (*société en commandite par actions*) or (iv) a cooperative in the form of a public limited company (*société coopérative organisée comme société anonyme*).

The articles of association of an SPF shall explicitly state that it is subject to the provisions of the SPF Law and the name of the company shall always be supplemented, after the indication of the legal form of the company, by “société de gestion de patrimoine familial”, abbreviated to “SPF”.

The minimum share capital of an SPF depends on the choice of legal structure.

### (B) OBJECT

The activity is strictly limited to the acquisition, detention, management and disposal of (i) financial assets within the meaning of the law of 5 August 2005 on financial collateral arrangements (e.g. shares, bonds, publicly quoted shares, shares of soparfis, shares of a SICAR, structured products and derivatives, etc.) and (ii) cash (Euros or foreign currencies) and assets of any kind held in a bank account. The SPF must not interfere in the management of any of its subsidiaries and shall not carry out any commercial activity. Unlike the holding 1929 company, the SPF cannot grant any interest bearing loans to other companies and its subsidiaries.

### (C) ELIGIBLE INVESTORS

Whereas the Holding 1929 Company has no limitation in that respect, the shares in an SPF can only be subscribed by eligible investors who are:

- (i) natural persons acting in the scope of their management of their private assets;
- (ii) a wealth entity acting exclusively for the benefit of the private wealth of one or more natural persons, (e.g. trusts, private foundations, etc.); or
- (iii) intermediaries acting for the account of the investors under (i) and (ii): e.g. a bank acting under a fiduciary agreement, etc.

The shares issued by the SPF can be bearer shares but cannot be publicly quoted on a stock exchange.

### (D) SUPERVISION OF THE SPF

There is no need to have the approval of the Luxembourg regulatory authority (*Commission de Surveillance du Secteur Financier* or CSSF).

The competent authority to exercise the tax control is the Administration for Registrations and State Property (*Administration de l'enregistrement et des domaines*). The right of control and investigation is limited to searching and examining the facts and information regarding the SPF's tax status and the details required to ensure and verify the fair and accurate collection of taxes and duties payable by the SPF.

Every year (not later than 31 July) the domiciliary agent, a chartered accountant or an auditor must issue a certificate mentioning that:

- (i) the SPF is held by eligible investors (as defined here above);
- (ii) the SPF does not receive more than 5% of its dividends from non-EU companies taxed at a rate below 11%; and
- (iii) the SPF has respected its obligations as

paying agent in the scope of the EU Savings Directive (Council Directive 2003/48/EC of 03 June 2003) (the “**Savings Directive**”).

The SPF must keep an accounting and must every year publish its annual accounts.

## (E) TAX ISSUES

- No debt equity ratio: there is no debt equity ratio that needs to be maintained for a SPF. However, a tax of 0.25% (*taxe d’abonnement*) is due for the part of the debts that exceed 8 times the paid-up capital increased by the issue premium;
- No corporate income tax<sup>1</sup>;
- No municipal business tax<sup>1</sup>;
- No VAT;
- “Taxe d’abonnement”: a tax of 0,25% (with a minimum tax amount of 100 Euros and a maximum of 125,000 Euro per year) on (i) the amount of the paid-up capital increased with (ii) the issue premium (if any). The “Taxe d’abonnement” is declared quarterly. During the year of its incorporation and liquidation, the SPF pays the “Taxe d’abonnement” pro rata to the number of days it has existed during the quarter in question;
- Withholding tax on interests: interests paid to Luxembourg resident persons are taxed at 10% and to non-resident natural persons at 20% under the regime of the Savings Directive;
- No withholding tax on distributions: there is no withholding tax due on dividends paid either to Luxembourg or foreign residents;
- No wealth tax<sup>1</sup>: SPFs are exempt from wealth tax whereas Luxembourg companies (*soparfi*) are subject to a wealth tax of 0.5% on the net assets of the company;
- Excluded from the Parent-Subsidiary directive 90/435 of 23 July 1990 (as amended);
- SPFs will not qualify for treaty protection under most of the tax treaties concluded by the Grand Duchy of Luxembourg.

## II. CONCLUSION

The law pertaining to the creation of the SPF offers an attractive new vehicle for private wealth investment in a renowned market place. The SPF can be an alternative for individuals owning a former Holding 1929 Company or individuals wishing to optimise their personal tax planning.

<sup>1</sup> Such exemption from corporate income tax, municipal business tax and net wealth tax will not apply for a given financial year if it received 5% or more of its total dividend income during that year from participations in non-resident unlisted companies that are not subject to tax that is comparable to corporate income tax (*impôt sur le revenu des collectivités*) within the meaning of the amended law of 4 December 1967 on income tax.

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