

UPDATE

Modernisation of the SPF tax regime: what you need to know

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On 24 December 2024, Luxembourg's Chamber of Deputies published the Bill 8414 amending the law of 11 May 2007 (**SPF Law**) on the creation of the Société de gestion de patrimoine familial (**SPF**) and introducing specific measures to modernise the Luxembourg tax regime which applies to the vehicle. The changes have been fully applicable since 1 January 2025. On 27 December 2024, the Administration de l'Enregistrement, des Domaines et de la TVA (AED) published Circular 823 detailing these measures. We have provided a summary of the main changes made to the SPF regime below.

Introduction

The structuring of investments through the SPF is widely used by families/individuals/co-investors wishing to structure their investments in a flexible and tax efficient way.

The SPF benefits from an advantageous tax regime as it is exempt from corporate taxation and solely subject to a 0.25 per cent subscription tax capped at 125,000 Euros per year.

Due to this tax exemption, although the SPF could obtain a tax residence certificate under specific conditions, it should not benefit from the provisions of double tax treaties concluded by Luxembourg. Nor should it be able to claim the tax benefit of certain EU Directives applicable in the context of the structuring of cross-border investments.

On the other hand, the SPF Law sets out restrictions on eligible investors. They are limited to individuals acting in the management of their own private assets, private wealth management entities acting exclusively for the estate of one or more individuals, and other intermediaries acting on behalf of investors mentioned above.

The activities of the SPF are also restricted to the passive holding of financial assets. It is for instance not allowed to perform any type of commercial/management activity or directly hold real estate.

The recent updates aim to clarify certain provisions of the SPF Law and modernise procedures applicable to this vehicle.

Increase of the minimum annual subscription tax

SPFs are subject to an annual subscription tax at a rate of 0.25 per cent. However, the annual amount of the subscription tax could not be less than 100 Euros and could not exceed 125,000 Euros. The annual minimum amount of the subscription tax has now been increased from 100 Euros to 1,000 Euros.

Clarification on the subscription tax basis

The basis for assessment of the subscription tax payable by the SPF is the amount of its paid-up share capital, increased, where applicable, by:

- the share premiums; and
- the portion of the debts, in whatever form, which exceeds eight times the paid-up share capital and share premiums.

The SPF Law now clearly states that only the debts existing at the first day of the financial year, or the date of incorporation for the year of the incorporation of the company, are to be considered in the increase of the subscription tax basis. This precision is particularly useful for SPFs whose financial year does not coincide with the civil year.

However, this precision does not apply to share premiums, which must always be added to the subscription tax base.

Mandatory 'SPF' mention in the company name

It is now mandatory for companies benefitting of the SPF regime to have the words 'société de gestion de patrimoine familial' or 'SPF' in their denomination. This aims to make it easier for third parties to identify a SPF.

New regulatory powers for the AED

The SPF Law now gives the Director of the AED the power to impose administrative fines of a maximum amount of half the amount of the due annual subscription tax or, when it is not possible to determine the latter, of a maximum amount of 10,000 Euros, when the SPF:

- fails to include the words 'société de gestion de patrimoine familial' or 'SPF' in the company name;
- fails to file its tax return;
- fails to pay the subscription tax within the required deadlines; or
- fails to file the annual certifications within the required deadlines.

The fines cap increases up to 250,000 Euros in cases of particularly serious non-compliance and breaches of provisions of the SPF Law, such as:

- the obligation of the SPF to have as its exclusive purpose the acquisition, holding, management and realisation of financial assets, to the exclusion of any commercial activity;
- the prohibition of the SPF to interfere in the management of the companies in which it holds a participation or to hold real estate; or
- the compliance with the criterion of eligibility of the SPF investors as defined in the SPF Law.

In addition to these new fining powers, the director of the AED has the capacity to pronounce the definitive withdrawal of the benefit of the SPF regime if, after a period of six months, the SPF has not remedied its non-compliance with the SPF Law. To protect the rights of defence, the withdrawal can only be pronounced after the SPF has been invited to make its observations on the AED's allegations of non-compliance.

The withdrawal of the SPF status takes effect at a specified date which cannot be earlier than the latest of the dates between the first instance of non-compliance noted by the AED or 1 January of the fourth year preceding the one in which the decision to withdraw status is announced. Such withdrawal will cause the company to be subject to the ordinary tax regime, which may lead to a significant tax adjustment for the previous four years. The aim of this measure is to strongly prompt the SPF to comply with the provisions of the SPF Law, under threat of a heavy sanction.

A company that has been subject to a withdrawal decision may no longer refer to the mention and status of 'SPF' vis-à-vis third parties after a period of one month from the date of notification of the withdrawal decision. The director has the right to impose an administrative fine of up to 5,000 Euros for each month of non-compliance with this provision. This new regime only applies for the wrongdoings committed on and after 24 December 2024.

Statutes of limitation

The statutes of limitations period generally applicable to Luxembourg taxes is suspended for the period during which the company was in breach of its obligations (as specified in the withdrawal decision) and during the period in which the withdrawal decision is not final.

Digitalisation of the annual certifications

The mandatory certifications to be made each year by the SPF Law should now be made electronically.

In short

The SPF remains an attractive vehicle for eligible investors wanting to structure their assets via a non-regulated and tax efficient entity.

However, due to the strengthening of the procedure sanctioning the non-compliance with the requirements of the SPF Law and to the restriction for the SPF of the possibility of benefiting from the statutes of limitation, the risk of issuance of fines and significant tax adjustments is now higher.

Particular attention should therefore be paid to the structuring of the investments via the SPF in particular in a cross-border context.

Our team of Luxembourg lawyers can provide further guidance in respect of the structuring of investments via Luxembourg regulated and non-regulated vehicles such as the SPF.

Contacts



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