



Luxembourg  
*Investment Vehicles*

*SPF*

2017

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*We are what we repeatedly do.  
Excellence, then, is not an act, but a habit.  
-Will Durant-*

On a preliminary basis and for the sake of clarity, the details shared, are of a general nature and shall not be intended as a fully comprehensive tax/legal advice but rather as a preliminary overview. Although we attempt to provide you with precise and timely updates, there can be no guarantee that the information shared is accurate as of the date it is received or it will continue to be accurate in the future. If you wish to have a more specific advice on the same or on different matters, LEXTRAY is at your disposal, to provide you with any advice you may require in connection with the above.



## > THE LUXEMBOURG ENVIRONMENT

Luxembourg is the world's second largest investment funds domicile, and is the prime location for the pan-European and global distribution of investment funds under the UCITS brand. Initially designed as a global retail funds hub under the sole UCITS brand, Luxembourg has gradually opened up to the alternative asset classes, offering personalised structuring solutions through specialized investment vehicles.

Structuring flexibility, investor protection and tax efficiency are the crucial elements that have *inter alia* helped to convince the investors, to shift their operations and investments to Luxembourg.

In addition to such a fund-friendly environment, the constant work of the legislator to promote Luxembourg as a fully-regulated on shore location (see its stringent anty money-laundering regulation) has greatly contributed to its business appeal.

# Luxembourg *Investment Vehicles / SPF*



## > **SPF: THE VEHICLE IN A NUTSHELL**

The purpose of this brochure is to provide you with a bird`s eyes view of the legal framework, investments policies as well as the reporting and taxation particularities of the “The Private Asset Management Company (*Société de Gestion de Patrimoine Familiale*”, “**SPF**””. We hope that you find it useful and that it meets your expectations.

As simple, flexible wealth management vehicle compliant with EU regulatory requirements includes the Family Office services - which in Luxembourg is a group of regulated activities - and must take the form of a capital company. Its share capital depends on the legal form chosen.

## > **LEGAL FRAMEWORK**

The Private Asset Management Company (*Société de gestion de patrimoine familial*, SPF) has been in existence in Luxembourg since 2007 and is the successor to the abolished Luxembourg Holding 1929.

The latter was abolished following a Decision of the European Commission that the taxation of this company represented prohibited state aid.

# Luxembourg *Investment Vehicles / SPF*

## PROVISIONS APPLICABLE TO ALL SPF



### > SUPERVISION

The SPF is subject to the supervision of Luxembourg's Indirect Tax Administration (*Administration de l'Enregistrement et des Domaines*) and to no further supervision.

The domiciliation agent is required to submit a report annually on the SPF's operation in Luxembourg within the given legal framework.

### > LEGAL AND REGULATORY SERVICES

The SPF in Luxembourg is only permitted to be formed as corporation. In practice, the SPF is formed in the form of (i) Public Limited Company (**PLC, Corp./SA**) (ii) Limited Liability Company (**LLC, Ltd/SARL**), (iii) Partnership Limited by Shares (**SCA**) or (iv) Cooperative in the form of a Public Limited Company (**SCSA**). In the context of an SPF in Luxembourg, "family assets" should be understood exclusively as the private assets of non commercial entities and natural persons. The existence of family ties between the shareholders of a SPF in Luxembourg is not required.

### > INCORPORATION

The SPF is formed through the recording of its articles of association by a notary public. The articles of association shall be published and lodged with Luxembourg's Trade and Companies Register.



## > INVESTMENT POLICY AND CORPORATE OBJECT

The SPF is a passive investment vehicle and its objective is strictly limited to the acquisition, holding and sale of financial assets. No commercial activity is possible, nor involvement in the management of a company in which the SPF has a shareholding, even if this is a majority stake.

## > ELIGIBLE ASSETS AND PERMITTED ACTIVITIES

The activities of the SPF are strictly limited to management of the private wealth. The purpose of the SPF in Luxembourg, as laid down by statute, is the acquisition and possession as well as the management and realization of investments in financial instruments, in the broadest sense, including derivatives such as, for example, shares, investments, funds, futures, bonds, options, precious metals as well as bank accounts.

The SPF can:

- (i) hold an important participation but may not interfere in its management;
- (ii) invest in the broadest scope of financial assets (gold, currencies, securities such as bonds, swap, etc.).

## > NOT-ELIGIBLE ASSETS AND PROHIBITED ACTIVITIES

A SPF in Luxembourg is prohibited from carrying on any type of commercial activity including the provision of management activity or financial services to third parties or shareholders.

Furthermore, the guaranteeing of loans is not permitted, even where a SPF has an interest in the relevant company. The exception thereto is where the guaranteeing involves a gratuitous deposit or surety in companies to which the Luxembourg SPF is affiliated.

The SPF is likewise not permitted to hold patents or rights, to directly possess real estate, to receive more than 5% of the complete dividend income of companies which is liable to taxation of less than 11% as well as the stock market flotation of SPF shares or their public offering.

Notwithstanding this, a SPF in Luxembourg may have a financial interest in structures carrying on the afore-mentioned prohibited activities.

The SPF cannot:

- (i) carry out any commercial activities;
- (ii) hold directly real estate;
- (iii) lend money or grant a caution unless in restrictive conditions being on ancillary basis and for free.

## > SHAREHOLDERS AND ELIGIBLE INVESTORS

The investors of a SPF must be:

- (i) individuals managing their private wealth;
- (ii) private wealth management entities acting for one or several individuals (e.g. trusts and/or private foundations and/or noncommercial holdings, which can be either offshore or onshore);
- (iii) intermediaries acting on behalf of either of the above;
- (iv) intermediaries holding shares in the SPF on a fiduciary basis or in a similar capacity, on behalf of investors who are themselves eligible, natural persons/(resident or non-resident);
- (v) family groups;
- (vi) investor groups;
- (vii) trusts;
- (viii) private foundations.

## > TAX ASPECTS

The SPF is liable to the so-called subscription tax ("*taxe d'abonnement*") to be paid annually at a rate of 0.25% on its paid-up share capital, the share premium, plus on a proportion of its debts exceeding eight times the paid-up share capital and the share premium.

## > TAX EXEMPTION

The SPF regime in Luxembourg grants an exemption from:

- (i) the withholding tax on interests' payments;
- (ii) the withholding tax on the dividends distributed to the investors;
- (iii) the corporate income tax and the net wealth tax unless antiabuse rule applies ; and
- (iv) V.A.T., due to the fact that the SPF does not carry out commercial transactions.

## > DOUBLE TAXATION AGREEMENTS (DTA`s) AND PARENT SUBSIDIARY EU DIRECTIVE

In order to ensure complete tax neutrality, SPF is exonerated from corporation income tax, communal business tax and wealth tax.

Due to these exemptions, an SPF cannot benefit from Luxembourg`s double taxation agreements ("DTA`s") and from parent-subsiary EU Directive ("**EU P-S Directive**").

# Presentation of the Firm



LEXTRAY is committed to providing the highest quality legal and tax services. Our team is at your service in 6 different languages (English, French, Italian, German, Spanish and Arabic), directly active in 7 jurisdictions (Luxembourg, Italy, Switzerland, UK, Ireland, Singapore and Dubai) and indirectly through our associates in the Netherlands, Spain, USA, Argentina and Brazil, to provide you with the finest tailor-made work products and solution.

Our widespread territorial coverage allows us to remain in constant contact with you, 24h24 and 7/7, guaranteeing a first-rate standard and rapid execution as well as a clear, practical and up to the minute advice. Considering the fast moving and aggressive business environment we nowadays facing, we are committed to a relentless professional skill update and are outmost attentive to tuning to the clients' wishes and adapting to new laws and regulations.

## **EMPHASIS ON OUR INVESTMENT VEHICLES PRACTICE AREA**

Our Luxembourg team has a robust expertise in all areas of Luxembourg investment vehicles law.

This includes among others:

- (i) support in finding the ideal investment vehicle to meet your requirements and your goals from a governance, regulatory and tax perspective;
- (ii) support in setting up the vehicle;
- (iii) tax structuring support;
- (iv) providing ongoing corporate support service throughout the lifetime of the vehicle;
- (v) keeping you updated on the new regulatory developments.



## CONTACT

We would love to hear from you.

Don't hesitate to get in touch with one of our professionals or dedicated departments.

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Talk to us about your concerns and find out more by visiting us at [www.lextray.com](http://www.lextray.com)