

2024 RECENT UPDATES ON PRIVATE WEALTH MANAGEMENT COMPANIES (“SPF”)

INTRODUCTION

In the course of the year 2024, there have been several updates on the SPF tax regime in Luxembourg:

- ▶ on 4 June 2024, the Luxembourg tax authorities issued a circular L.I.R. no. 159/2 (the “Circular”) to provide guidance on the tax residency certificates to be issued to private wealth management companies “SPF” under domestic law;
- ▶ on 17 July 2024, the Luxembourg parliament has issued a draft law (n° 8414) amending notably the amended law of 11 May 2007, on the creation of a SPF (the “Draft Law”).

THE SPF TAX REGIME IN A NUTSHELL

As per the law of 11 May 2007, related to the creation of a SPF (the “SPF Law”), a SPF is a company:

- ▶ which adopts one of the following legal forms: limited liability company (société à responsabilité limitée), public limited company (société anonyme), limited partnership by shares (société en commandite par actions), cooperative company organized in the form of a public limited company (société cooperative organisée sous la forme d’une société anonyme);
- ▶ whose exclusive purpose is the acquisition, holding, management and realization of financial assets, to the exclusion of any commercial activity;
- ▶ which is held by eligible investors (i.e. individuals managing their private wealth or entities or intermediaries acting in the interest and on behalf of the private investors);
- ▶ whose articles of association explicitly foresees that the entity is subject to the SPF Law.

A SPF is exempt from corporate income tax, municipal business tax and net worth tax. The SPF is only subject to the annual subscription tax of 0.25%.

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IMPACT OF THE CIRCULAR

INTERNATIONAL CONTEXT

As a result of this special tax status, the SPFs cannot benefit from double tax treaties concluded by Luxembourg, nor from the European Union directives on the common system of taxation applicable in the case of parent companies and subsidiaries, mergers and interest and royalties' payments.

DOMESTIC CONTEXT - RESIDENCE CERTIFICATE

Under the domestic tax law, a SPF is considered as resident in Luxembourg if the SPF has its registered office or its central administration in Luxembourg.

Based on the Circular, a certificate of residence can be issued demonstrating the tax residency of the SPF under the domestic tax law provided that the SPF has its registered office or central administration in Luxembourg.

RESIDENCE CERTIFICATE REQUEST PROCEDURE

The request for a certificate of residence has to be addressed to the Luxembourg tax authorities - (Bureau d'Imposition Sociétés VI, L-2982 Luxembourg - soc6@co.etat.lu) and has to indicate :

- ▶ the name and address of the SPF;
- ▶ the tax identification number of the SPF;
- ▶ the date of adoption of the SPF regime;
- ▶ the language in which the residence certificate has to be issued (French, German or English);
- ▶ by whom the request is introduced and the reasons for the request including notably the accurate reference to the foreign legislation requiring the issuance of a certificate of residence.

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IMPACT OF THE DRAFT LAW

SUBSCRIPTION TAX

According to the Draft Law, the minimum annual subscription tax due by SPFs would be increased from EUR 100 to EUR 1,000.

Under the current SPF Law, the taxable basis for the subscription tax due by any SPF (for the years following its incorporation) is equal to the sum of (i) the paid-up share capital plus the share premium increased by (ii) the aggregate amount of debt of any type exceeding 8 times the paid-up share capital and the share premium computed as at the 1st of January irrespective of the starting date of the SPF’s financial year.

According to the Draft Law, the amount of the debt to be considered in order to determine the taxable basis for subscription tax purposes is the first day of the SPF’s financial year rather than the 1st of January as currently provided by the SPF Law.

CERTIFICATE TRANSMISSION

Based on the Draft Law, the certificate evidencing the compliance with all the conditions required to benefit from the SPF regime to the Registration Duties, Estates and VAT authority (“LVAT”) must be electronically transferred.

AUDIT AND SANCTIONS

According to the current SPF Law, the sole sanction for a SPF not complying with legal, regulatory or statutory provisions required by the SPF Law is the withdrawal by the LVAT of the benefit of the tax provisions established by the SPF Law.

The Draft Law aims at modernizing the audit procedures and setting out a series of new sanctions (mainly financial sanctions but not limited to) depending on the breach(es) of the SPF Law requirements, ranging from EUR 10,000 to EUR 250,000. In case some breaches are not corrected by the SPF within a delay of 6 months, the benefit of the SPF law could be withdrawn by the director of the LVAT.

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INTERESTED?

Should you need assistance in relation to the above, please do not hesitate to contact with one of the team members below:



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