

The Luxembourg Private Foundation: innovative private wealth management solutions



A significant Bill of Law (no. 6595) was submitted to the Luxembourg parliament at the end of July 2013. It regards a new private wealth management vehicle named Fondation Patrimoniale (the Private Foundation), which after the amendments of the Parliament and the Council of State shall be ready to adoption and to bring new fresh air to the structuring for rich family groups.

If the **Special Limited Partnership** (*société en commandite special* – SCSp) aims at providing a valid alternative to the British limited partnerships, the Luxembourg private foundation is **very suitable alternative to the Belgian vehicles and the Dutch *Stichting***

Administratiekantoor.

The Luxembourg Private Foundation in details

This vehicle is characterised by the maximum level of flexibility, overcoming by far the public interest foundations. Notwithstanding its legal personality, it is definable as an “orphan” structure as it has no shareholders. No approval from a ministry is required, at the contrary to the public interest foundation.

Said max level of flexibility can be summarised by the following key points.

- Governance of the foundation might be conducted either by one or more directors and a supervisory board is mandatory only in case beneficiaries are more than 5 or the assets more than EUR 20 M. The founder can be director and beneficiary at the same time;
- No limitation to the class of assets to be held/acquired by the foundation: movable or immovable, tangible or intangible;
- The foundation might subscribe or be the beneficiary to insurance contracts, opening the way to new planning ideas with insurance policies;
- The foundation can create or be the beneficiary of trusts;
- In the event the foundation is not involved in the company’s management, it can hold shares in such company;



- The resolutions of the management and of the supervisory bodies do not require a quorum to be approved. The simple majority is sufficient;
- Certificates representing the assets owned by the foundation can be issued to the beneficiaries – either individuals or any wealth management structures in charge of the assets' administration.

Luxembourg private foundation legal framework

The foundation shall be constituted via a notarized deed and only some extracts of the deeds shall be subject to publication in the Luxembourg's Memorial C and Trade and Companies Register.

The foundation must have its registered office located in Luxembourg and the minimum contribution to the entity must be EUR 50,000.

Regarding the subjects who can utilize such foundation, only individuals or private wealth management entities in charge to the administration of assets of physical persons.

Regarding the accounting obligations, the foundation must keep accounts' booking but is not required to publish them. Should the amount of the assets exceed EUR 20 M or the number of beneficiaries 5, statutory auditors and a supervisory board must be appointed.

Luxembourg private foundation tax framework

The tax aspects related to the foundation make it very appealing. It is a fully taxable vehicle, thus in principle subject to the ordinary income tax. However it enjoys a number of exemptions regarding direct tax; whereas there are a few indirect tax implications.

Why choosing the Luxembourg private foundation?

- To secure your private and business assets, by separating the economic ownership from the decision-making person. This is particularly useful when there are individuals in the family that are not in the condition to manage their wealth or in case the owners wish to open the way to new capital or talents not belonging to the family.
- To protect your legitimate privacy and confidentiality. Such legitimacy is recognised in other European countries as Netherlands.
- To pursue a determined specific goal: i.e. to grant a dedicated wealth to a handicapped relative rather than the needs of a family member in the context of a business venture.
- To choose one of the best alternatives for estate and succession planning: indeed, it will secure the wealth of the deceased would not be dispersed.
- To choose a vehicle which will be well received by any foreign jurisdictions, as it is a fully taxable entity (though benefitting of several exemptions).



Who does the new version of the private foundation address to?

It is an ideal structure for family groups and/or whoever, provided with significant wealth (HNWI) is seeking for an appropriate vehicle to obtain privacy protection and tax optimization.

Many players willing to structure their investments via a trust might consider the Luxembourg private foundation as more appropriate.

The Bill of Law introduces other significant new items (e.g. the international “Step-Up” scheme), opening to a number of new opportunities.

The Luxembourg foundation as the European alternative to the US foundation

Indeed, the Luxembourg private foundation stands up as a homologue of the Foundation in the USA (e.g. the US family foundation).

The Luxembourg foundation enables to achieve the same degree of assets protection and estate planning as the US one, especially in the context of inheritances.

As from a tax perspective the Luxembourg framework sounds more attractive though. In fact in USA the tax exemptions provided for the private foundations are available only if the foundations are “organized and operated exclusively for exempt purposes set forth in section 501 (c) (3)” (source: IRS).

Section 501 (c) (3) restricts the exemptions to purposes that are “charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals”. In this sense, Luxembourg foundations allow their special tax regime without such kind of limitations.

In fact, by targeting wealthy families, they aim at providing these latter with an appropriate instrument to separate assets from their estate and organise the management of such assets for an unlimited period of time. In other words, Luxembourg foundation enhances a patrimonial purpose rather than a purely charitable one as in the US homologue.

If we consider USA foundations literally boomed lately (two-fifths of the largest foundations were established only in the last 2 years, with assets exceeding USD 500 bln most of the times), it is foreseeable Luxembourg might attract new players and financial resources via the Luxembourg foundation.



Another important improvement: the “step-up” scheme

A relevant contribution added by the Bill is the long awaited introduction of the so-called “**step-up**” scheme, which represents a development of what similarly applicable to the establishment of foreign companies in the Grand-Duchy (under certain conditions). The extension of the scheme to any non-Luxembourg residents who decide to establish their own tax residency in Luxembourg is a juridical innovation particularly attractive to those wealthy individuals aiming at moving abroad.

Innovative Solutions

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Archon is a tax analyst specialized in integrated solutions and shall be at your disposal to evaluate the benefits you might obtain through the new developments of the limited partnerships.

To have more insight and advice, contact us:

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