



PRIVATE FUND

Tax considerations for Private Foundation

Introduction

In this brochure we explain the most important aspects of the Private Foundation (known in Dutch as the "Stichting Particulier Fonds" or SPF). The SPF can be used under civil law to protect your assets. From a fiscal perspective, the SPF is also used to hold passive investments. Under certain conditions, your investments in an SPF can generate profit tax-free.

Features SPF

The SPF is a special foundation that is established by notarial deed. Unlike a regular foundation, the SPF is not subject to a distribution ban, which means it can freely make payments to its beneficiaries – such as founders, board members, and family members – without these payments needing to be tied to a charitable purpose.

The SPF can be used as a vehicle to segregate assets:

- For making investments
- To protect your assets
- As part of your estate planning

Tax treatment SPF

The SPF can be treated as transparent or non-transparent for tax purposes.

A transparent SPF

A transparent SPF is treated as invisible for tax purposes. This means that any assets held in the SPF remain attributed to the settlor's estate for tax purposes.

Income from these assets is taxed through the settlor's personal income tax. However, for civil law purposes, the assets still form a separate estate.

A non-transparent SPF

A non-transparent SPF is treated as a separate entity for both tax and civil law purposes. This means that the assets transferred to the SPF are considered to have left the settlor's estate. Any income generated from these assets is subject to profit tax at the SPF level. In this newsletter, we will focus on the non-transparent SPF.

Requirements for non-transparent SPF

In order to separate assets for tax purposes, the settlor must no longer have the power of disposal over those assets.

De 'letter of wishes'

A 'letter of wishes' allows the settlor to express their preferences regarding the SPF's assets. This includes specifying the SPF's beneficiaries and how the assets should be used.

Please note that while the letter of wishes serves as a guideline for the board in executing their duties, it is not legally binding.

Contributing assets to the SPF

Contributing assets to an SPF is considered a gift. When made by a Curaçao resident (either an individual or a company established in Curaçao), such contributions are subject to 25% gift tax.

Therefore, while contributing assets to an SPF may not be advantageous for Curaçao residents, there are alternative structures available.

Benefits from an SPF

Curaçao residents receiving benefits from an SPF are subject to income tax on these distributions. This income is taxed under the personal income tax system.

For beneficiaries residing abroad, the tax implications need to be evaluated according to their country of residence. In Curaçao, no additional tax consequences apply to SPF distributions.

Fiscal aspects

The SPF is subject to profit tax, which requires annual financial statements and profit tax returns. However, the key tax advantage of the SPF is that profits are exempt from profit tax, provided no business activities are conducted within the SPF.

While you must still file tax returns, no profit tax is payable on these earnings. This means your investments can generate returns tax-free within the SPF.

Exercising a business

An SPF may not engage in business activities. Business activities occur when operations extend beyond normal asset management. Normal asset management includes returns generated from owning assets, such as receiving dividends from shares.

When additional activities are undertaken to achieve higher returns than would be generated from simply holding assets, this may constitute a business.

Therefore, it is essential to evaluate whether your specific situation would be classified as business activities under these rules.

More information?

Are you looking to invest (in Curaçao) or start your estate planning? An SPF can be used for investments in real estate and other assets while taking advantage of attractive tax benefits.

Let us assess whether an SPF is the right structure for your goals based on your specific situation and intended activities.

Want to know if a Private Foundation is the right structure for you? Schedule a consultation by clicking [here](#)!

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+ 5999 5173434



info@equilibrium-ts.com



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