

APPENDIX A

INVESTMENT FUNDS SECTOR IN LUXEMBOURG

Luxembourg is creating an environment to attract different kind of funds by providing different kinds of vehicle to pool their investments.

Luxembourg offers funds a choice of both regulated and non-regulated structures.

If fund promoters would like to establish a regulated Fund in Luxembourg two different options are available, each addressing specific needs:

1. Undertaking for Collective Investment (“UCI”) which itself distinguishes between: UCIs whose securities are distributed to the public and whose securities are reserved for institutional investors.
2. Société d’Investissement en Capital à Risque (« SICAR »)

Both schemes, as further described below, fall under the prudential supervision of the Luxembourg financial sector regulator, the Commission de surveillance du secteur financier which plays a key role by authorizing the fund upon its incorporation and by supervising the on-going operations of the fund.

1. Regulated vehicles

a. Undertakings for collective investments

UCIs that offer their securities to the Public are subject to the so-called “Part II” of the Law dated December 20, 2002 (the “2002 Law”). UCIs reserving their securities for Institutional Investors are regulated by the Law dated February 13, 2007 (the SIF Law”)

The legal forms available to a UCI are as follows:

- A société d’Investissement à Capital Variable (« SICAV ») is an investment company, with a variable share capital that at all times equals the net asset value of the fund. SICAV are, by far, the most frequent legal form used. SICAVs can be set up as a public limited company (société anonyme), partnership limited by shares;
- A Société d’Investissement à Capital Fixe (« SICAF »), a corporate structure with fixed capital that may operate either as an open-ended or closed-ended fund. Fixed capital in this context means that the par or nominal value of the issued capital does not change. These companies have the right to repurchase their own shares. Public limited company or partnerships limited by shares;
- A “Fonds Commun de Placement” (« FCP ») is equivalent to the concept of « unit trust” as known in the UK. FCP has no separate legal status; it must be managed by a Luxembourg management company. It is however not liable for the obligations of the latter;

A key element of a UCI is that it can have various sub-funds and it can issue different classes of shares. Units or shares issued by each of the sub-funds have different values representing specific pools of assets and liabilities.

Tax framework

- Taxation of income / capital gains

Luxembourg investment funds (UCITS and non-UCITS) are not subject to income / capital gains taxes in Luxembourg.

- Withholding taxes on income received

Withholding tax levied at source on income received by a Luxembourg UCI is technically non-refundable. However, UCIs formed as investment companies (SICAVs) may benefit from certain double taxation treaties signed by Luxembourg. UCIs formed as an investment partnerships (FCPs) will generally not benefit from DTTs unless the unit-holders themselves are able to claim the reduced rate under the applicable double tax treaty (transparency).

- Tax distribution

Distributions by Luxembourg Investment funds, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. However, some payments may be subject to withholding tax under the European Savings Directive.

- Taxation of capital gains realised by the investors

Any capital gains realised upon disposal of shares/units in a Luxembourg fund should not be subject to tax in Luxembourg, unless cumulative application of the following 2 conditions: 1 the shareholder holds an important participation (i.e. more than 10% of the units/shares of the fund) **AND** 2 the shareholder sells its shares/units within 6 months of acquisition. For non-resident investors, some double tax treaties concluded by Luxembourg might prevent this exceptional taxation.

- Capital Duty

At the set up of a Luxembourg fund, a one-time capital duty of EUR 1,250 is due. Any future capital increase or issues of shares will not give rise to further taxation.

- Subscription tax ("Taxe d'abonnement")

An annual subscription tax of 0.05% of net assets is payable and calculated quarterly, based on the UCI's net asset value at the end of each quarter.

A reduced tax 0,01% p.a. is levied on the total net assets of the funds, governed by the SIF Law and of institutional sub-funds and classes of shares even if offered within other types of Luxembourg funds.

The portion of a fund's assets invested in other Luxembourg funds, which have already been subject to subscription tax, is excluded for the purposes of computing the tax. Therefore, funds of funds holding exclusively other Luxembourg funds (which have been subject to the subscription tax) are fully exempted.

- Net Wealth tax

Luxembourg investment funds (UCITS and non-UCITS) are not subject to net wealth tax in Luxembourg.

b. SIF

Specialized investment Funds
(all kinds of alternative investment funds)

The SIF law made it far easier to establish alternative investment-type funds. Replacing the existing 1991 law on institutional funds, the new law importantly allows a SIF to be established without prior permission from the “Commission de surveillance du secteur financier (CSSF)”. Thus, among other far-reaching changes, the law will significantly reduce time to market for these funds.

The range of eligible assets is unlimited: private equity, alternative strategies, real estate and commodities are just a few examples. The law now allows high net worth individuals and their advisors/managers to launch products tailored to their own needs, while institutional investors can create new alternative vehicles, or repatriate existing funds into a safe, regulated environment. The new law basically permits a higher degree of flexibility at the product set up and client target level phases whilst maintaining the scope of investment strategies available under the old institutional fund regime. This also means that fund providers no longer need to adopt a multi-jurisdictional approach to product development. Risk diversification requirements remain, but the prior law’s quantitative limits disappear – it is up to the managers of each SIF to determine quantitative limits subject to the approval of the CSSF. (Further information can be found on our [PwC Luxembourg](#) website).

Legal forms

These funds can be formed either as FCP, SICAV or SICAF.

Tax framework

Same tax regime as FCP, SICAV or SICAF
(Depends on which form chosen)

Subscription tax (“Taxe d’abonnement”): 0.01% b.p. per annum calculated on net assets

c. SICAR (“Société d’Investissement en Capital à risque »)

The SICAR is a fund vehicle (private equity, hedge funds, venture capitalist) dedicated exclusively to investments in the risk capital asset class and which is subject to a “light” regulation of the CSSF.

Legal forms

Regulations, risk capital under SICAR law high risk associated with the investment in the target companies and the objective of developing the target companies.

A SICAR can be set up in a transparent form, the partnership form, or a non-transparent form. Most Luxembourg Companies are eligible (SA, S.à r.l., SCA etc) SICAR in Luxembourg often opt for the partnership limited by shares ("Société en Commandite par Actions).

Tax framework

- Taxation of income / capital gains

SICAR set up in the form of a Luxembourg company

SICAR as *limited public company, partnership limited by shares, limited liability company, cooperative incorporated as a public company* is, as a general rule, fully liable to corporate income tax and municipal business tax at the rate of 29,63%.

Income and capital gains derived from securities (and temporary investments in liquid assets held for a period of max. 12 months before investment in capital risk) are excluded from the taxable base. Securities are a.o. bonds, loans and any other tradable security as well as interest. All other income is included in the taxable basis of the SICAR.

SICAR set up in the form of a Luxembourg partnership

SICAR as *limited partnership* is deemed to be transparent for corporate tax purposes. Taxation will consequently be levied at the level of the partners according to the rules applicable in their country of residence. NO commercial entity. SICAR is not subject to municipal business tax.

- Withholding taxes on income received

Withholding taxes on income received from foreign entities

The Luxembourg tax authorities have confirmed that they consider the SICAR to be resident for double tax treaty purposes. Income paid by foreign entities should therefore benefit from a reduced withholding tax rate. This also applies to the benefits of the P/S directive.

Withholding tax levied at source on exempt income received by a Luxembourg SICAR is normally not refundable.

Withholding taxes on income received from Luxembourg companies

Dividends distributed by a Luxembourg fully taxable resident company are normally subject to 15% withholding tax. Under certain conditions the withholding tax may be exempted.

- Tax on distributions

Interest and dividends allocated to investors are not subject to any withholding tax in Luxembourg. Any dividend paid by a SICAR to a fully taxable Luxembourg entity should benefit from the tax exemption.

- Other taxes

Capital duty

Contribution to SICAR is subject to a one-shot capital duty of € 1,250 due upon incorporation.

Net wealth tax and Subscription tax

The SICAR is exempt from net wealth tax and subscription tax payable by UCIs.

2. Société de gestion de Patrimoine Familial (« SPF »)

Tailored to enter the private sphere of individuals for the purpose of wealth management. Their object is restricted to the acquisition, holding, management and disposal of financial assets, to the exclusion of any commercial activity. Their shareholding is restricted to individuals acting for private purposes and their substitutes, i.e. estate entities acting for the benefit of private assets of one or several individuals (e.g. trust, foundations) and intermediaries acting on behalf of other eligible investors.

Legal forms

SPFs take a legal form excluding partnerships (société anonyme, société à responsabilité limitée, société en commandite par actions, société coopérative organisée comme une société anonyme)

Tax framework

SPFs are exempt from corporate income tax, municipal business tax and net wealth tax. These exemptions are not available when at least 5% of the annual dividends are derived from non-resident and non-listed companies, which have not been subject to an income tax comparable to the Luxembourg corporate income tax (i.e. 11%)

SPFs are liable to a yearly subscription tax of 0,25%

SPFs are not qualifying as person for double tax treaties benefits nor from the EC “parent and subsidiary directive)

Exemption of Luxembourg taxation for non-resident shareholders:

Non-resident shareholders are not taxed on profits deriving from SPFs in Luxembourg (i.e. no withholding tax on their dividends and no Luxembourg income tax on their capital gains).