

LUXEMBOURG SPECIAL LIMITED PARTNERSHIP

Société En Commandite
Spéciale

Overview

At the time of the enactment of the law of 12 July 2013 on alternative investment fund managers (the “AIFM Law”), the Luxembourg government took the opportunity to reform the limited partnership regime from a legal and fiscal perspective. A new form of limited partnership without legal personality: the special limited partnership (société en commandite spéciale) was introduced.

The tax regime of the special limited partnership (“SLP”) has been clarified by the AIFM Law and by the circular of the Luxembourg tax authorities dated 9 January 2015.

Largely inspired by the Anglo-Saxon limited partnership regimes, the SLP has been designed to bolster Luxembourg’s position as an AIF hub at a time when the manager regulation is seen as a potential substitute for product regulation. Structuring flexibility and tax transparency are the key features of the SLP.

A PARTNERSHIP WITHOUT LEGAL PERSONALITY

The SLP follows the usual common law partnership regime and does not have a legal personality distinct from its partners. Despite the fact that the SLP has no legal personality, the registration of assets which are contributed to the SLP shall be made in the name of the SLP and not in the name of a General Partner (“GP”) or Limited Partners (“LP”).

Non-regulated vehicles or regulated vehicles (i.e. Special Investment Funds (“SIF”) and Société d’Investissement à Capital Risque (“SICAR”) or a Part II Société d’Investissement à Capital Fixe (“Part II SICAF”) may be created under the legal form of a SLP.

REGISTRATION REQUIREMENTS AND CONTRACTUAL FLEXIBILITY

The SLP is formed under a contractual form. The Limited Partnership Agreement (“LPA”) can take the form of a notarial deed or a private agreement. However, the SLP has to be registered with the Luxembourg Trade and Companies’ Registry (“RCS”). Only an extract of the LPA shall be filed with the RCS and subsequently published. The mandatory content of the extract comprises: the denomination and the duration of the SLP, the designation of the GP(s) and designation of the manager(s) and their signatory powers. Other provisions of the LPA and the identity and contributions of the LP(s) do not have to be published.

The GP(s) and LP(s) shall define all the terms and conditions in the LPA, including the operational and organizational aspects.

There are no legal restrictions regarding the following features that can be freely organized in the LPA:

- ▶ Acceptance of new partners and issuance of new partnership interests in the SLP;
- ▶ Transfer of partnership interests;
- ▶ Distributions to the partners (either in the form of a distribution of profits or by means of a reimbursement of participating interest in the SLP (NB: interest issued will be represented by securities or capital accounts);
- ▶ The right of the partners to the profits or share of losses of the SLP;
- ▶ The form of the contribution (in cash, in kind or sweat equity);
- ▶ Allocation of voting rights can be freely determined;
- ▶ A GP may but is not obliged to act as manager of the SLP and the management may be delegated by the GP to an AIFM;
- ▶ Conditions and process to put the SLP into liquidation.

Given that the SLP has no legal personality, it does in principle not have a registered office but the AIFM Law states that its registered office is deemed to be that of its central administration agent (which in turn is deemed to have its statutory seat in Luxembourg).

The rights on the assets of the SLP are exclusively for the benefit of the creditors of the SLP. The creditors of any given partner have no direct rights with regards to these assets but only to the interests held by that partner in the SLP.

TAX CONSIDERATIONS

1. NON REGULATED SLP

A SLP is fiscally transparent for the purpose of income tax and wealth tax (foreign partners may only be taxed in Luxembourg if they carry commercial activity through a permanent establishment).

No withholding tax is levied on payments whether the partners are located in Luxembourg or elsewhere.

It is however subject to Municipal Business Tax ("MBT") to the extent that it carries on commercial activities on a permanent basis. In this respect an administrative circular has clarified that a SLP considered as an AIF pursuant to the AIFM Law is deemed not to carry on commercial activities and shall therefore never be subject to MBT to the extent that its GP holds less than 5% of the SLP. With respect to SLPs that do not qualify as an AIF, the circular sets out several criteria and examples that gives useful guidance on the circumstances and activities deemed to be commercial resulting in the SLP being subject to MBT.

2A. REGULATED SLP SET UP AS A SIF

A SLP set up as a SIF is not subject to corporate income tax ("CIT"), MBT or net wealth tax ("NWT").

It is however subject to a 0.01% subscription tax per annum calculated on its Net Asset Value ("NAV").

Non-resident LPs should not be subject to Luxembourg tax on income and gains arising from their interest in the SLP set up as a SIF.

2B. REGULATED SLP SET UP AS A SICAR

A SLP set up as a SICAR, is not considered to carry out a commercial activity. It is not subject to CIT, MBT or NWT.

Non-resident LPs should, in principle, not be subject to Luxembourg tax on income and gains arising from their interest in the SLP set up as a SICAR.

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