Luxembourg Partnership regime overhaul

Structuring opportunities ahead

Context

The modernisation of the partnership regime currently included in the legislative process in Luxembourg will offer a larger spectrum of structuring opportunities for alternative investment fund vehicles.

The proposed legislative changes shall give rise to a flexible and efficient limited partnership (**LP**) vehicle which meets the alternative investment funds industry's needs, which are primarily for unregulated funds (with very low time-to-market), but also for lightly regulated funds in a tax neutral way.

The proposed new provisions are laid down in the draft law submitted by the Luxembourg government to parliament on 24 August 2012. They would transpose the EU Alternative Investment Fund Managers Directive (**AIFMD**) into national law (the **draft law**), the implementation of which is scheduled for before the end of 2012.

Key Opportunities

Luxembourg is often chosen by alternative investment funds as an investment platform due to its strategic location in Europe, its competitive holding company regime, its access to EU directives and its extensive double tax treaty network.

Combining this use of Luxembourg as an investment platform location with a Luxembourg fund structure can add value in terms of an operational model and substance and help to reduce costs.

The draft law enhances the Luxembourg partnership regime as follows:

From a legal standpoint

- It enhances the rules on partnerships limited by shares (*Sociétés en Commandite par Actions*, SCA) bringing them into line with business structuring needs.
- It modernises the existing common LP (*Société en Commandite Simple*, SCS). The regime is available irrespective of whether the fund qualifies as an alternative investment fund under the AIFMD;
- It creates a new vehicle, the special LP (*Société en Commandite Spéciale*, SCSp). The SCSp regime is generally similar to the SCS regime except for some minor differences due to the fact that the SCSp does not have legal personality.
- Both the SCS and the SCSp regimes embed the broad contractual structuring flexibility inherent in the Anglo-Saxon LP model. Indeed there are only a few mandatory rules provided by the draft law, leaving the flexibility to:
    - Keep the identity of the limited partners confidential
    - Have partnership interests represented by securities (now also debt securities) or to have partnership accounts

- Delegate management duties to a manager which is only liable for the execution of its mandate
- Allow the limited partners to perform some internal management functions, such as advisory and supervisory functions and the granting of loans or guarantees to the fund or its affiliates
- Allow contribution in industry (such as the efforts of the management team of the fund) in addition to contributions in cash and in-kind
- Derogate from the “one share, one vote” principle
- Exclude a partner from sharing in the profits and/or losses
- Freely arrange for distributions in the LP agreement and preclude the claw-back of distributions to partners; and
- Freely determine transfer restrictions (or the absence thereof) for partnership interests

From a tax standpoint

- Full Luxembourg tax transparency is achieved for SCS and SCSp (to the extent that the GP holds less than 5% of the partnership interest and the SCS/SCSp does not perform actual commercial activity such as active trading)
- The possibility of setting up a limited partnership, either with legal personality (SCS) or without it (SCSp), offers more flexibility regarding the tax characterisation of the vehicle as either opaque or transparent in the jurisdiction of the investors (impacting the tax treatment in their hands); and
- Management services provided to a SCS, SCSp or SCA qualifying as an alternative investment fund under the draft law would qualify for VAT exemption

Our Services

We can assist you in identifying and setting up the optimal fund structure for your business, fully in line with international standards. Our offer can notably entail the following services:

Fund structuring	Management structuring	Implementation	Investments structuring	Maintenance	Compliance
• High level review of the different fund vehicles available (unregulated and/or regulated) and highlight of their main legal, regulatory and tax features in order to identify the optimal fund structure • In depth analysis of the legal, tax and potential regulatory implications of the selected structure • Analysis of tax implications at the level of the investors	• Analysis and optimization of tax position for fund managers	• Assistance with the set up of the structure including drafting of step plan, review of legal documentation, liaising with the Luxembourg tax authorities and ongoing assistance throughout the implementation phase	• Tax efficient structuring of the investments of the fund aligned with legal , banking and comercial constraints	• Assistance with the set up of maintenance guidelines with respect to operations and substance	• Assistance throughout the lisfespan of the fund with potential compliance and tax reporting requirements

Contacts

Benjamin Lam
Partner | Private Equity & Real Estate Leader
Tel: +352 451 452 429
blam@deloitte.lu

Raymond Krawczykowski
Partner | Tax Leader
Tel: +352 451 452 500
rkrawczykowski @deloitte.lu

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