

SICAR

Attractive vehicle for investments in venture and risk capital

The Luxembourg Parliament has approved on May 12, 2004 the law on the SICAR (Société d'Investissement en Capital à Risque). The SICAR is a Luxembourg vehicle, which may be used to invest in venture and risk capital. The SICAR offers a flexible, competitive and tax efficient solution for the private equity industry.

Purpose of the SICAR

The purpose of the SICAR is to invest in venture capital. Investments made by the SICAR can be realized either directly or indirectly in an entity to be launched, to be developed or in order to achieve a future listing. The investment in "risk capital" includes venture capital as well as different forms of private equity, like convertible debt and mezzanine financing.

Legal form

A SICAR can adopt the form of a limited partnership, a partnership limited by shares, a cooperative organized under the form of a public limited company, a limited liability company or a public limited company.

Since October 2008, SICARs can have a "multi-compartment" structure with each compartment corresponding to a distinct part of its assets and liabilities.

Investors

The shares of a SICAR can be offered to institutional and professional investors. In addition, the shares of a SICAR may also be subscribed by investors, who declare that they are aware of the risk the investment is bearing and either invest at least EUR 125.000 or show a confirmation issued by a financial institution, which confirms that the investor has the expertise, the experience and the knowledge to appraise an investment in risk capital.

Share capital and company law

The minimum subscribed share capital amounts to EUR 1.000.000 (to be reached within 12 months) of which at least 5% have to be paid in. A SICAR may have a variable share capital (except for the limited partnership). There are no restrictions on the redemption of shares or the payment of dividends and interim dividends. In addition, the SICAR is exempted from the obligation to form a legal reserve and to prepare consolidated accounts.

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Supervision

The articles of association, the constitutional documents, the board of directors and the custodian have to be approved by the authority in charge of the supervision of the Luxembourg financial sector (CSSF – Commission de Surveillance du Secteur Financier). The custodian and the central administration of the SICAR have to be in Luxembourg.

In addition, the annual accounts of a SICAR have to be audited by an auditor (*“réviseur d’entreprises agréé”*). The promoter and the investment manager do not need to get approved by the CSSF.

Publications and investment restrictions

There are no restrictions for the investment policy, as long as the SICAR invests in risk and venture capital. However, the SICAR has to publish a prospectus which provides enough information in order to enable the investors to appraise the investments and the related risks.

The SICAR also needs to publish an annual report, which shows among others the annual accounts, an activity report as well as any significant information, which enables the investors to appraise the development of the activities and the financial results of the SICAR.

Tax treatment

The SICAR (set up as a limited liability company, a public limited company, a partnership limited by shares or a cooperative organized under form of a public limited company) is subject to income tax on its worldwide income. The SICAR is considered as a tax resident corporation but the benefit of tax treaties concluded with Luxembourg is not systematic.

Income derived from transferable securities or capital gains realized at the sale of those securities are tax exempt. Losses realized on the sale of transferable securities are not tax deductible. The income derived from an investment in liquid assets is tax exempt if it is held for a period of maximum 12 months and if it is invested after this period in risk capital. All other income, like management fees, is fully taxable.

The SICAR, set up as a limited partnership, is transparent for tax purposes, which means that its partners will be directly taxed on their share in the profit of the SICAR. The law exempts the limited partnership from the municipal business tax (*impôt commercial communal*). Thus, foreign partners of the limited partnership will not be subject to income tax in Luxembourg as the SICAR established as a limited partnership should not have a permanent establishment in Luxembourg.

The SICAR may not benefit from the tax consolidation.

The SICAR is not subject to net wealth tax, nor to the subscription tax (*taxe d’abonnement*). As from 1 January 2009, capital contribution duty has been abolished. A fixed registration fee of EUR 75 is levied at the incorporation of companies.

Dividend distributions made by a SICAR are not subject to any withholding tax in Luxembourg.

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The capital gains realized by non resident investors at the sale of the shares of the SICAR are not taxable in Luxembourg.

The management services provided to a SICAR are exempt from VAT.

Conclusion

The SICAR represents a very attractive vehicle for investments in private equity and venture capital. The light supervision and the attractive tax regime enable the use of a SICAR for many investment purposes.

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