SICAR

(Private equity investment company)

Purpose

A SICAR is a private equity fund designed for venture capital investments. The corporate purpose of a SICAR is limited to investments in entities during their phase of start-up, development or at the threshold of getting listed.

The definition of “private equity” is to be considered as very broad and means investments in non quoted companies for a number of purposes e.g. “buy offs”, bridge financings, management buyouts, leverage buy-outs or other mezzanine financings. Investments in real estate have already been approved in the scope of a SICAR; however a SICAR must then actively contribute to the development of the project.

The shareholders have either to be “well informed” or they should be “institutional” investors; therefore, a SICAR does not need to comply with any risk diversification rules.

Fact Sheet

• The law with regard to the SICAR status is dated 15 June 2004

• A SICAR can be created under the form of :

- a capital corporation under the form of a public limited company (SA), a private limited company (Sàrl), a partnership limited by shares (SCA), or a corporative company set up as a public limited company (SC) or;
- a partnership under the form of a limited partnership(SECS)

• “Well informed” investors include professional or institutional investors, as well as any other investor who has confirmed in writing that he is aware of the risks and who is willing to invest a minimum of EUR 125.000,-

• Capital of the SICAR: EUR 1 million (to be reached within 12 months after constitution); capital is variable (except for SECS) and can be paid-in in cash or in kind

• No debt/equity rules are applicable

• No obligation for a legal reserve

• Only investments in non quoted companies or in real estate are permitted

• Neither semi-annual nor consolidated accounts are to be issued

• The constitutional documents, the contracts with service providers as well as the directors of the SICAR have to be approved and are monitored by the Luxembourg banking and stock market supervision (CSSF); the "investment manager" is not subject to the approval of the CSSF

• Once a SICAR is approved by the CSSF, there should not be any further obstacles in order to be listed on the Luxembourg stock market

• A SICAR is free to determine its asset valuation method, which shall be mentioned in the articles of incorporation

• A SICAR needs to be audited by an external auditor

• A SICAR cannot be part of a fiscally integrated group

Tax facts

The taxation of the SICAR depends on whether it is incorporated as a partnership or as a capital company. In case of a partnership, the taxation on revenues and capital gains will be done directly on behalf of its shareholders and in proportion of their stake in the SICAR. Foreign investors of this kind of SICAR will hardly pay any taxes in Luxembourg.

The following tables illustrate the tax regime of a SICAR that is incorporated as a capital company.

A. Company incorporation

Tax	Treatment for "capital" SICAR
Capital duty	EUR 75,- flat

B. General tax features

Tax	Treatment for "capital" SICAR
VAT	Management services rendered to a SICAR are VAT exempted
Annual Subscription Tax	Exempted
Net Worth Tax (ISF)	Exempted
Corporate Income Tax (IRC)	21,84% on taxable profits BUT: Revenues and capital gains from private equity participations are exempted
Municipal Business Tax (ICC)	6,75% on taxable income, depending on the municipalities BUT: Revenues and capital gains from private equity participations are exempted
EU directives and tax treaties	In principle: Compatible, a SICAR should be considered as a"fully taxable" company

C. Incoming flows

Operation	Treatment for "capital" SICAR
Revenues from participations (dividends)	Exempted
Capital gains from participations	Exempted
Revenues from other sources than participations	28,59% on taxable income (=> sum of IRC and ICC)
Losses in value of participation	Realized and non-realized losses in value of the participations cannot be deducted on the taxable revenues of the SICAR

D. Outgoing flows

Operation	Treatment for "capital" SICAR
Dividends paid	No withholding tax
Interests paid	No withholding tax BUT: "Savings Directive" is applicable ➔ Withholding tax of 20% if paid to EU-resident individuals (rate applicable until 2011)

E. Liquidation of the company

Operation	Treatment for "capital" SICAR
Liquidation proceeds	No withholding tax

Advantages compared to regular companies and to ordinary investment funds (UCI's) can be summarized as follows:

SICAR	
Compared to regular companies (e.g. SOPARFI's):	Compared to UCI's (e.g. SICAV's):
No withholding tax on dividend distribution	No subscription tax
No debt/equity ratio	No risk spreading rules
No legal reserve	No need for consolidated accounts
Variable capital	Quicker and easier set-up
	Less regulated

Conclusion

The overall tax burden of a SICAR is extremely low and hardly any taxes are payable on private equity investments at the level of the SICAR. In other words, a SICAR is almost tax neutral.

Beyond the tax scheme, the SICAR is easy to handle and the regulatory requirements are at a minimum. Only the SICAR itself together with its directors as well as the service providers, such as the domiciliation agent, the custodian or the auditors need to be approved by Luxembourg banking and stock market supervision (CSSF). The fact that there is no risk-diversification rule allows a SICAR to invest in a specific activity or in a restricted number of chosen companies. This puts the SICAR as a prime investment tool for private equity or venture capital investors.

The Luxembourg banking secrecy is applicable to this kind of investment vehicle.

To sum up, the very attractive tax features as well as its flexibility put the SICAR in a prime position among the private equity investment tools on a global scale.

Last update, 2012

finexis S.A.

Finexis S.A. • 25A, boulevard Royal L-2449Luxembourg • Phone: (+352) 20 21 29 • Fax: (+352) 20 21 29 99 • www.finexis.lu • info@finexis.lu