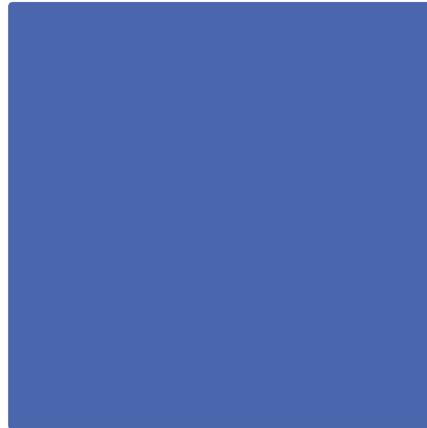




VENTURE CAPITAL IN LUXEMBOURG: WHERE DO WE STAND?



Venture Capital

- Definition of venture capital :
 - Venture capital is focused on start ups and early stage companies to provide finance from inception (seed capital) or for early commercial and/or technological developments.

- Private equity & venture capital:
 - Private equity generally refers to the acquisition of a company or a stake in a company through a transaction involving privately held equity or other non-public securities by an investor or group of investors; and
 - Private equity is meant to provide financial assistance for medium or long term; and
 - Private equity is usually for unlisted companies.

- Venture capital is a subset of private equity;
- Venture capital is mostly directed to innovative technology companies;
- It has traditionally been used to mark the early stages in a life cycle of a company and
- It has immediate impact on the employment creation.

Luxembourg: an ideal environment for Venture Capital

- A financial centre and investment fund centre
- Political, legal and regulatory environment
- High regulatory and investor protection standards
- Solid financial sector supervision
- Rapid, efficient and innovative responses to new trends
- Europe's number one investment fund centre
- Unique concentration of investment fund industry experts
- Long track record in alternative investment products
- High volume of European deals backed by private equity/venture capital firms
- A prime jurisdiction for structuring of venture capital funds

The Luxembourg law regulating Venture Capital

- Law of 12 July 2013 of alternative investment funds (“AIF Law”) transposing the directive 2011/61/EU dated 8 June 2011 (“AIFMD”)
- Conditions of art. 4 (1) (a) AIFMD (art. 1 (39) of the AIFM Law) need to be fulfilled:
 - AIFs means collective investment undertakings, including investment compartments thereof, which raise capital from a number of investors, with a view of investing it in accordance with a defined investment policy for the benefit of those investors; and do not require any authorization pursuant to UCITS Directive 2009/65/EC.

The Luxembourg law regulating Venture Capital

- Geographical Scope

- EU AIFMs which manage one or more EU or non EU AIFs;
- Non-EU AIFMs which manage one or more EU AIFs; and
- Non-EU AIFMs which market one or more EU or non EU AIFs in the EU.

- Figures

- In 2013 the network of “Private Equity and Venture Capital” had 300 billion Euros of assets under management and 2.000 employees;
- In 2013 Luxembourg was home for 278 SICARs and more than 1500 SIFs of which 10% can be considered to be used for private equity or venture capital investments; and
- The vast majority of the Luxembourg SICAR is investing in private equity. 62 percent of the SICARs net assets of some 30 billion Euros were invested in this sector in 2012.

Main Venture Capital Investment Vehicles: SICAR

- SICAR (*Société d'Investissement en Capital à Risque*)
 - Introduced by the law of 15 June 2004 as a venture capital and private equity vehicle;
 - Modernized by the law of 24 October 2008;
 - SICARs may be organized as multiple compartment structures (segregation of assets and liabilities on a compartment by compartment basis);
 - Specifically dedicated to private equity and venture capital investments;
 - Designed as a flexible and tax neutral structure;
 - Must invest in risk-bearing investments in form of debt or equity;
 - Investments do not have to be listed and no risk diversification rule applies; and
 - Minimum capital requirement upon incorporation. S.A./SCA: EUR 31,000; S.à r.l.: EUR 12,500;
 - Subscribed share capital and share premium must reach EUR 1 million within 12 months from authorization.

Main Venture Capital Investment Vehicles: SOPARFI

- SOPARFI (*Sociétés de Participations Financières*)
 - It is subject to the law of 10 August 1915 on commercial companies;
 - SOPARFI is normally incorporated in the form of private limited liability companies (*Société à responsabilité limitée* or S.à r.l.) or public limited liability company (*Société Anonyme* or S.A.).
 - The term SOPARFI does, therefore, not refer to a specific type of company existing under Luxembourg corporate law. Rather, it is a generic term that encompasses unregulated, fully taxable Luxembourg companies whose object is the holding of equity participations and/or intra-group financing companies.
 - As such, a S.A. or a S.à r.l. can also perform commercial activities, and sometimes perform such activities as an accessory to holding and financing activities.
 - Typically used for holding and financing private equity and venture capital investments;
 - Can be used as stand-alone (venture capital) acquisition, holding or financing vehicles or in combination with SICARs, SIFs and UCIs.

SOPARFI - Tax aspects

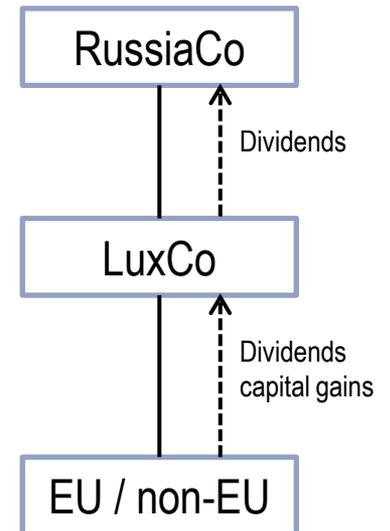
- Tax aspects

- Statutory tax rate: 29.22% in 2014
- Under certain conditions, exemption regime possible from corporate income tax on dividends received or capital gains realized upon disposal of its participation on its qualifying subsidiaries
- Intellectual property exemption subject to conditions
- Exemption from dividend withholding tax requiring cumulatively
 - a minimum participation threshold
 - a holding period of the minimum participation above of at least 12 months which does not need to be fulfilled already at the time the dividend is distributed; and
 - that the parent company be eligible.
- Eligible companies include notably:
 - a fully-taxable Luxembourg company
 - an entity covered by the Parent-Subsidiary directive, which in practice includes most European taxable companies; and
 - a parent company resident in a country that has concluded a tax treaty with Luxembourg and is subject to a tax comparable to Luxembourg corporate income tax.
- Advance tax ruling system to secure upfront the tax treatment of transactions (prompt and flexible tax authorities – written confirmation is obtained within 2 to 6 weeks): pragmatic approach
- Not subject to VAT unless it performs activities subject to VAT

HOLDING – EU SUBSIDIARIES OR “HIGH-TAXED” NON-EU SUBSIDIARIES

Benefits

- Full exemption on incoming dividends and capital gains (participation exemption regime)
 - 10% ownership or acquisition price of EUR 1.2m (dividends) / EUR 6m (capital gains)
 - 12 months holding period
 - “Subject to tax” requirement (except for EU subsidiaries)
- No Luxembourg withholding tax on dividends paid to RussiaCo under domestic rules
- In principle, no foreign withholding tax on incoming dividends from EU/non-EU subsidiaries pursuant to EU Directive and tax treaties
- No withholding tax on Luxembourg liquidation proceeds

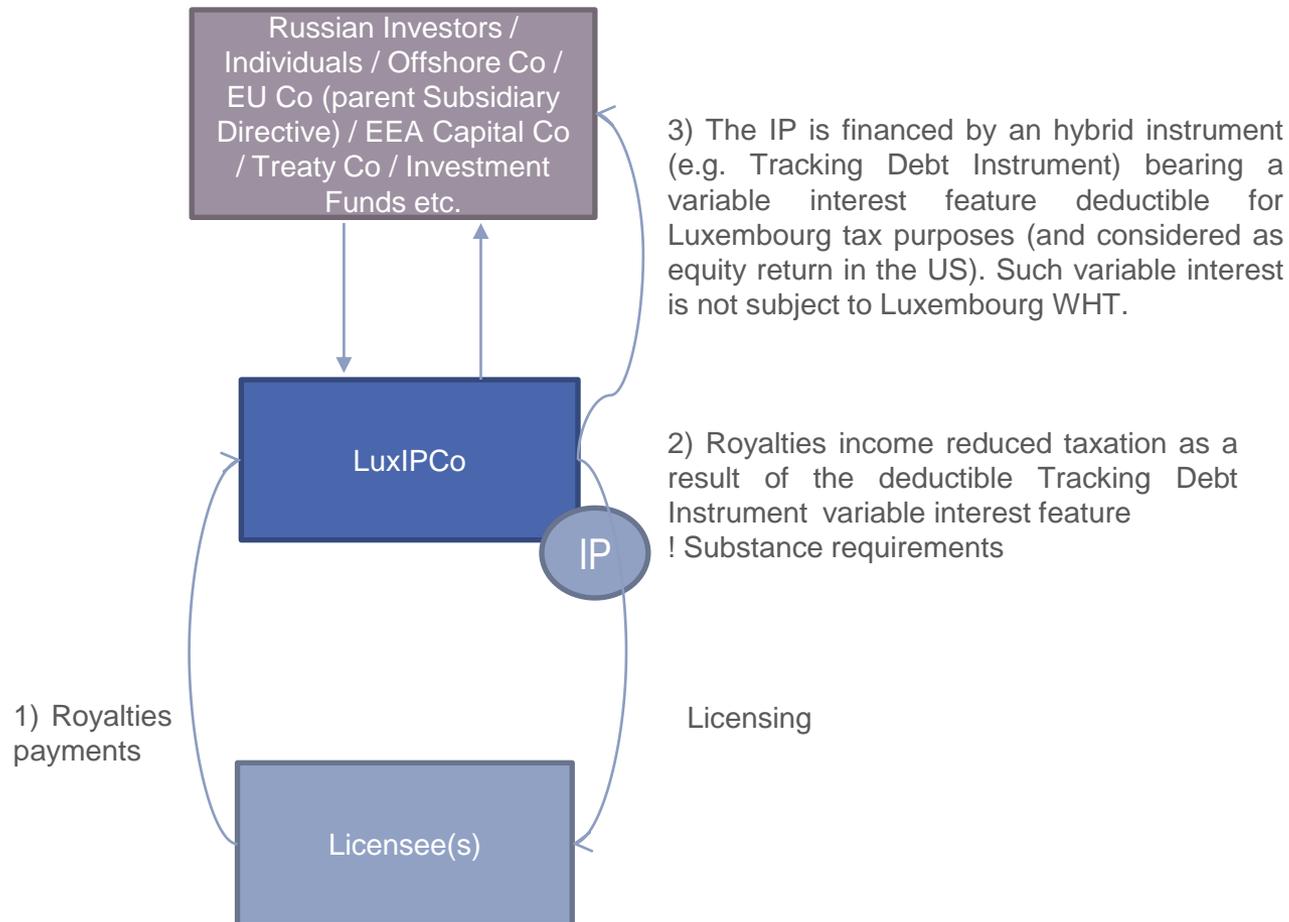


Other considerations

- Luxembourg tax clearance
- Luxembourg substance requirements

LUXEMBOURG IP STRUCTURE (USING HYBRID INSTRUMENT)

- 1) Royalties may be subject to a reduced withholding tax under the DTT
- 2) LuxIPCo is taxed on a margin equal to the difference between its net royalty income and the yield on the Debt Instrument – effective taxation between approx. 1.5% and 3%
- 3) No Luxembourg withholding tax (WHT) on accrual (or payment) of yield on the Tracking Debt Instrument



- 3) The IP is financed by an hybrid instrument (e.g. Tracking Debt Instrument) bearing a variable interest feature deductible for Luxembourg tax purposes (and considered as equity return in the US). Such variable interest is not subject to Luxembourg WHT.
- 2) Royalties income reduced taxation as a result of the deductible Tracking Debt Instrument variable interest feature
! Substance requirements

Main Venture Capital Investment Vehicles:

SIF 1/2

- SIF (Specialized Investment Funds)
 - SIFs are subject to the law of 13 February 2007 relating to SIF which was modernized by the law of 26 March 2012;
 - Great deal of flexibility;
 - Allows the creation of specialized investment funds under a corporate form or contractual arrangement → co-ownership (FCP – *fonds commun de placement*);
 - If it is a co-ownership, it must be managed by a Luxembourg-based management company, which is either subject to Chapter 15 or 16 of the law of 17 December 2010 on undertakings for collective investments (“UCI Law”);
 - Minimum capitalization amounts to EUR 1 250 000 to be reached within 12 months of approval by the CSSF;

Main Venture Capital Investment Vehicles:

SIF 2/2

- SIF

- Most private equity and venture capital funds apply a commitment-based funding policy, which can be organized according to two different ways:
 - Entire subscription commitment is paid-up with a minimum 5% payment upon issue
 - Shares are issued fully paid-up as needed and within the limits of the contractual subscription commitment
- Very flexible legally
- No restrictions in respect of underlying assets
- Diversification rules
- Attractive tax regime; and
- Opens the door to both conventional or Sharia compliant investments.

Main Venture Capital Investment Vehicles:

Part II UCI

- Part II UCI (Undertakings for Collective Investment)
 - Certain promoters have structured their private equity and venture capital funds under Part II of the UCI Law;
 - An UCI may pursue alternative investment policies such as real estate, private equity and venture capital investments;
 - Circular IML 91/75 as amended by Circular CSSF 05/177 (Circular 91/75) outlines the terms and conditions for venture capital funds;
 - The circular prescribes that the members of the management body as well as the investment adviser must establish that they have sufficient experience in the field of venture capital investments;
 - The shares issued to investors must have a minimum price of 12,500 Euros;

European Venture Capital Fund (the “EuVECA”) 1/3

- Regulation on EuVECA adopted on 21 March 2013;
 - Entry into force on 22 July 2013 with the AIFM Directive.
- As from 22 July 2013 managers of EUVECA may be granted a European Passport permitting them to market the shares or units to suitably qualified investors throughout the European Economic Area;
- Available to managers of UCI established in the European Economic Area, whose assets under management do not exceed the AIFM Directive threshold of 500 million Euros;
 - Defined as: Investment in securities of unlisted companies because either these companies are recently formed or are still in the course of development
 - Managers must be legal persons whose regular business includes managing at least one qualifying European fund and they must be established in the EU/EEA.

European Venture Capital Fund (the “EuVECA”) 2/3

- The managers are required to meet conduct of business requirements including:
 - Act honestly, fairly and with due skill, care and diligence in conducting their activities
 - Apply appropriate policies and procedures for preventing malpractices
 - Conduct their business activities so as to promote the best interests of the qualifying European funds they manage, the investors in those qualifying European funds, and the integrity of the market
 - Apply a high level of diligence in the selection and ongoing monitoring of investments in qualifying portfolio undertakings
 - Possess adequate knowledge and understanding of the qualifying portfolio undertakings in which they invest
 - Treat investors fairly
 - Ensure that no investor obtains preferential treatment unless such preferential treatment is disclosed in the constitutional document of the qualifying fund

European Venture Capital Fund (the “EuVECA”) 3/3

- The managers may delegate functions to third parties. The manager's liability towards the qualifying European fund or the investors therein is unaffected by the delegation. The manager cannot delegate functions to the extent that it becomes a letter-box entity.
- The managers are required to identify and avoid conflicts of interest and, where they cannot be avoided, manage, monitor and disclose those conflicts of interest in order to prevent them from adversely affecting the interests of the qualifying European funds and their investors and to ensure that the qualifying European funds they manage are fairly treated.
- The manager of a qualifying European fund must have sufficient own funds and employ adequate and appropriate human and technical resources.
- Where the 500 million Euros are exceeded, an authorization is required

Wildgen is a longstanding business law firm offering excellent quality in all key areas of law through seamless and sizeable teams of lawyers that are truly accessible while ensuring unrivalled client care.

“A firm you can rely on.”



wildgen
PARTNERS IN LAW

About Wildgen, Partners in Law

- Serving clients since 1923 - Long-term experience
- One of the best known and well-respected law firms in Luxembourg
- Full-service business law firm
- Fully independent
- LPEA members (Luxembourg Private Equity and Venture Capital Association)

KEY FIGURES

Founded in 1923

85 people

8 Partners / Heads of Practice Groups

16 Nationalities

14 Spoken Languages

OUR VALUES

Unrivalled client care.

Quality.

Respect and team spirit.

Entrepreneurial.

One firm.

How we can assist

- For decades now, we have served and assisted our clients in achieving success with their goals in the following practice areas:
 - BANKING AND FINANCE
 - COMMERCIAL, LITIGATION AND LABOUR LAW
 - CORPORATE LAW AND STRUCTURES
 - INTELLECTUAL PROPERTY, TECHNOLOGIES, MEDIA AND TELECOMMUNICATIONS
 - INVESTMENT FUNDS
 - TAX

Private Equity / Venture Capital

- **As one of the major law firms in Luxembourg, Wildgen acts as the Luxembourg counsel for major players in the field of PE/VC:**
 - Investors and sponsors, family offices, private equity houses, funds, banks and financial institutions.

- **Our services include:**
 - LBO structuring,
 - Funds structuring,
 - Debt financing and restructuring,
 - Exits (private sales / IPO),
 - Portfolio restructuring and refinancing,
 - Management incentive schemes / stock option plans,
 - Taxation.



“Our diversity, integrated approach and knowledge of Luxembourg jurisdiction allow us to have a global overview for every transaction and to offer cutting-edge and reliable consultancy, saving time and money to our clients.”

wildgen
PARTNERS IN LAW

Wildgen C.I.S. Desk

- **Russian-native speakers** providing advice to C.I.S. companies willing to invest in Luxembourg and to Luxembourg investors that want to develop operations in C.I.S.
- **Services in native Russian and years of experience in the C.I.S. market**, eliminating cross-culture risks and misunderstandings
- **Strong network of contacts** in the C.I.S. and Eastern Europe financial and capital market sectors
- **Full range of services** including corporate law, investment funds, private equity, banking & finance, tax, and IP/TMT
- **Tailored legal services** to meet strategic needs in the Russian-speaking countries and markets

Contacts:

- **Samia RABIA**, Partner - samia.rabia@wildgen.lu tel. +352 40 49 60 221
- **Anna MARTYENKO**, Business Development Manager - tel. +352 26 186 809



wildgen
PARTNERS IN LAW