

Fund Briefing for Luxembourg, Belgium and the Netherlands

Recent developments in Fund Regimes

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1. The Luxembourg SIF regime

1.1 Introduction

In February 2007 Luxembourg enacted the law on specialised investment funds (the 'SIF Law'). The SIF Law replaces the 1991 law on undertakings for collective investment ('UCIs'), commonly referred to as institutional investor funds, the securities of which are not intended to be offered to the public. The result is a lightly regulated, operationally flexible and tax-efficient investment fund regime for an internationally qualified investor base.

1.2 Main conditions

Legal structure

The SIF regime may be applied to any entity formed under Luxembourg law including the FCP and SICAV. In summary, the SIF regime can be applied to:

- A tax-transparent common fund established by a contractual arrangement (*fonds commun de placement*), managed by a Luxembourg management company (a 'FCP-SIF');
- An investment company with variable capital ('SICAV') in the corporate form of a private limited liability company (*société à responsabilité limitée* or 'Sàrl'), public limited liability company (*société anonyme* or 'SA'), partnership limited by shares (*société en commandite par actions* or 'SCA') or cooperative company in the form of a public limited liability company (*société coopérative sous forme de société anonyme* or 'SCSA') (a 'SICAV-SIF');
- Any entity formed under Luxembourg law, including a limited partnership (*société en commandite simple* or SCS).

Eligible investors

Any institutional, professional or 'well-informed' investor may invest in, but also initiate or launch, a SIF. The 'well-informed' investor status basically entails that an investor invests at least EUR 125,000 in the fund, or in the case of a smaller investment, obtains an appraisal from a credit institution, a qualifying investment enterprise, or a management company certifying the investor's expertise, experience and knowledge justifying his adequate appraisal of an investment in the relevant SIF. It is thus not the SIF itself that is 'specialised', but it is the investor base which must be 'specialised'.

Supervision

Establishing a SIF does not require prior authorisation by the Luxembourg regulatory authority for the financial sector (*Commission de Surveillance du Secteur Financier* or 'CSSF'). However, the constitutional documents of the relevant SIF must be filed with the CSSF within one month following the establishment of the SIF. Although the CSSF will verify that the relevant SIF and its directors have complied with the applicable laws and regulations prior to admitting the SIF to the official SIF list, pending such admittance the SIF may in principle launch its activities once it has been established.

Investment policy

Although the SIF Law imposes the condition that the SIF adheres to a policy of risk diversification, the law does not elaborate on any quantitative, qualitative, geographical or other type of investment restrictions. In order to speed up the regulatory approval process, the CSSF has published a Circular (07/309) which provides additional guidance as to this risk diversification principle. Pursuant to this Circular, a SIF should generally not invest more than 30% of its assets or commitments in securities of the same kind issued by the same issuer. However, exemptions may apply to investments in securities issued or certified by an OECD Member State or by its territorial public communities, including international or local institutions and supranational bodies, and investments in other undertakings for collective investment that are subject to risk diversification requirements which in purpose and nature are at least comparable to the requirements imposed on SIFs.

The SIF is not permitted to be in a short position with respect to similar securities issued by the same issuer for more than 30% of the SIF's assets. If the SIF invests in derivative financial instruments, it must ensure, through a diversification of its underlying assets, a comparable risk diversification policy.

These guidelines apply to all SIFs, although the CSSF may grant exemptions, if appropriate. In addition, depending on the investment policy, the CSSF may require the relevant SIFs to adopt additional investment limitations. A second Circular (07/310) provides detailed information on the financial reporting obligations that must be adopted by SIFs.

1.3 Taxation

The tax regime of the SIF relies on the proven and tested tax regime of Luxembourg investment funds. Regardless whether the SIF is organised with or without legal personality, it is not liable to tax on its income or capital gains. Upon its establishment, a one-off lump-sum capital duty charge of EUR 1,250 is due.

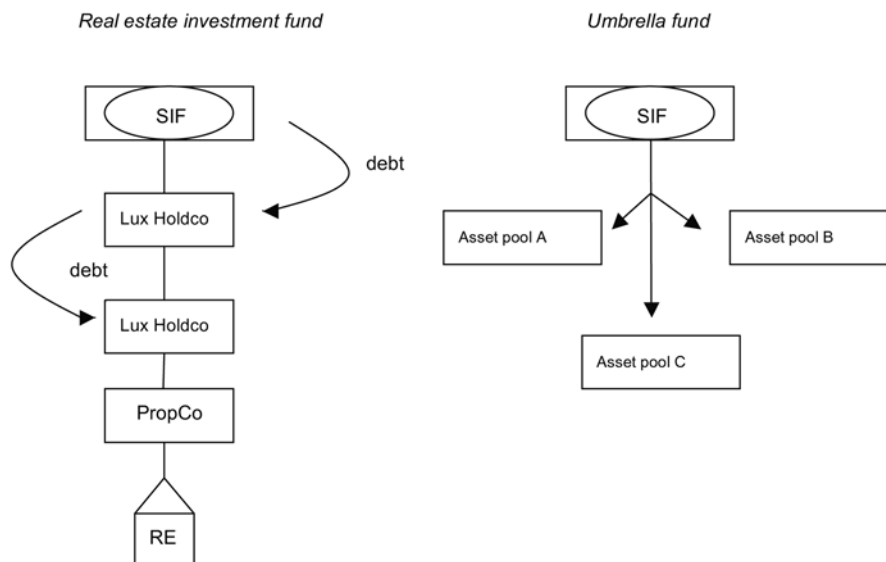
The SIF is subject to an annual subscription tax (taxe d'abonnement) of 0.01% assessed on the total of its net assets. There are certain exemptions to this annual subscription tax with respect to investments in other undertakings for collective investment that have already been subject to an annual subscription tax, and for SIFs that invest in certain money market instruments or that implement pension pooling schemes.

SICAV-SIFs will be eligible for the benefits of a selection of double tax treaties concluded by Luxembourg with other jurisdictions.

The Luxembourg management company of an FCP-SIF (typically in the form of an Sàrl) managing solely one FCP may benefit from the tax regime of the SIF, and as such is exempt from Luxembourg taxation.

1.4 SIF in practice

As of January 25, 2008 the total number of SIFs in place is 572. These existing SIFs adhere to a wide selection of investment policies ranging from traditional securities funds to infrastructure, logistics, private equity and hedge funds. Practice has proven that SIFs have also become popular as a platform for real estate investment funds. SIFs are also being used for a variety of fund-of-funds, umbrella funds and master/feeder funds. Please be referred to the below structure charts for some practical examples of a SIF being used as a fund vehicle for, respectively, a real estate investment fund, a private equity fund and an umbrella fund.



Comments to the above structure charts

Real estate investment fund: Since the SIF is allowed to issue debt instruments to its investee companies, a tax efficient structure (making use of a double tier Luxembourg holding structure) can be created where (rental) income from real property investments can be repatriated in a tax efficient manner (as interest on loans) to the SIF.

Umbrella fund: The SIF regime provides for the creation of different compartments, each compartment investing in a specific asset class (with the assets of each compartment being ring-fenced from the other compartments). For each compartment, a separate class of units is issued by the SIF, enabling investors to choose in which of the fund's asset classes they wish to invest.

2. The enhanced Belgian PRIVAK regime

2.1 Introduction

The Royal Decree of May 15, 2003 implementing the law of April 22, 2003 on the private investment vehicle, the *'private privak' / 'pricaf privée'* (**'PRIVAK'**) has been replaced in full by the Royal Decree of May 23, 2007 (**'2007 Decree'**). The PRIVAK regime is meant for privately held entities making (equity) investments in non-listed companies.

2.2 Main conditions

Legal structure

- The PRIVAK regime may be applied to one of the following limited liability entities formed under Belgian law: A public limited liability company (*'naamloze vennootschap' / 'société anonyme'*);
- A limited partnership with share capital (*'commanditaire vennootschap op aandelen' / 'société commandite par actions'*); or
- An ordinary limited partnership (*'gewone commanditaire vennootschap' / 'société en commandite simple' or 'SCS'*).

The 2007 Decree has substantially reduced the list of requirements for the PRIVAK's by-laws. The by-laws must contain an undertaking to comply with all existing and future legal and regulatory provisions applicable to the PRIVAK. One of the conditions is a maximum duration of the PRIVAK of twelve years.

The PRIVAK must be managed by a 'professional' management company. There is no further guidance available as to the criteria to be satisfied for a 'professional' management. Important is that no VAT is due on the management fees charged to the PRIVAK.

Eligible investors

The PRIVAK must have at least six shareholders. There is no maximum number of investors. The minimum commitment to the PRIVAK is EUR 50,000 per investor. The shareholders' meeting of the PRIVAK must decide with a majority of at least four shareholders jointly holding at least 50% of the voting rights (subject to any other applicable majority requirements in the Belgian Companies Code and the PRIVAK's by-laws). The above two limitations do not apply if at least one shareholder has a special status such as a Belgian or foreign undertaking for collective investments (UCITS), a Belgian or foreign pension fund, or a company operating under governmental authorisation, provided that this shareholder holds at least 30% of the voting shares of the PRIVAK while none of the other shareholders is controlling the PRIVAK. It seems therefore possible to have a PRIVAK with only two shareholders, one institutional investor that satisfies above-mentioned criteria and that holds at least 30% of the PRIVAK and a second shareholder investing at least EUR 50,000.

Affiliated shareholders are not allowed to participate in the PRIVAK unless they opt to be treated as one investor.

Supervision

The PRIVAK must be registered on the list of privaks with the *Federal Government Department of Finance* before starting its activities. Due to the private character of the PRIVAK, no prospectus is required and there is in principle no supervision by the Commission for Banking, Finance and Insurance ('CBFI'). However, the legislator has entrusted the external auditor (statutory auditor) with the supervision of the PRIVAK. In the event of a breach of the law, a copy of the auditor's report must be sent to the CBFI.

Regardless the legal form chosen, it is mandatory for the PRIVAK to draw up annual accounts and have them audited by an external statutory auditor. Following approval by the PRIVAK's shareholders, the annual accounts must be filed with the National Bank of Belgium where they are publicly available for inspection by third parties. Depending on its size, the PRIVAK will have to draw up full fledged or abbreviated annual accounts.

Investment Policy

The 2007 Decree sets out classes of financial instruments in which the PRIVAK is allowed to invest. These are limited to financial instruments issued by non-listed (Belgian or foreign) companies (e.g. shares, bonds, warrants, options). New is the fact that the PRIVAK is permitted to invest in private loans (e.g. mezzanine financing). Important to note is that otherwise there are no geographical limitations nor is there an obligation to diversify investments.

As a rule, the PRIVAK is not permitted to take an equity interest in a company as a result of which it can cast influence on the management of such company and the appointment of its directors. It is thus prohibited for a PRIVAK to control the portfolio company. Although the legislator has not provided any further guidance to the concept of 'control', it is clear that any direct control by the PRIVAK over a company is prohibited. One can nevertheless argue that indirect control by the PRIVAK is not forbidden, for instance in a situation where the PRIVAK would act as a feeder entity in a fund (not being a PRIVAK), whereby this feeder represents the majority of investors in the fund.

The 2007 Decree provides for certain exceptions to the prohibition of control over portfolio companies, the most important of which are:

- a company incorporated exclusively with a view to holding debt instruments (eg bonds, mezzanine loans, etc.) can be controlled by the PRIVAK, and
- the PRIVAK may control the portfolio company provided that the remaining shares are held by an institutional investor such as a foreign and Belgian UCITS or pension fund.

2.3 Taxation

A PRIVAK is subject to the ordinary Belgian corporate income tax regime at the rate of 33.99%, but virtually all items of income which a PRIVAK may generate are excluded from the corporate tax base. Belgium takes the position that a PRIVAK can benefit from the double tax treaties concluded by Belgium, and that a PRIVAK should be able to benefit from the EC Parent-Subsidiary Directive.

No capital duty tax is due on contributions to the PRIVAK. Management fees charged to the PRIVAK are exempt from VAT.

Dividends distributed by the PRIVAK are subject to 15% withholding tax. However, an exemption applies to the extent the distributed income originates from realised capital gains on shares, or to the extent the dividend is distributed to a non-Belgian investor and the distributed income originates from dividends from non-Belgian companies. Subject to conditions (such as a minimum participation of at least 15%), the exemption from withholding tax provided by the EC Parent-Subsidiary Directive might apply to distributions by the PRIVAK.

3. The Dutch VBI regime - latest developments

3.1 Introduction

In 2007 the Netherlands has introduced a new tax-exempt regime for investment funds (*vrijgestelde beleggingsinstelling* or 'VBI'). This new regime is now available in addition to the existing 'FBI regime' (*fiscale beleggingsinstelling*).

The VBI regime is very similar to the Luxembourg SIF regime, in that the VBI is an entity which is not liable to Dutch corporate income tax, whilst distributions of profits by the VBI are not liable to Dutch dividend withholding tax. In addition, and in contrast to the Dutch FBI regime or Luxembourg SIF regime, the VBI regime does not impose any conditions as to the composition of its shareholders, its level of debt financing or its profit distribution policy. Significant benefits of the VBI regime, as compared to the Luxembourg SIF regime, are the possibility of a full exemption from regulatory requirements, the absence of reporting obligations, an annual subscription tax and the absence of the compulsory appointment of domestic service providers.

3.2 Main conditions

Legal structure

A VBI must be structured as either of the following entities:

- A Dutch public limited company (*naamloze vennootschap* or 'NV');
- A common fund established by a contractual arrangement that is qualified as a separate entity for Dutch tax purposes (*fonds voor gemene rekening* or 'FGR', the legal form of which is comparable to that of the Luxembourg FCP);
- Foreign entities that have a comparable legal form to the Dutch NV or FGR. This enables foreign investment funds to apply for the VBI regime as well (e.g., a Luxembourg SICAV).

Eligible investors and regulatory supervision

The VBI must qualify as an investment institution within the meaning of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht* or 'Wft'). This requirement is generally satisfied if the VBI has at least two investors. The fact that the VBI regime is only eligible for funds that qualify as investment institution within the meaning of the Wft does not mean that such fund should at all times be regulated. Exemptions from the Wft licensing requirement are available, for instance, if the rights of participations in the VBI have a nominal value of at least EUR 50,000, or if they are offered for a consideration payable of at least EUR 50,000, or if they are marketed to a group of not more than 100 individual investors. The VBI must provide for (semi) open-ended status.

Investment policy

The VBI must pursue a risk diversification policy, although in practice this requirement should not be perceived as a restriction. The VBI is permitted to make passive investments in financial instruments, such as marketable shares, bonds, other securities including interests in investment funds, instruments commonly traded through an

exchange, commodity derivatives, forward contracts, swaps, contracts for differences and options on the aforementioned instruments. Although the VBI is not permitted to make direct investments in Dutch real estate and (mortgage) loans, an exception has been made for indirect investments in foreign real estate.

3.3 Taxation

The VBI is not liable to Dutch corporate income tax. As a consequence, the VBI will not be considered a resident of the Netherlands for tax treaty purposes so that the VBI should generally not expect to be eligible to a reduction of foreign withholding tax that it has suffered in respect of its interest and dividend income. The same applies with respect to Dutch dividend withholding tax incurred by the VBI which will not be recoverable (through a refund or a credit).

Distributions by the VBI are not liable to Dutch dividend withholding tax. Foreign corporate investors in a VBI are not liable to Dutch corporate income tax as a non-resident taxpayer in respect of their investment in a VBI, provided such investment is not attributable to a Dutch permanent establishment or representative. European individual investors in a VBI may be eligible for tax treaty protection against Dutch non-resident taxation.

Application of the regime must be formally requested to the competent tax inspector not later than by the end of the financial year in respect of which the VBI regime is intended to apply. This application, however, serves to provide certainty to the taxpayer and it does not render any discretionary powers to the tax inspector. If need be, corporate taxpayers wishing to convert to a VBI are permitted to interpose a balance sheet date to gain faster access to the VBI regime.

3.4 VBI in practice

Since its introduction, the VBI regime has attracted the interest of several categories of investors, ranging from Dutch and European HNWIs, family offices to pan-European institutional investors. Although practical experience is still in a process of being gained due to the VBI's novelty, we believe that an unregulated VBI offers interesting and efficient opportunities for private wealth management, hedge funds, and investment funds that invest in transferable or listed securities.

4. Reform of the Dutch FBI regime

4.1 Introduction

The FBI is widely used as an investment fund for investments in securities and real property (in the latter case, the FBI is being referred to as the 'Dutch REIT'). Although initially used as a public investment fund as a result of its shareholder's restrictions, legislative relaxations to these restrictions have now made the FBI an attractive investment fund vehicle for the private investment fund market as well.

4.2 Main reformed conditions

Tax

An FBI is liable to Dutch corporate income tax levied at a special rate of 0%, provided that certain requirements are met. As the FBI is liable to Dutch corporate income tax, it is generally able to claim tax treaty benefits in respect of, for example, dividends and interest it has received.

An FBI is required to withhold and remit 15% Dutch dividend withholding tax on its distributions of profits to its shareholders unless a treaty or domestic law provides for a reduction. European tax-exempt institutional investors are generally eligible for a refund of this withholding tax. In addition, an FBI is granted a rebate on its remittance obligation for Dutch and (in part) foreign withholding tax incurred by the FBI.

Legal structure

An FBI may be structured as a Dutch limited liability company (*besloten vennootschap* or 'BV'), a Dutch public limited company (*naamloze vennootschap* or 'NV') or a FGR (comparable to a Luxembourg FCP). In addition, the FBI regime can be applied for by any foreign entities that have a comparable legal form to the Dutch BV, NV or FGR. This means that, for instance, a German real estate company which meets the FBI conditions can apply for the 0% FBI regime in respect of its Dutch-based real estate, thus effectively achieving exemption from Dutch corporate tax.

Eligible investors

The legislative amendment has relaxed the shareholder requirements that must be satisfied in order to qualify as an FBI:

- The condition that a foreign shareholder is not permitted to own an interest of 25% or more in the FBI has been abolished.
- In principle, at least 75% of the investors should comprise of individuals, exempt corporate investors or other (foreign) FBIs. However, more lenient conditions apply if the shares of the FBI are either listed on a market in financial instruments or if the FBI or its manager is either subject to Dutch regulatory supervision or exempt from such Dutch regulatory supervision because it is regulated as an undertaking for collective investment in securities (UCITS) abroad.

Project development activities

In principle, an FBI is only allowed to be engaged in passive investment activities. On the basis of recent legislative amendments, an FBI is now also permitted to be engaged in property development activities for its own account, provided that - among other conditions - such development activities are carried out by a subsidiary company of the FBI. Such a subsidiary company will not qualify for FBI status and hence will be liable to the regular corporate income tax regime in respect of its development activities.

No amendments have been made to the FBI's maximum permitted leverage (60% of the Dutch corporate tax book value of direct investments in real estate and 20% of the tax book value of all other investments).

Compulsory dividend distribution

No amendments have been made to the compulsory annual distribution of the FBI's net taxable profits within eight months following the end of the relevant financial year. The FBI can elect to exclude the balance of realised capital gains and revaluation gains in respect of investments in securities from the determination of its net taxable profits. Dividend distributions are subject to 15% dividend withholding tax as further summarised above, except for distributions of the balance of realised capital gains/revaluation gains in respect of investments in securities if the FBI has elected to exclude these from its taxable profits. Distribution of such gains continues to be exempt from Dutch dividend withholding tax under domestic law.

4.3 Reformed FBI in practice

The FBI is typically being used as a widely owned listed or unlisted fund for direct and indirect investments in Dutch and foreign real property, transferable securities or as a feeder fund. Given the absence of withholding tax for institutional investors, the FBI is also often seen as a private fund for tax-exempt investors like pension funds. Specifically for foreign funds investing in Dutch real estate, the possibility for foreign entities to apply for FBI status makes it possible to increase the fund's financial performance by setting the Dutch tax rate at 0%. In addition, the relaxation of shareholder's restrictions have made it possible for foreign FBI-like entities (such as French SIICs) to make a direct bid for Dutch FBIs, thereby preserving the FBI status of the target.

5. MiFID in the Benelux countries

On November 1, 2007, the Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EU) was implemented in each of the Benelux countries. The MiFID replaces the Investment Services Directive (Directive 93/22/EU) and aims, amongst certain others objectives, to provide for a harmonised set of rules with regard to licensing, organisational requirements and conduct of business rules in respect of transparency, transaction reporting and duty of care (best execution, know your customer, etc.) of investment firms. In accordance with the provisions of the MiFID, once licensed as an investment firm in an EU country (in accordance with the MiFID provisions), such firm has the benefit of a European passport that allows it to perform the investment services in other European countries without being required to go (once more) through a registration process in such other countries.

MiFID introduced a new element in the definition of investment services: the rendering of investment advice. Investment advice is described as the making of personalised recommendations to a client in respect of one or more transactions in financial instruments. The licensing requirement is triggered only to the extent the advice is being given to a specific client and such advice relates to the purchase, sale, subscription or exchange of specific financial instrument. General advice given to members of the public does not qualify as investment advice. Licensed investment institutions or their respective managers may without a specific license to that effect give investment advice to investors in relation to the rights of participation in such investment institutions or the investment institution managed by such investment institutions or managers, provided that these activities are subject to certain conduct of business rules that apply to these services under the MiFID.

In accordance with the provisions of the MiFID (section 2(1)(h)), investment institutions or their managers or depositaries generally fall outside the scope of MiFID to the extent the activities of the investment institution or its manager or depositary are within the scope of collective portfolio management. Collective portfolio management includes investment management, administration (including units redemption and sales) and marketing.

Also in the case where an investment institution does not itself perform investment services, it may be faced with requirements imposed by MiFID due to the fact that the investment firms they engage must be MiFID compliant.

6. Other developments

6.1 Luxembourg

Tax

As per January 1, 2008, the Luxembourg capital duty rate has been reduced from 1% to 0.5%. It has further been announced by the Luxembourg government that capital duty will be abolished altogether as of 2010.

Regulatory

The Committee of European Securities Regulators ('CESR') published in June 2007 its findings on the functioning of the supervision on the Prospectus Directive and the Regulation (Directive 2003/71/EC and Commission Regulation 809/2004). Further, in September 2007, the CESR published an updated overview of frequently asked questions. The Prospectus Directive will be reviewed by the European Commission in 2008.

The Prospectus Directive is the subject of the Luxembourg law of July 10, 2005, on prospectus with respect to securities ('Prospectus Law'). This law applies to closed-end funds (defined as funds that do not allow any redemption upon the investors' request) as well as collective investment schemes which do not qualify as undertakings for collective investment.

The offer to the public of securities issued by such vehicles is subject to certain obligations imposed by the Prospectus Law. The most important of these conditions is the compulsory release of a prospectus which has been approved by the Luxembourg CSSF, and which format and content must comply with the requirements set out by the Prospectus Law. However, certain exemptions are available (such as the offer of securities to qualified investors, to a close circle of investors, the solicitation of a high amount of minimum investment or securities that provide for a high subscription price per unit or low aggregate value of the offer).

The admission to trading on the Luxembourg Stock Exchange, which is a regulated market as published by the European Commission, of securities issued by closed-end funds is also subject to the provisions of the Prospectus Law and to the supervision of the CSSF.

The admission to trading on the Luxembourg Euro-MTF is subject to rules governing the market operator and its supervision.

6.2 The Netherlands

Regulatory

The involvement of activist hedge funds (notably opportunistic hedge funds or funds pursuing long/short equity strategies) in the business operations of well-established Dutch enterprises such as Stork, ABN AMRO and Hagemeyer was subject to public scrutiny and

has triggered a research study by the Ministry of Finance in June 2007 on the behaviour of private equity and hedge funds. This study concluded that the actions of private equity and hedge funds have contributed to the economic growth and created employment. According to this study, the contribution of hedge funds to the market sector was considered to be moderately positive. However, certain legislative proposals are on the agenda:

- to decrease the thresholds from 5% to 3% which trigger a compulsory notification and identification for investments in companies which are listed at NYSE Euronext in Amsterdam,
- on the identification of shareholders, and
- to increase the statutory thresholds which allow a shareholder to put items on the agenda for general meetings of shareholders of listed companies.

A bill has been submitted to the Dutch Parliament which, when enacted, will make it possible for Dutch limited partnerships (*commanditaire vennootschap* or 'CV') and Dutch general partnerships (*vennootschap onder firma* or 'VOF') to elect for legal personality. This bill also contains provisions to ensure that an election for legal personality will not change the current Dutch income and corporate tax treatment of the CV or VOF and its partners. However, the bill does propose to significantly amend the current liability to the Dutch 6% real estate transfer tax on the acquisition of shares, units or participating interests in entities whose assets consist to significant extent of Dutch real estate.

Tax

A recent legislative change has abolished the possibility for FBIs to reclaim in full (through a refund or credit against Dutch corporate tax) Dutch dividend tax that they have incurred, and the current cash compensation payment to FBIs for foreign withholding taxes that they have suffered. Instead, an FBI is now only able to recover such Dutch and foreign withholding tax through a rebate of the amount of Dutch dividend tax which the FBI withholds on its distributions of profits and which it must remit to the Dutch tax authorities. Subject to certain limitations and conditions, this rebate is basically equal to the aggregate amount of Dutch dividend tax and foreign withholding tax that the FBI has incurred.

As part of the same legislative changes, a reduction has been introduced to the refund of Dutch dividend tax to Dutch and other EU-resident tax-exempt entities which they have incurred with respect to dividends received from a Dutch FBI. Effectively, this reduction- which is calculated on the basis of a certain formula - reflects the claimant's proportionate share of the foreign withholding tax in respect of which the FBI has claimed a rebate against its Dutch dividend tax remittance obligation.

Annex

Comparison of four entities that frequently serve as fund or feeder entity: Dutch CV, BV and Coop, and the Luxembourg Sàrl

	Dutch CV	Dutch BV	Dutch Coop	Luxembourg Sàrl
<i>Legal form</i>	<i>Commanditaire Vennootschap (CV).</i>	<i>Besloten Vennootschap (BV).</i>	<i>Coöperatie U.A. (Coop).</i>	<i>Société à responsabilité limitée.</i>
<i>Corporate profile</i>	Limited partnership with no separate legal personality (a bill is pending that makes it possible to elect for legal personality). Investor liability limited to contribution and capital commitment.	Separate legal personality. Investor liability limited.	Special form of a Dutch association with separate legal personality, which is governed by certain specific rules and the general rules applicable to Dutch associations (<i>verenigingen</i>). Investor liability limited to contribution and capital commitment.	Separate legal personality. Investor liability limited.
<i>Transferability</i>	For tax reasons, transparency can be achieved only if LPA provides for unanimous consent from all the partners for a transfer of limited partnership interests or the admission of new limited partners. A deemed consent may apply for investors not responding within a four weeks period following notification.	No specific requirements.	For tax reasons, a transfer of interests or the admission of new members generally requires the consent from the board of the Coop.	Transfer of shares to third parties requires approval of shareholders representing at least 75% of the share capital.
<i>Investors' requirements</i>	No requirements.	No requirements.	At least 2 members required at incorporation.	No requirements.
<i>Tax treatment</i>	Not subject to corporate income tax, withholding tax, capital duty, net wealth tax or annual subscription tax. Limited partners may be subject to corporate income tax (permanent establishment); in such a situation the participation exemption (see under Dutch BV) may apply and effectively eliminate tax liabilities.	Normally subject to 25.5% corporate income tax. Exemption applies to dividend and capital gains income realised from ≥ 5% shareholdings in active companies and real estate companies ('participation exemption').	Normally subject to 25.5% corporate income tax. Exemption applies to dividend and capital gains income realised from ≥ 5% shareholdings in active companies and real estate companies ('participation exemption').	Normally subject to 29.63% corporate income tax. Exemption generally applies if dividend and capital gains income is realized from a shareholding (i) which is held - or will be held - for at least 12 months, (ii) in which Sàrl is either invested for ≥ 10%, or has an acquisition price of ≥ €1.2M (dividend income) respectively ≥ €6M (capital gains), and (iii) in case of non-EU shareholdings, a subject to tax requirement is met.
<i>Tax Treaty protection</i>	CV is tax-transparent. Hence, in principle, no tax treaty protection.	BV can, in general, make use of Dutch bilateral tax treaties.	Coop can, in general, make use of Dutch bilateral tax treaties.	Sàrl can, in general, make use of Luxembourg's bilateral tax treaties.
<i>Taxation of distributions</i>	No withholding tax or other tax liabilities as a result of CV's tax-transparency.	Subject to 15% withholding tax. Under circumstances corporate income tax is imposed. Reduction or elimination of these tax liabilities may apply on the basis of EC Parent-Subsidiary Directive, or tax treaties.	No withholding tax. Under circumstances corporate income tax is imposed. Reduction or elimination of this tax liability may apply on the basis of tax treaties	Subject to 15% withholding tax. Reduction or elimination of this tax liability may apply on the basis of the EC Parent-Subsidiary Directive or tax treaties. Alternatively, hybrid financial instruments may be employed to capitalize the Sàrl.
<i>Flexibility</i>	Flexibility in partnership agreement: lock-up, open/closed ended, redemption and distribution, etc. However, transferability rules must be taken into account to ensure tax transparency.	Flexibility in setup.	Flexibility in setup.	Flexibility in setup, however 75% shareholder approval requirement must be taken into account in relation to third party transfers.
<i>Regulatory provisions</i>	If set up as an institutional fund not subject to prior authorisation or on-going supervision. No reporting obligations and no external audit required.	Depending on the investors' base, the manager or the BVI may be subject to a license requirement and ongoing supervision by the Autoriteit Financiële Markten (AFM). In practice, an exemption should generally apply (e.g. for funds with an institutional investors' base).	Depending on the investors' base, the manager or the Coop may be subject to a licence requirement and ongoing supervision by the Autoriteit Financiële Markten (AFM). In practice an exemption often applies (e.g. for Coops with an institutional investors' base).	In principle not subject to regulation.
<i>Risk diversification</i>	None.	None.	None.	None.

Comparison of five fund regimes: Luxembourg SIF and SICAR regime, Dutch FBI and VBI regime, and Belgian PRIVAK

	Luxembourg SIF	Luxembourg SICAR
<i>Legal form</i>	<p>1. Various corporate entities either with or without SICAV status: <i>Société Anonyme (SA)</i>, <i>Société en commandite par actions (SCA)</i>, <i>Société à responsabilité limitée (Sàrl)</i> or <i>Société cooperative (SCSA)</i>.</p> <p>2. FCP-SIF: <i>Fonds commun de Placement</i>.</p> <p>3. SCS-SIF: <i>Société en commandite simple</i>.</p>	<p>1. Corporate: <i>Société Anonyme (SA)</i>, <i>Société en commandite par actions (SCA)</i>, <i>Société à responsabilité limitée (Sàrl)</i> or <i>Société cooperative (SCSA)</i>.</p> <p>2. <i>Société en Commandite Simple (SCS)</i>.</p>
<i>Corporate profile</i>	<p>Separate legal personality. Limited liability.</p> <p>FCP-SIF: Co-ownership of assets established under Luxembourg law, managed by a Luxembourg management company. No separate legal personality. Investor liability limited to contribution and capital commitment.</p> <p>SCS-SIF: Limited partnership managed by its managing general partner. Limited liability for investors.</p>	<p>Corporate SICAR: separate legal personality. Investor liability limited.</p> <p>SCS-SICAR: partnership between a general partner as manager, and investors as limited partners. Limited liability for investors.</p>
<i>Investors' requirements</i>	Either institutional/professional investors or 'well-informed' investors (investing at least EUR 125,000 or benefiting from a certification).	Either institutional/professional investors or 'well-informed' investors (investing at least EUR 125,000 or benefiting from a certification).
<i>Tax treatment</i>	<p>Not subject to tax, except for annual subscription tax of 0.01% on net asset value of SICAV-SIF (save for certain exceptions), and a one-off fixed capital duty of EUR 1,250.</p> <p>SCS-SIF and FCP-SIF are tax transparent.</p>	<p>Corporate SICAR: subject to corporate income tax, but the return derived from securities is exempt. A SICAR is not subject to net wealth tax. No annual subscription tax. A one-off fixed capital duty of EUR 1,250.</p> <p>SCS-SICAR: tax transparent.</p>
<i>Tax Treaty protection</i>	<p>SICAV-SIF can make use of roughly half of the bilateral tax treaties concluded by Luxembourg. Most important ones are Germany, Spain, People's Republic of China, Portugal, Austria, Turkey, Singapore and Korea.</p> <p>FCP-SIF and SCS-SIF are tax-transparent: no tax treaty protection.</p>	<p>Corporate SICAR can, in general, make use of all Luxembourg's bilateral tax treaties.</p> <p>SCS-SICAR is tax-transparent: no tax treaty protection.</p>
<i>Withholding tax</i>	<p>SICAV-SIF: No withholding tax.</p> <p>FCP-SIF and SCS-SIF: no withholding tax as a result of its tax-transparency.</p>	No withholding tax.
<i>Regulatory provisions</i>	Subject to authorisation and on-going supervision by the CSSF. Application must be filed within one month after set-up. Appointment of a Luxembourg custodian bank entrusted with the safeguarding of the fund's assets and the daily administration thereof.	Subject to prior authorization and on-going supervision by CSSF. Appointment of Luxembourg custodian bank entrusted with the safeguarding of the SICAR's assets.
<i>Risk diversification; minimum net assets and other typical requirements</i>	<p>Principle of risk spreading applies. No quantitative, qualitative, geographical or other type of investment restrictions. 30% safe harbour rule.</p> <p>Net assets may not be less than EUR 1,250,000 (to be reached within twelve months).</p>	<p>No risk diversification rules apply.</p> <p>Net assets of a SICAR may not be less than EUR 1,000,000 (to be reached within twelve months).</p>

Dutch FBI	Dutch VBI-regime	Belgian PRIVAK
<p>1. <i>Corporate: Naamloze Vennootschap (NV) or Besloten Vennootschap (BV).</i></p> <p>2. <i>Fonds voor gemene rekening (FGR).</i></p> <p>3. A comparable foreign entity established under the laws of an EU Member State or certain other jurisdictions.</p>	<p><i>Naamloze Vennootschap (NV) or Fonds voor gemene rekening (FGR) or a comparable foreign entity established under the laws of an EU Member State or certain other jurisdictions.</i></p>	<p><i>Naamloze Vennootschap (NV) / Société Anonyme (SA), Commanditaire Vennootschap op Aandelen (Comm. VA) / Société Commandite par Actions (SVA), Gewone Commanditaire Vennootschap (Comm. V) / Société en Commandite Simple (SCS).</i></p>
<p>Separate legal personality if NV or BV. Investor liability limited.</p> <p>FGR: Co-ownership of assets established under Dutch law. No separate legal personality. Investor liability limited to contribution and capital commitment.</p>	<p>Separate legal personality. Investor liability limited.</p>	<p>Separate legal personality. Investor liability limited, except for the Comm. VA and Comm. V where at least one participant (the general partner) is jointly and severally liable for all obligations of the company.</p>
<p>Various conditions apply to the composition of the FBI's shareholders in terms of maximum interest that a single investor is allowed to hold.</p>	<p>VBI must have at least two investors.</p>	<p>No requirements as to the capacity of the investor (investing at least EUR 50,000).</p> <p>PRIVAK must have at least six (unaffiliated) investors. PRIVAK can have less than six shareholders if at least one shareholder has a special status such as a Belgian or foreign undertaking for collective investments (UCITS) or a Belgian or foreign pension fund.</p>
<p>Corporate income tax at a rate of 0%. Capital gains may be added to a tax free reinvestment reserve. No capital duty. Gearing limitations, an activity test and certain other restrictions apply.</p> <p>Profits must be distributed within eight months after the fiscal year-end. All classes of shares must share equally in the profits.</p>	<p>No liability to Dutch corporate income tax. No capital duty. No other levy.</p>	<p>Corporate taxpayer without tax base (except for certain items of income, generally not relevant for funds), meaning effectively tax exempt.</p>
<p>As the FBI is subject to corporate income tax (although at a rate of 0%), it can, in general, make use of bilateral tax treaties.</p>	<p>The VBI is exempt from corporate income tax, and, therefore, not entitled to tax treaty protection.</p>	<p>Entitled to tax treaty protection (from a Belgian perspective; unknown whether source countries grant treaty protection).</p>
<p>An FBI is required to withhold and remit 15% Dutch dividend withholding tax on distributions made to its shareholders unless a treaty or domestic law provides for a reduction or repayment. An FBI is granted a rebate on its remittance obligation for Dutch and (in part) foreign withholding tax incurred by the FBI. Distributions sourced from the reinvestment reserve are free from dividend withholding tax.</p>	<p>No withholding tax.</p>	<p>Dividend distributions are subject to 15% withholding tax, but a full exemption is granted to the extent the distributed income originates from realised capital gains on shares or the dividend is distributed to a non-Belgian investor and originates from dividend income from non-Belgian companies. The exemption under the Parent-Subsidiary Directive might also apply, as well as reduction or elimination of withholding tax pursuant to tax treaty.</p>
<p>Regulatory supervision is not a condition to benefit from the FBI regime (tax regime). However, depending on the investors' base, the manager or the FBI may be subject to a licence requirement and on-going supervision by the Autoriteit Financiële Markten (AFM). In practice, an exemption often applies (e.g. for funds with an institutional investors' base). If, however, it is subject to regulatory supervision, or specifically exempted from such regulatory supervision, the FBI enjoys more relaxed shareholder conditions. If the FBI qualifies as a UCITS, a European passport is available.</p>	<p>Regulatory supervision is not a condition to benefit from the VBI regime. However, depending on the investors' base, the manager or the VBI may be subject to a licence requirement and on-going supervision by the Autoriteit Financiële Markten (AFM). In practice, an exemption should generally apply (e.g. for funds with an HNWI or institutional investors' base). If the VBI qualifies as a UCITS, a European passport is available.</p>	<p>No supervision by the Commission for Banking, Finance and Insurance (CBFI).</p> <p>'Indirect' supervision by the statutory auditor (external auditor).</p>
<p>No risk diversification rules.</p> <p>The FBI is only permitted to be engaged in 'passive investment activities' (with limited possibility to be engaged in real estate development).</p>	<p>VBI should apply risk diversification. Requirement should be easily met in practice.</p> <p>Investments restricted to categories of securities/financial instruments listed in regulatory law. This may include foreign real estate if structured through a (tax-transparent) entity. VBI may not be used for direct investments in Dutch real estate.</p> <p>There is a limit on the permitted scope of assets. (semi-) Open-ended character is compulsory. No conditions as to the composition of VBI's shareholders or distribution policy.</p>	<p>No diversification of investments.</p> <p>Investments restricted to financial instruments listed in regulatory law and temporary or additional investments listed in regulatory law.</p> <p>Maximum term of a PRIVAK is 12 years.</p>

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