

RAIF

A) Background

RAIF is the acronym for “Reserved Alternative Investment Fund”, in French “*Fond d’Investissement Alternatif Réserve*” (FIAR). The introduction of the RAIF regime, by the law dated 23 July 2016, widens the range of investment vehicles available in Luxembourg.

The RAIF vehicle combines the characteristics and structuring flexibilities of Luxembourg regulated Specialized Investment Funds (SIFs) and of investment companies in risk capital (SICARs) qualifying as Alternative Investment Funds (AIFs), and is compliant with the AIFMD (Alternative Investment Fund Managers Directive).

The RAIF is not subject to the Luxembourg regulator’s (CSSF¹) approval before it is launched. At the same time, it benefits from all the same structuring flexibilities as all other CSSF approved and supervised Luxembourg funds. Therefore, the time-to-market is reduced, which represents an attractive advantage for well-informed investors.

1) Investors

The RAIF is reserved for investments made by well-informed investors.

These investors can be institutional (insurance companies, social security institutions, credit institutions, UCIs, local authorities, holding companies, pension funds, etc.) or professional (investors having the experience, knowledge and expertise to make their own investment decisions and properly assess the risks incurred).

Other investors have to confirm in writing the wish to become well-informed investors and invest a minimum of EUR 125,000, or provide a certification from a credit institution, an investment firm or a management company about their ability to understand the risks associated with investing in the RAIF.

¹ Commission de Surveillance du Secteur Financier



2) Investment strategy

The RAIF regime is optional and is open to Luxembourg AIFs managed by an authorized (domestic or foreign) external AIFM that invests in accordance with the principle of risk diversification.

The RAIF can invest in all types of assets without any restriction as far as the principle of risk-spreading is respected, unless investments are made in risk capital only (like the SICAR regime). All businesses invested in the RAIF are allowed to be marketed in all EU countries and be diversified through a single fund or an umbrella structure with an unlimited number of compartments.

3) Legal forms

The RAIF can adopt several legal forms. It can be set up as a common fund (FCP – “*Fond Commun de Placement*”), without legal personality and managed by a management company and/or it can be incorporated as an investment company (SICAV/SICAF – “*Société d’investissement à capital variable/fixe*”).

SICAVs and SICAFs may opt for the various legal forms provided for in the Luxembourg Company Law. The most common ones are: corporate entities (e.g. public limited companies - S.A., private limited companies - S.à r.l., partnerships limited by shares - S.C.A., cooperative structured as a public limited company – SCOSA); and partnerships (e.g. common limited partnerships - SCS, special limited partnerships - SCSp).

4) Management

The RAIF has to be managed by an authorized AIFM (Alternative Investment Fund Manager). The manager has to be an external AIFM, appointed by the RAIF and responsible for managing the RAIF. The AIFM has to be registered in an EU member state and has to be fully compliant with the AIFMD.

The law also gives the possibility for an AIFM established in a third country to manage the RAIF, but only when the AIFMD passport becomes available to third countries.

5) Other service providers

The appointment of certain service providers is also mandatory. The central administration and the depositary have to be established in Luxembourg. The depositary is mainly responsible for the custody and safekeeping of the RAIF’s assets and for the monitoring of the RAIF’s cash flow, the depositary being fully compliant with the AIFM Law. The central administration is typically responsible for the

accounting and NAV (net asset value) calculations, keeping the register of shareholders/unit holders and the handling of subscriptions and redemptions for the preparation of financial statements.

The RAIF needs to appoint an authorized independent auditor to audit the annual accounts.

6) Umbrella structure and Cross-compartment investments

The RAIF can be part of an umbrella structure (multiple compartments where each compartment is linked to a specific investment portfolio) consisting of multiple sub-funds acting as separate investment funds, but forming a single legal entity whereby there exists no joint liability of the different compartments. It enables funds with different strategies to be established within the same structure, which can reduce the funds costs, especially when shifting assets from one fund to another within the same umbrella structure.

The compartment of an umbrella RAIF can invest in one or more other compartments of the same RAIF (cross-compartment investments). The RAIF offering document should provide for this type of investment. The fund and compartments may have an unlimited number of share classes, depending on the needs of the investors to whom the fund is distributed.

B) Legal formalities

Capital requirements

The net assets of the RAIF must be of at least EUR 1,250,000. This minimum amount must be reached within 12 months of creation. Only 5% of the capital needs to be paid up on subscription. The RAIF can also be financed by borrowings, as well as via the issuance of bonds or other debt instruments. The assets of the RAIF should be valued at fair value.

Incorporation

The RAIF has to prepare an offering document indicating on its front page that the fund is not subject to supervision in Luxembourg. The constitutive documents must expressly mention that it is subject to the provisions of the RAIF law.

For RAIFs organised as a SICAV or SICAF in the form of a S.A., S.C.A. or S.à r.l., the articles of association must be adopted by a notarial deed. For RAIFs organised as a FCP, SCS or SCSp, a notarial record confirming that the RAIF has been established must be drawn up within 5 business days from the formation of the RAIF.

Registration and publication

The RAIF must be registered on a list held by the Luxembourg Trade and Companies Register (RCS ²) and be available on the RCS website within 20 business days from the date of the notarial deed. The RAIF has to be registered in the legal form chosen at the time of its establishment. Upon registration, information about the name of the RAIF, its establishment date, and the Management Company of the fund has to be provided.

The notice certifying the creation of the RAIF has to be registered with the RCS and published on the RESA (Recueil Electronique des Sociétés et Associations).

The RAIF has also the obligation to publish audited annual financial statements.

C) Tax facts

Default tax regime (similar to SIF regime)

RAIFs are exempt from Luxembourg Corporate Income Tax (CIT), Municipal Business Tax (MBT) and Net Wealth Tax (NWT) but they are, as such, in general, subject to subscription tax³.

The annual subscription tax is 0.01% of the Net Asset Value of the RAIF. The subscription tax is valued at the end of each calendar quarter. The declaration and payment of the subscription tax must be made quarterly.

RAIFs established as an FCP, SCS or SCSp are regarded as fully tax transparent entities for Luxembourg tax purposes. This may enable investors to claim the benefits of tax treaties.

Effective as from 1 January 2021, RAIFs following the SIF regime and holding real estate located in Luxembourg, are subject to a new real estate tax, with an annual rate of 20%. However, investment funds having the legal form of a partnership or FCP remain out of scope. The basis for the 20% annual levy is the realized gross rental income (excluding VAT) and the capital gain on sale of real estate

² Registre de Commerce et des Sociétés

³ The RAIF law provides some exemptions from the subscription tax

owned directly or indirectly (via transparent entities) by the investment vehicle.

A respective declaration has to be submitted to the tax authority by 31 May of the year following the tax year and the tax has to be paid by 10 June. The declaration has to be annexed by a report issued by an independent auditor validating the calculation of the income generated by respective real estate. In addition, all investment vehicles covered by the law are obliged to inform the tax authority until 31 May 2022 of the Luxembourg real estate assets they held in 2020 and 2021. Important to note that the provision of information is also required for the non-detention of any Luxembourg real estate during that period.

Optional alternative tax regime (similar to SICAR regime)

RAIFs set up in the form of a corporation and investing exclusively in risk capital, may opt for the application of tax rules similar to the SICAR tax regime. Hence, the RAIF represents a fully taxable entity, subject to corporate taxes (CIT, MBT and minimum NWT) and benefiting from exemptions on some categories of income (e.g. for income derived from transferable securities). In this case, RAIFs are also subject to minimum Net Wealth Tax, which ranges from EUR 535 to EUR 32,100 (depending on the company's total assets).

Value Added Tax (VAT)

The RAIF is a taxable person from a VAT perspective in Luxembourg. In cases where the RAIF is set up as an FCP, managed by a management company (ManCo), the FCP and the ManCo will be considered as a single VAT entity.

In general, as a RAIF performs VAT exempt activities, they only have to register for VAT if they receive services from abroad (subject to the reverse-charge mechanism) or if they perform intra-Community acquisitions of goods in Luxembourg for an amount higher than EUR 10,000 per year. In that case, a simplified VAT registration is sufficient and VAT returns are required on an annual basis.

The management services provided to a RAIF can benefit from VAT exemption, while the supervisory services provided through the depositary bank function are subject to the intermediary VAT rate of 14%.

Withholding Tax

Distributions made by a RAIF to investors as well as any payment proceeds made upon the redemption of RAIF units/shares/partnership interest are not subject to Luxembourg withholding tax.

Double Tax Treaties

RAIFs organised under the corporate form of a SICAV or SICAF may have access to the Double Tax Treaties (DTT) concluded by Luxembourg. Luxembourg has signed DTT with more than 80 countries.

RAIFs established as FCPs or partnerships have no access to DTT. However, investors might claim the benefits of tax treaties.

D) Conclusion

The RAIF is a flexible vehicle that offers a multipurpose alternative to common investment funds with the possibility for quick marketing. As it benefits from all passport advantages, the shares can be distributed to professional investors across Europe. The tax exemption, in the majority of cases, also represents a distinctive advantage.

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