



# Luxembourg AIF

## Direct and Indirect Tax Aspects

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# Why using Luxembourg?

- Distribution advantages – EU institutional investors - Passport
- Legislative policy – investment focussed laws, regulatory and fiscal regimes
- EU founder member & DTA network
- Concentration of industry
- Substance – regulatory + tax residence

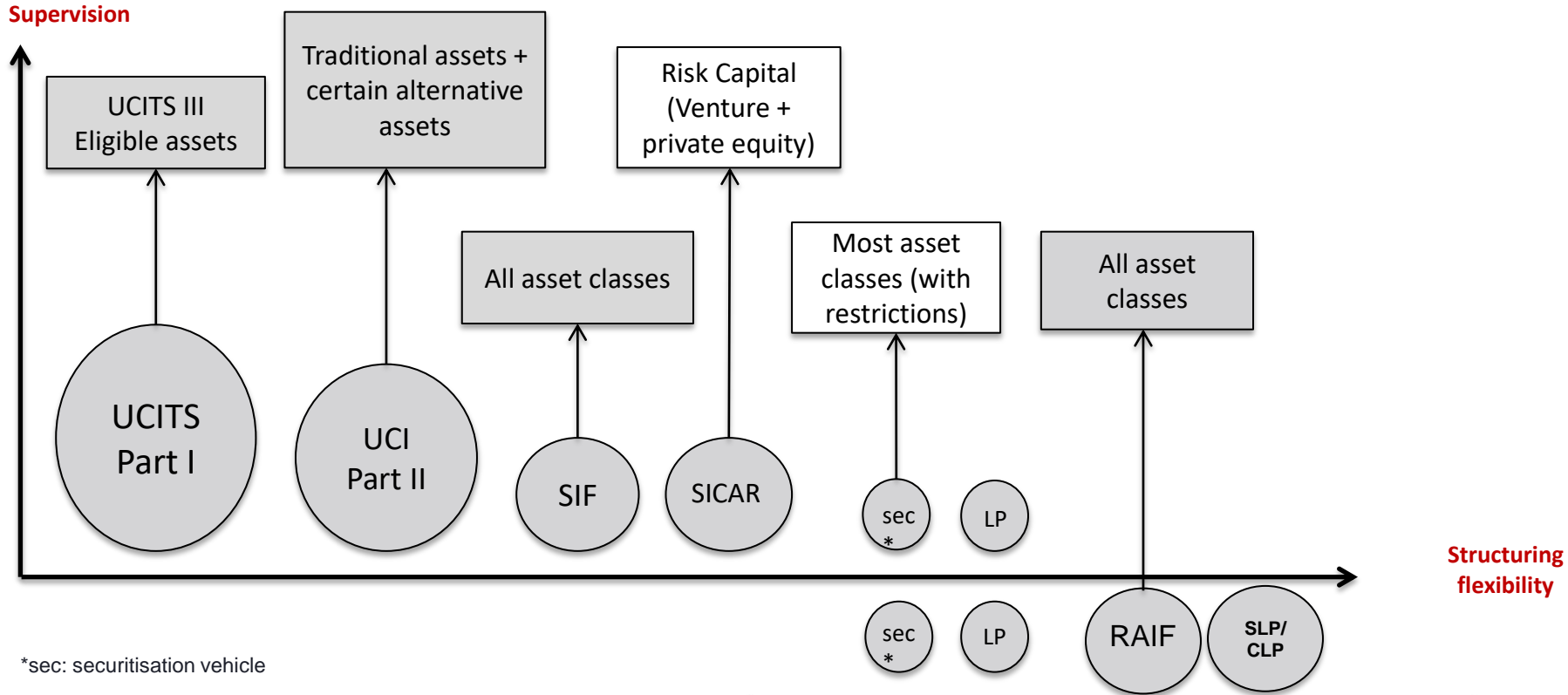
# Who is using Luxembourg?

- Fund domiciles
  - Onshore EU - Luxembourg (PE/RE)
  - Onshore EU - Ireland (Hedge)
  - Onshore EU - UK, France, Germany (Asset managers)
  - Offshore - Channel Islands (PE/RE)
  - Offshore - Cayman Islands

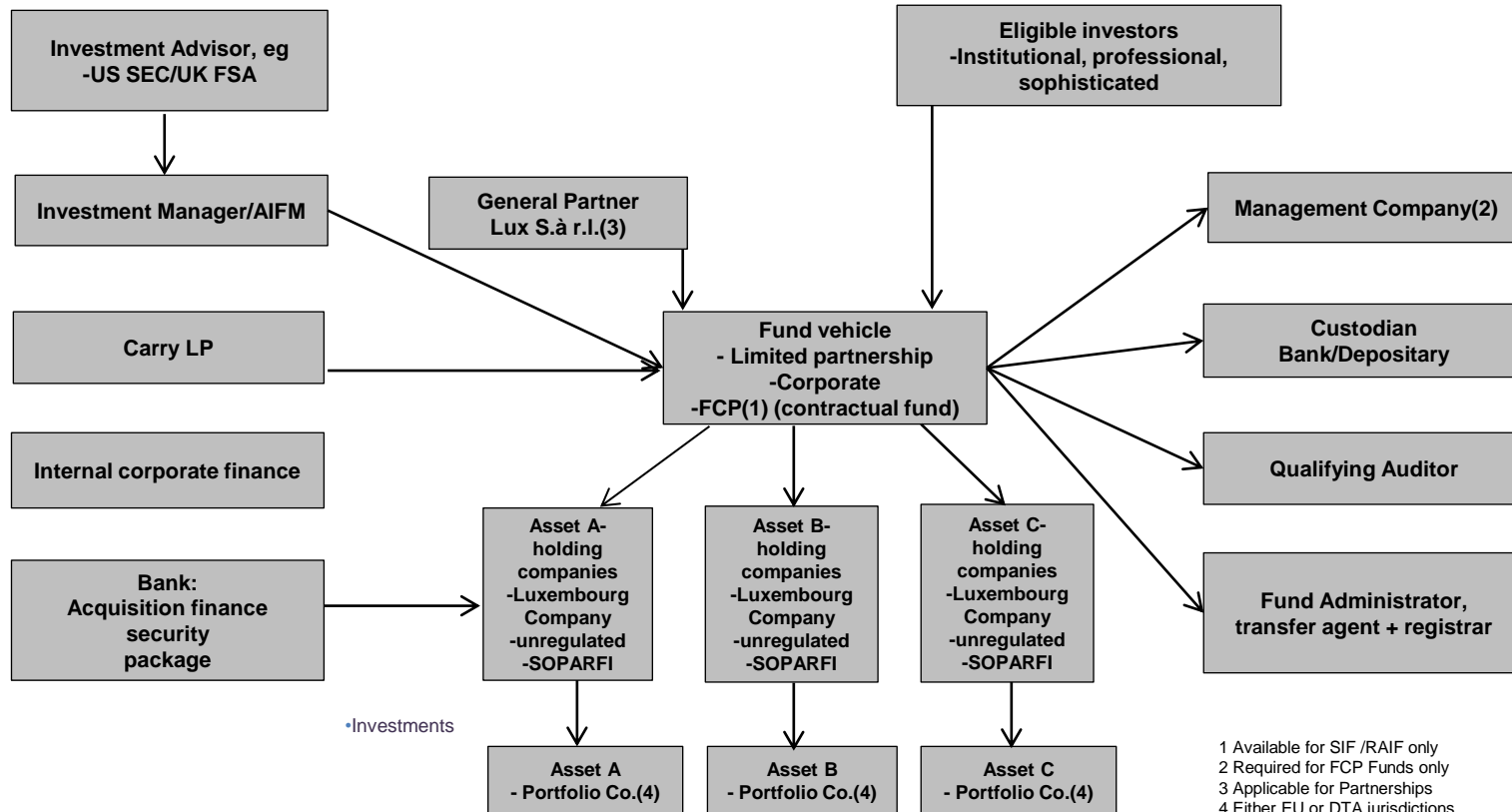
# Investment fund vehicles

- **Onshore regulation – wide range of investment fund vehicles**
  - UCITS and UCI: retail products
  - Specialised Investment Funds (SIF) – 1.600 since 2007
  - Investment vehicles in “risk capital” (SICAR): Private Equity, Venture
  - Unregulated Limited Partnerships
  - New: Reserved Alternative Investment Funds (RAIF) – Law of 23 July 2016

# The Luxembourg toolbox



# SIF/SICAR/RAIF/Unregulated SLP – Typical structure



# Fiscal Environment

## Fund level – Direct Taxation

- **To be achieved: Tax Neutrality**

- A. Regulated Vehicles – Subjective tax exemption by virtue of a specific product law (e.g. SIF, RAIF)
- B. Unregulated vehicles
  - i. Objective tax exemption
  - ii. Tax transparency

# Fiscal Environment

## Fund level – Direct Taxation – Unregulated vehicles

### ○ Objective tax exemption

- Taxable entities but de-facto minor taxable base (e.g. SICAR, SV)

### ○ Tax transparency

- National CIT – Partnerships are tax transparent by virtue of the tax law
- Local MBT if the fund performs
  - i. commercial activities - exception for AIF
  - ii. “deemed” commercial activities – mitigation through 5% interest-rule for GP



## Fiscal Environment

### Fund level – Indirect Taxation

- **Standard VAT rate in Luxembourg : 17%**
- **Funds are within the scope of VAT**
  - The fund activity is an economic but exempt activity – i.e. no right to deduct input VAT
  - Required to register for VAT in Luxembourg if taxable services are received from abroad
  - Reverse charge mechanism (B2B) : application of Luxembourg VAT

# Fiscal Environment

## Fund level – Indirect Taxation

- **Management services to special investment fund vehicles are exempt**
  - Regulated and indirectly regulated vehicles (e.g. SIF, RAIF)
  - SV / SICAR
  - Unregulated AIF
  
- **Exemption applies also to delegated or outsourced management services**
  - distinct whole (e.g. investment/portfolio management, risk management)
  - specific and essential for the functioning of the fund

# Fiscal Environment

## Tax Structuring Background

- 80+ Tax Treaties
- 20+ Tax Treaties in Pipeline
- BEPS/Anti-tax avoidance rules/exchange of information
- Turning constraints into opportunities: non-tax opportunities (e.g. substance)

# Questions



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- Caroline specializes in all aspects of cross-border corporate tax advisory services including international investment structures, direct and indirect tax structuring of investment funds and related matters (such as carried interest, fee structures, etc.), mergers & acquisitions, relocation of companies (inbound and outbound), intellectual property rights, corporate restructuring and direct tax compliance including tax due diligence work.
- Prior to joining Ogier in 2014, Caroline worked for six years in another Luxembourg corporate law firm, seven years at leading, global accountancy / professional services firms, and then at her own boutique law practice, focusing on tax and corporate law. Over this time, Caroline has gained a broad experience assisting private equity and venture capital firms, investment funds, multinational corporate groups and high net worth individuals.
- Caroline graduated from the University KU Leuven and University UC Louvain-la-Neuve (Belgium) in 1999 with a Master in Law (cum laude), and in 2000, she achieved her Master in Tax Law (cum laude) at the University KU Leuven. In 2006, she completed the 'Cycle de formation en Droit Fiscal luxembourgeois' and holds a certification in Finance and Managerial Accounting from Boston University.
- Caroline is a member of the Luxembourg and Brussels Bar and is registered as a foreign lawyer at the Law Society of Hong Kong. She regularly provides external presentations on various Luxembourg tax and legal topics, acts as a session reporter to the Annual Tax Planning Strategies Conference – US and Europe and published in, amongst others, International Tax Review, International Finance Center, etc.
- Finally, Caroline holds a Belgian and Luxembourg passport but is based in Hong Kong. She speaks fluently English, Dutch, French, German and Luxembourgish.

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