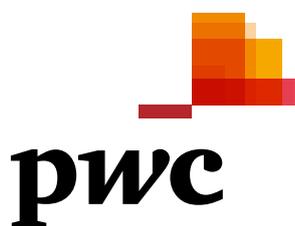




The Luxembourg special partnership

A multi-purpose solution for the real estate industry



Introduction

The Luxembourg special limited partnership vehicle – the “Luxembourg SCSp” – has filled a notable gap in the range of legal entities offered in Luxembourg. Since its introduction in 2013, the Luxembourg SCSp has opened up new solutions for the real estate industry.

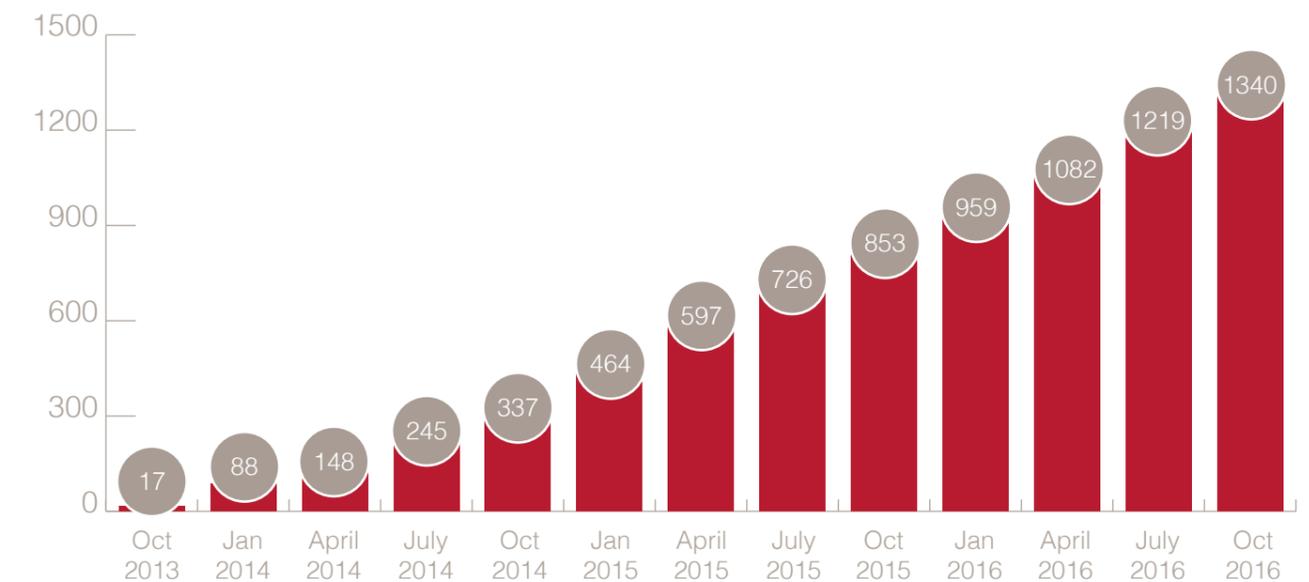
This brochure summarises the first three years of experience with the SCSp, and helps to discover and explore the possible functions that an SCSp may serve.

The Luxembourg special limited partnership (*Société en Commandite Spéciale*, or “SCSp”) legal form was introduced in 2013 – at the time of implementation of the AIFMD – as one of several measures designed to encourage the alternative investment fund industry in Luxembourg. In legislating at that time, the Luxembourg Government deliberately went beyond merely transposing the AIFMD into domestic law: it took a step forward, and modernised and expanded the legal solutions available in Luxembourg for structuring funds and real estate transactions. Historically, limited partnerships set up under Anglo-Saxon legal systems had been the predominant choice whenever a solution involving a non-regulated “transparent” entity type was sought.

Now, three years after the introduction of the Luxembourg SCSp, more than 1,300 of these partnerships have been set up in Luxembourg.

In contrast to the long-established standard Luxembourg limited partnership legal form (*Société en Commandite Simple*, or “SCS”), a Luxembourg SCSp does **not** have a legal personality separate from those of its partners. It is formed by an agreement between its partners. The SCSp allows for more flexible structuring when compared with SCSs and other corporate entities established in Luxembourg, which must comply with additional corporate law requirements.

SCSp evolution in Luxembourg (data as of September 2016)



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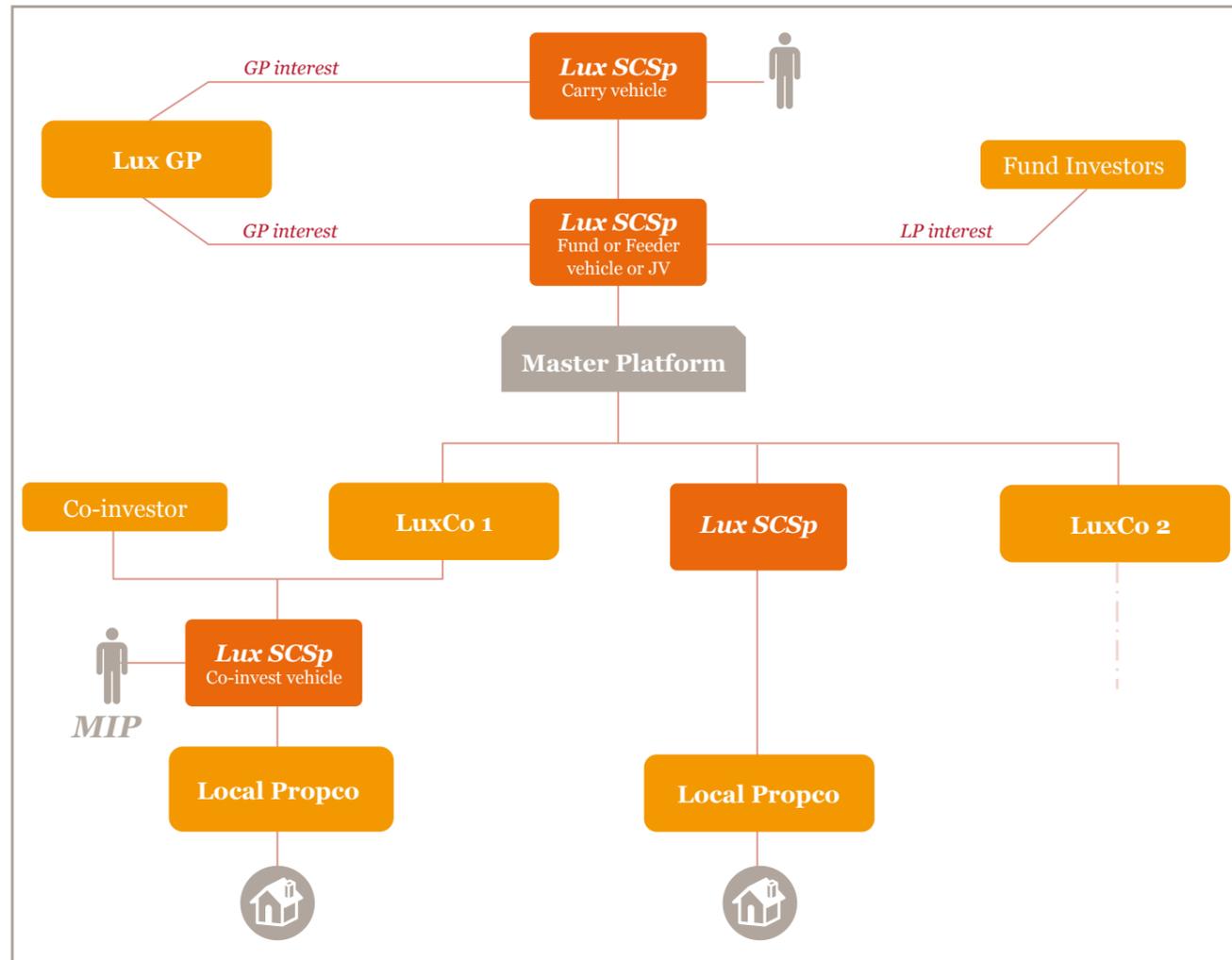
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A multi-purpose vehicle

The SCSp is a legal form that aims at extending the range of legal solutions available in Luxembourg for structuring both real estate investment funds, and dedicated vehicles to the real estate industry.

SCSp purpose



An SCSp may be used as a **fund vehicle**, either regulated (Part II UCI, SIF, SICAR or RAIF) or unregulated.

If a fund vehicle set up as an SCSp is unregulated, it is governed principally by the provisions of the Law of 10 August 1915 on commercial companies, as amended – the main legislation on Luxembourg company law. The provisions implementing the AIFMD may well also apply.

Regulated SCSps (similarly to the other legal forms used for regulated fund vehicles) may be set up as “umbrella” fund vehicles, having multiple distinct and segregated asset portfolios, with each such portfolio constituting a separate sub-fund or compartment. There are of course many different factors that have an impact on the choice of a fund vehicle’s legal form. In most situations, the choice of the SCSp is driven by investors’ considerations - e.g. both tax and legal transparency of the fund vehicle being either a regulatory requirement for, or a preference of, the investors. Contractual flexibility, in terms of framing the

relationships between the manager and the investors, also makes the SCSp attractive from a fund management structuring perspective.

A Luxembourg SCSp may also be considered as a suitable form for a **feeder fund vehicle**, set up by a fund’s sponsors or managers to accommodate investment into the fund by one or more investors who have particular needs or obligations not shared by all of the target investors for the fund. This may often be due to the suitability or otherwise of the main fund’s jurisdiction of incorporation or legal/tax regime, meaning that an investor or class of investors may prefer to invest into the fund indirectly through an upper-tier entity. Alternatively, a feeder fund can serve to “ring-fence” investors who might otherwise cause all the investors in a fund to suffer additional costs, such as those of tax or regulatory compliance, or of an undue disadvantageous tax treatment.

The contractual flexibility of the SCSp regime can also favour the use of an SCSp as a **co-investment**

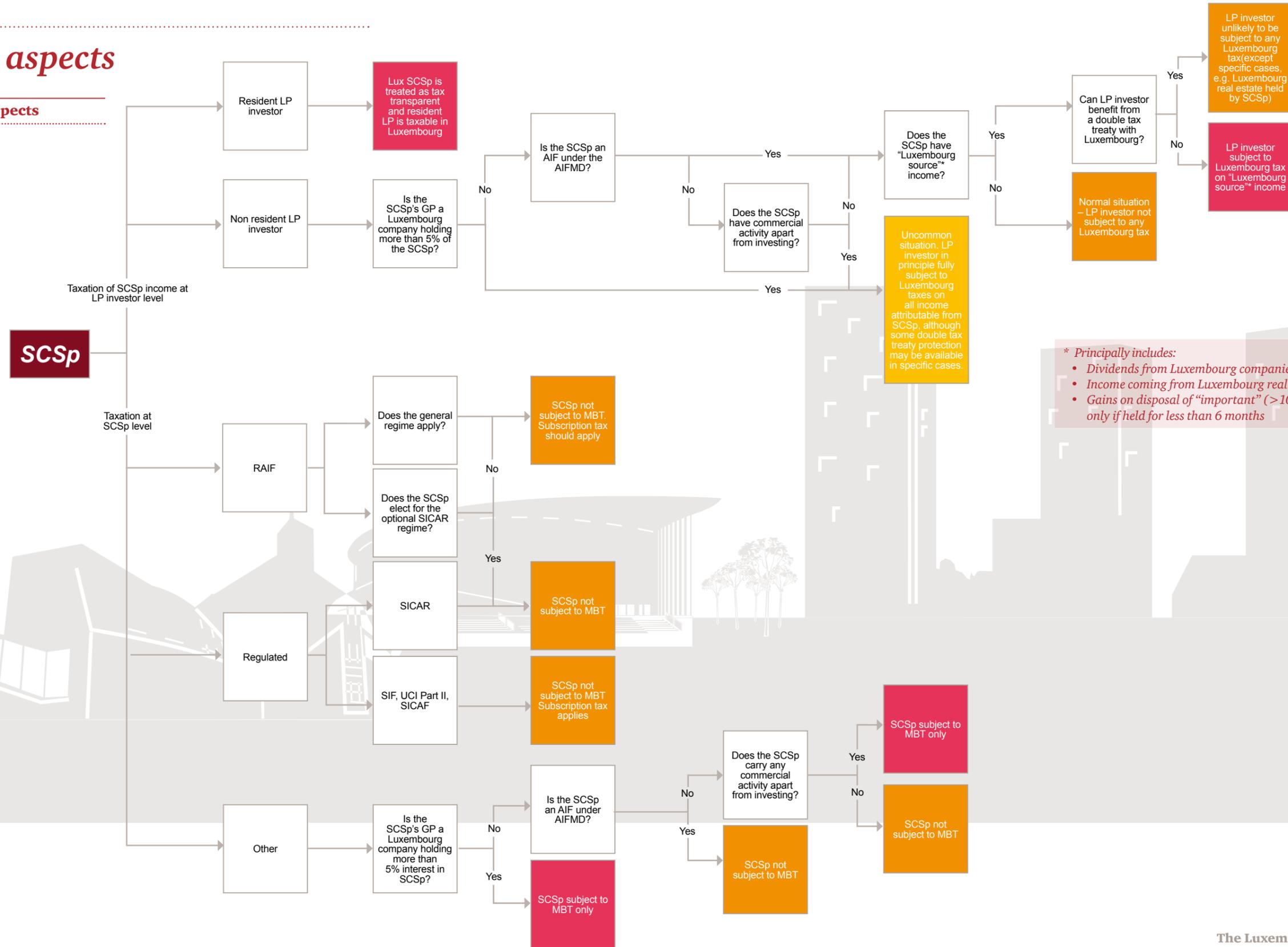
vehicle, a vehicle typically formed to accommodate investments by one or more investors on a deal-by-deal basis into assets such as real estate projects where the lead participant is a real estate fund.

More recently, the SCSp has become a popular legal form for the setting-up of the carried interest structures. Often individuals connected with the management of a fund are entitled to share a priority or enhanced share of the profits (i.e. performance or promote fees), often referred to as “carried interest”. A Luxembourg SCSp’s contractual flexibility, and the private nature of such partnership arrangements can make it an optimal solution for the vehicle, through which the fund’s sponsor/key executive managers may derive such a share of the profits.

Finally, in some circumstances, a Luxembourg SCSp may serve as ideal choice of **asset-owning entity**. This is specifically relevant for the real estate and infrastructure industries.

Taxation aspects

Direct taxation aspects

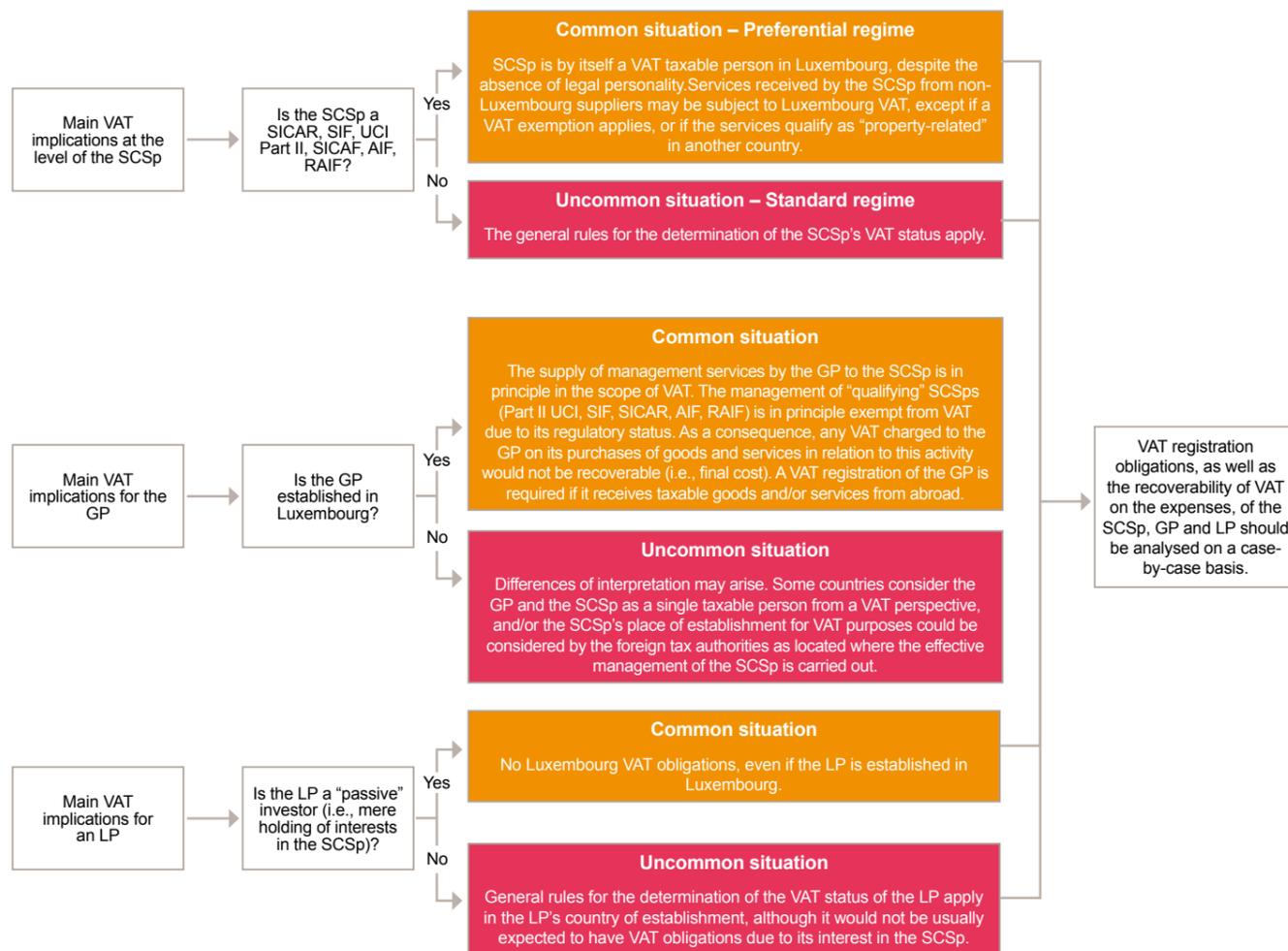


* Principally includes:

- Dividends from Luxembourg companies (if subject to WHT)
- Income coming from Luxembourg real estate
- Gains on disposal of "important" (>10%) participations, but only if held for less than 6 months

Taxation aspects

VAT aspects



Legal and operational aspects

Absence of legal personality	<ul style="list-style-type: none"> An SCSp does not have legal personality However, it comprises a common portfolio of assets, e.g.: <ul style="list-style-type: none"> The SCSp is itself the holder of its assets Only the SCSp’s creditors (not its partners’ creditors) have direct recourse to its assets
Set-up documentation	<ul style="list-style-type: none"> SCSp agreement (private or public deed) No need to specify a capital amount (initially)
Entity name	<ul style="list-style-type: none"> Free choice of name (no requirement to include the words <i>société en commandite spéciale</i> or the acronym SCSp)
Language	<ul style="list-style-type: none"> SCSp agreement in the English language permitted (no translation into French or German is required if the SCSp is set up by private deed)
Number of partners	<ul style="list-style-type: none"> At least one GP and one LP – no maximum limit
Duration	<ul style="list-style-type: none"> Limited or unlimited duration
Role, rights and liability of the GP(s)	<ul style="list-style-type: none"> The GP may, but does not have to be, the manager (or one of the managers) of the SCSp The GP’s rights are defined primarily in the SCSp agreement (decision-making/economic rights) rather than by law – the agreement may include the GP’s right to approve the accounts (in which case the accounts do not need to be approved by the LPs), and/or the discretionary right to appoint and dismiss the manager(s) The GP has unlimited liability (joint and several liability in the case of multiple GPs)
Role, rights and liability of the LPs	<ul style="list-style-type: none"> Each LP is a “passive” investor, but may indirectly take part in the internal management of the SCSp (no direct contact with third parties), may provide advice and grant loans, guarantees or assistance to the SCSp or its affiliates, and may control or supervise the SCSp (e.g. be a member of an advisory or supervisory board), BUT may not be a manager or part of the management board of the SCSp An LP’s right to information, and voting rights, are determined by the SCSp agreement (and may vary depending on the status of the LP) – exceptions: migration, transformation, liquidation, change of the company’s objects LP’s economic rights are determined by the LP agreement; different LPs may have different economic rights (sole exception: “unconscionable clause”) An LP’s liability is limited to the amount of its investment in the SCSp
Management structure	<ul style="list-style-type: none"> There may be one or several managers. Where there are several managers, they may form a board. A GP can be a manager, but does not have to be. A non-partner may be appointed as manager, but an LP may not. The role of a manager is to represent the SCSp and to take all management decisions (GPs who are managers bear unlimited liability, whereas there is no unlimited liability for managers who are not GPs).
Commitments of the LPs/commitment period	<ul style="list-style-type: none"> Freely defined by the SCSp agreement Can take the form of contractual commitments, or unpaid capital Either partners’ accounts or units are possible
Annual accounts	<ul style="list-style-type: none"> Limited accounting obligations
Possibility of leveraging the SCSp	<ul style="list-style-type: none"> LPs may grant loans to the SCSp, without any commingling of risk An SCSp can be leveraged (e.g. through the issuance of debt securities). Debt securities can be convertible, listed or offered to the public
Distribution requirements	<ul style="list-style-type: none"> None in law, freely defined by the SCSp agreement No clawback imposed by the law
Publication	<p>Mandatory publication of information is limited to:</p> <ul style="list-style-type: none"> details of the GP(s); entity name; details of the manager(s) (including any representation rights); and duration <p>The identity of and investments by the LP(s) do not have to be made public</p>
Transferability, stripping, pledging	<ul style="list-style-type: none"> Freely determined in the LP agreement; default rule: accepted by all GPs; this rule can be can be strengthened or relaxed

Regulatory requirements may apply to regulated SCSps or non-regulated SCSps, if they are managed by an AIFM.

Glossary

AIF	Alternative Investment Fund, as defined in the AIFMD
AIFM	Alternative Investment Fund Manager, as defined in the AIFMD
AIFMD	Alternative Investment Fund Managers Directive, Directive 2011/61/EU
GP(s)	General Partner(s)
LP(s)	Limited Partner(s)
MBT	Municipal Business Tax
MIP	Management Incentive Plan
RAIF	Reserved Alternative Investment Fund
S.C.S.	Société en Commandite Simple (or Limited Partnership)
SCSp	Société en Commandite Spéciale (or Special Limited Partnership)
SICAF	Société d'Investissement à Capital Fixe
SICAR	Société d'Investissement en Capital à Risque
SIF	Specialised Investment Fund, governed by the Law of 13 February 2007
UCI	Undertaking for Collective Investment, governed by the Law of 17 December 2010



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