Luxembourg in perspective

HAROLD PARIZE, PARTNER AT OOSTVOGELS PFISTER FEYTEN

The case for offshore financial centres has been in the spotlight for over three decades. Many efforts have been made to curb the role and influence of jurisdictions attracting foreign investors with attractive or zero tax regimes, light regulations and banking secrecy rules. International initiatives have been co-ordinated including the Financial Stability Forum which gives priority to protecting the integrity of the financial system. The OECD has focused on countering harmful tax practices while the Financial Action Task Force has been working on the prevention of money laundering. The European Commission supports each of these initiatives and one topical example of this has included the harmonised European legislation on the prevention of money laundering and the taxation of savings.

Luxembourg, a founding member of the EU, has often spearheaded the implementation of such harmonisation measures. Despite its adherence to global financial standards and European banking, financial and tax rules, the jurisdiction has, however, sometimes received adverse attention. This may be due to the fact that Luxembourg strives to be both imaginative and creative within the accepted boundaries of European common rules by grasping a business idea and developing it into an attractive legal bundle. Recent legal developments have exemplified this traditional attitude towards a flexible and creative outlook.

SICAR

The law creating the SICAR (société d'investissement à capital risque, or Venture Capital Investment Company) was enacted on 15 June 2004, at a time when other European countries were also adapting their legal systems to facilitate private equity investments. In Luxembourg, the new instrument was designed to meet the demands of the private equity and venture capital industry. A flexible tool, easy to set-up, manage and exit, the Luxembourg SICAR elegantly combines the advantages of a regulated entity with the tax efficiency of access to the benefit of double tax treaties. There is also a wide choice of fund vehicles that are either tax transparent or tax resident as requested.

Luxembourg has had for some time now an outstanding reputation as an investment fund centre supported by a broad range of professional services providers. The jurisdiction also offers considerable transactional know-how having been the host country for many special purpose vehicles for private equity structures for many years now. To date, the SICAR has been very popular with 183 already registered with the CSSF, the Luxembourg supervisory authority.

SIF

On 13 February 2007, new legislation gave way to the specialized investment fund (SIF). The SIF is, in fact, the updated and rejuvenated version of a previous investment vehicle which the law turned into a virtually new, very versatile and highly-flexible instrument. It is aimed at qualified investors, just like the SICAR. However, unlike the SICAR, the SIF adopts an investment fund format and is not limited to venture capital and private equity. The SIF is a positive response from the Luxembourg authorities to satisfy the need for less-regulated investment pooling instruments aimed at sophisticated investors, i.e. professional, institutional or eligible individuals, able to assess the investment risk they take.

The take up of the new instrument has been quite spectacular. On its first year anniversary, over 350 new SIFs have been approved by the CSSF and another 120 are currently awaiting approval.

SPF

On July 2006, the EU Commission revised the Luxembourg Holding Company regime (known as Holding 1929) a state aid incompatible with the European Community Treaty /article 87 Treaty of Rome). As a result, it has been confirmed that Holding 1929 shall be abolished by 2010.

In order to avoid any legal uncertainty, Luxembourg enacted in May 2007 a law creating a private asset management company (société de gestion de patrimoine familial or SPF). The SPF is specifically designed to meet the requirements of the EU Commission, who was duly consulted on adherence of the new scheme to article 87 of the Treaty. Compliance is notably achieved through limitation of the benefit of the scheme to private individuals of the activities of the SPF to passive investment only, and to the extension of the benefits of the scheme to non-resident companies active in Luxembourg, provided that they meet the criteria of the SPF regime. The number of new SPFs since enactment of the law has not yet been published by the control authority. However, it would certainly appear that the SPF has addressed market needs as in 2006, 80% of the 14,000 holding companies in Luxembourg were for individuals or family needs.

Moving on

Luxembourg continues to attract international investors interested in a combination of pragmatic operational flexibility and serious regulation. Total

assets under administration in the funds industry exceeded the two trillion Euros threshold in December 2007. The financial market place has concentrated its efforts on staying compliant in an increasingly complex and demanding legal environment, and to a large extent there is a sustained endeavour to adequate transparency, risk control, and impeccable ethics. Banks and financial professionals revived in the early years of this decade the project of a joint communication effort to the outside world. With these initiatives and certain changes (the most recent being the creation of LuxembourgforFinance, a development agency for the financial market place – www.luxembourgforfinance.lu), it looks like we are another step closer to the day when any adverse attention will finally move away from Luxembourg.

Recent news, however, shows a striking example of a particularly swayed perception of Luxembourg as an offshore financial centre. Indeed, as a side effect to the tax probe currently held in Germany against Liechtenstein, Luxembourg was cited as one of the countries to which the German Finance recently promised to extend the tax evasion crackdown. Yet, secrecy has already been largely limited through a number of bilateral cooperation agreements, disclosure obligations in case of money laundering or terrorism financing suspicion and the provisions of the Savings Directive which will lead to automatic exchange of information in 2011 to cite the most meaningful examples.

It may well be that banking secrecy will be the next battlefield of a resistance that may already belong to another age for Luxembourg. However, in the meantime, it is definitely worth looking beyond any adverse speculation to discover the many benefits Luxembourg has to offer the international financial communities. ■