



# Cheat sheet for Limited Partnerships

Everything you need to know  
to get started in one easy-to-  
understand FAQ

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It's not easy researching Limited Partnerships in Luxembourg. The information out there is fragmented, confusing, and often painfully difficult to understand.

So how do you get on top of it all?

**Christophe Diricks**, Head of Alternative Investments at KPMG Luxembourg, distills it all down in this practical, easy-to-understand, and up-to-date guide. He covers the essentials to help you get started with your Limited Partnership and, more importantly, avoid common pitfalls that could cost you time and money.



# Setting up a Limited Partnership

## What forms does the Limited Partnership take in Luxembourg?

There are two kinds of Limited Partnership in Luxembourg

01

**Société en Commandite Simple – SCS – a Limited Partnership**

02

**Société en Commandite Spéciale – SCSp – a Special Limited Partnership**

The main difference between the two is that the Luxembourg Limited Partnership (Lux LP) has a legal personality whereas the Luxembourg Special Limited Partnership (Lux SLP) does not. But despite this, the Lux SLP actually has a lot of the features you might expect from an entity with a legal personality: it can have its own registered office and creditors, hold assets in its own name, and even borrow for its own account!

## Are the Lux LP and Lux SLP regulated or unregulated?

You get to choose! The Lux LP and SLP can be set up as either regulated or unregulated vehicles.

### Regulated Lux LPs and Lux SLPs

First, let's look at regulated. With the exception of UCITS, all regulated fund types can be set up as Lux LPs or SLPs. Most regulated funds are under the direct supervision of the regulator, so the CSSF has to approve and supervise the fund itself. This applies to all SIFs and SICARs that are not RAIFs.

### Unregulated Lux LPs and Lux SLPs

Now, let's turn to unregulated Lux LPs and SLPs. Investment managers choose this option when they want to have the possibility to tailor partnership agreements to investors' needs with bespoke contracts.

## How do I know which one is best for me?

This depends on what you're trying to achieve with your fund. Here's some guidance on the different options.

### Reasons to opt for a regulated entity

You should opt for a regulated entity if you require, or desire, higher investor protection or wish to create compartments in your fund to ringfence profits and losses derived from specific investments.

With regulated entities, contrary to unregulated, you can also set up a fund with variable capital. It should be noted however that non-regulated entities can always set up a partnership with a high enough volume of capital to include the possibility for commitments.

### Reasons to opt for a non-regulated entity

If you're looking for more options, and the reasons above don't apply to you, then the unregulated Limited Partnership was created for you.

If you opt for an unregulated Limited Partnership, then you will have zero restrictions in terms of eligible assets and risk diversification. This is great, for example, if you plan to invest in only one or a limited number of assets: it's virtually impossible to do this and respect diversification rules.

### Further considerations for both regulated and unregulated entities

It may be that certain countries treat Limited Partnerships differently to Luxembourg, and this needs to be considered when setting up. If you need further information on the different regimes, you can [contact me](#) to find out more.

## How long does it take to set up?

This depends on the type of Limited Partnership you choose.

Unregulated entities take just a week to set up if you have the required documentation readily available. You'll be asked to provide a partnership agreement, bank account details and other key documents.

Regulated entities can take much longer. The longest wait is for UCI and SIF funds where the average processing time is four to six months: the regulator, the CSSF, has to approve the fund itself. RAIFs, however, require much less time for launch: only two to four weeks if an authorized AIFM has been appointed. This is because they're under the indirect supervision of the regulator, as we mentioned, so only the AIFM and not the fund requires CSSF approval.

# Managing a Limited Partnership

## How are Limited Partnerships managed?

Both types of Limited Partnership are managed by a General Partner (GP). The GPs are responsible for portfolio investment, risk management and the approval of accounts. GPs who manage regulated Limited Partnerships that need to comply with the Alternative Investment Fund Managers Directive (AIFMD) can delegate certain functions like portfolio or risk management.

### Tax residency

If you would like your Limited Partnership to have its tax base in Luxembourg, then both the GP and AIFM should reside in Luxembourg for tax purposes. Another alternative is to manage your entity via a Luxembourg permanent establishment.

### Limited Partners

It's worth noting that, contrary to some fund types, only GPs and not limited partners can perform acts of management on behalf of the fund with regards to third parties. For example, decisions regarding the acquisition and sales of investments have to be taken by the GP.

## What are the accounting and filing obligations for Limited Partnerships?

Lux LPs and Lux SLPs have slightly different requirements in terms of accounting.

### Accounting for Lux LPs

Lux LPs are required to produce annual accounts appropriate to the nature and scope of their activity. Specific accounting rules apply to your Lux LP if one or more of the following is true of your fund:

1. All the partners with unlimited liability are legal persons in the form of:
  - a public limited company (SA);
  - a European company (SE);
  - a limited liability company (S.à r.l.);

- a limited partnership by shares (SCA); or
  - a non-European company with comparable legal form.
2. All the partners with unlimited liability are organized as a Partnership (SENC) or as a Lux LP in which all the underlying partners with unlimited liability are legal persons in the form of any of the company types listed in bullet one.
  3. The annual turnover of the fund exceeds EUR 100,000 (excluding VAT).

If one or more of the above criteria apply, then the accounts have to be prepared in line with Luxembourg Generally Accepted Accounting Principles (LUX GAAP) and comply with the Luxembourg Standard Chart of Accounts. Once the accounts have been prepared, you have to file them at the Luxembourg Trade and Companies Register (RCS) with the standard chart of accounts. If bullet 1 or 2 above applies, then the accounts are made available to the public via the register.

An alternative to the above is to prepare annual accounts under the EU-approved International Financial Reporting Standards (IFRS) framework, and file them at the RCS. If you do this, then there is no need to file a standard chart of accounts. Again, if bullet 1 or 2 above applies, then the accounts are made available to the public via the register.

### Accounting for Lux SLPs

The Luxembourg government has yet to legislate on the form and content of accounts for Lux SLPs. Until a new Grand-Ducal Decree is published on the matter, there are no specific guidelines to follow or filing obligations. However, accounts should be maintained as appropriate for the nature and scope of your entity's activities.

For regulated Lux SLPs under the supervision of the CSSF, the entity can either prepare annual accounts in accordance with LUX GAAP or the EU-approved IFRS framework. The annual accounts have to be filed with the CSSF.

### Do I need to get the account audited?

Again, Lux LPs and Lux SLPs have slightly different requirements in terms of the auditing of accounts.

### Auditing of Lux LP accounts

Accounts need to be audited if one or more of the following applies:

1. An audit is required by the Limited Partnership agreement
2. The entity is a regulated Limited Partnership that requires an audit to comply with EU or Luxembourg law
3. Two of three of the following are true on the balance sheet closing date after two consecutive financials years of operation:
  - Balance sheet total exceeds EUR 4.4m
  - Net turnover exceeds EUR 8.8m
  - Average number of full-time employees exceeds 50

## Auditing of Lux SLP accounts

There is no legal requirement for Lux SLPs to audit their accounts. However, an audit is essential if one or more of the following applies:

1. An audit is required by the Limited Partnership agreement
2. The entity is a regulated Limited Partnership that requires an audit to comply with EU or Luxembourg law
3. The SCSp qualifies as an Alternative Investment Fund ("AIF") under art. 20 of the amended Law of 12 July 2013 on alternative investment fund managers ("AIFM").

If one or more of the above criteria apply, then an audit is required.

*If criteria 1 applies*, then the GP and the LP can choose which GAAP to apply to the accounting. The choice of GAAP can significantly increase or reduce the complexity of the Limited Partnership's reporting and accounting process.

*If criteria 2 or 3 applies*, then the audit has to be prepared in line with Luxembourg Generally Accepted Accounting Principles (LUX GAAP) or the EU-approved International Financial Reporting Standards (IFRS) framework.

*If criteria 3 applies*, then the Lux SLP's AIFM has to submit an annual report within six months of the end of the financial year for which the accounting information – the financial statement or annual accounts – must be audited.

In all the cases above where an audit is required, the audit report from the réviseur d'entreprises or the réviseur d'entreprises agréé will state that the financial statements or annual accounts give a true and fair view. However, there could be instances where the audit is performed under a compliance framework, thereby the opinion will state that the financial statements or annual accounts are prepared in material respect in accordance with the framework.

# Understanding taxation

## How are Limited Partnerships taxed?

Generally speaking, Limited Partnerships are tax transparent. However, it may be that other countries don't treat them in the same way as Luxembourg does, and see them as opaque. This would mean that they are "hybrid entities".

If this situation creates such a hybrid mismatch, then specific anti-hybrid rules may need to be applied. These rules are found in the second Anti-Tax Avoidance Directive (ATAD 2) as it is implemented in Luxembourg law. Areas to look out for include taxation of income at the Limited Partnership level, and the denial of interest deductions at the level of the companies receiving loans from the Limited Partnership.

If the investors' home country considers the Limited Partnership to be tax opaque and challenges its Luxembourg substance, the Limited Partnership may become subject to tax in the country of the investor, rather than being considered tax transparent in Luxembourg.

## Do double tax treaties apply to Limited Partnerships?

Limited Partnerships are considered as transparent in terms of Luxembourg corporate income tax. As such, they don't qualify for a tax residency certificate or benefit from any of the double tax treaties signed by Luxembourg.

There are, however, some exceptions. The tax treaty between Luxembourg and Germany, for example, contains specific clauses related to the Limited Partnership.

## How are the profits and net assets of Limited Partnerships taxed?

This mainly depends on whether your partnership performs commercial activities or is deemed to perform commercial activities. If it does, then the partnership should constitute a permanent establishment leading to municipal business tax at the level of the Limited Partnership, and income tax, corporate income tax and net wealth tax at the level of any partners residing in or outside of Luxembourg (subject to any applicable double tax treaty).



## Income, corporate income and net wealth taxes

In Luxembourg, Limited Partnerships which do not constitute a permanent establishment are treated as transparent for income tax, corporate income tax and net wealth tax purposes meaning that they are not taxed as such. Instead, the income and net wealth of the business is taxable at the level of its partners, once the profits have been allocated to the partners according to their stake in the Limited Partnership.

If your fund has partners who neither reside in Luxembourg nor have a permanent establishment or representative here, then these individuals or groups will need to identify Luxembourg-sourced income and then refer to relevant double tax treaties to find out how different types of income from the Luxembourg-based Limited Partnership will be taxed. Let's take the example of a partner in a Luxembourg Limited Partnership that is investing in German real estate and doesn't constitute a permanent establishment. If the partner lives in the UK, then he or she should consult the double tax treaty between the UK and Germany.

[You can consult our double tax treaty map here.](#)

From 2022, the rules on the taxation of some entities will change as the Luxembourg law that implements reverse hybrid rules under ATAD 2 comes into force. Under these rules, Limited Partnerships that qualify as reverse hybrid entities will no longer be considered transparent for corporate income tax purposes and will be subject to corporate income tax. Generally speaking, this new tax will not apply to Limited Partnerships set up as UCIs, SIFs or RAIFs.

## Municipal business tax

In Luxembourg, only partnerships that carry out a commercial or deemed commercial activity have to pay municipal business tax (currently set at 6.75% for Luxembourg city).

Generally speaking, Alternative Investment Funds (AIFs) are not considered to perform a commercial activity so Limited Partnerships set up as AIFs aren't subject to this tax.

However, there is a notable exception to this rule that applies to Limited Partnerships that are deemed to be commercially tainted. This refers to entities in which at least one GP, that holds an interest in the partnership of 5% or more, is:

- a corporate body; or
- itself a commercially active or tainted partnership.

Limited Partnerships meeting the above criteria are said to perform a commercial activity and are therefore subject to municipal business tax.

Limited Partnerships set up as UCIs, SIFs, RAIFs or Investment Companies in Risk Capital (SICARs) are exempt from municipal business tax.

## Filing obligations related to municipal business tax, income tax, corporate income tax and net wealth tax

So that you are taxed correctly, you need to submit tax information to the Luxembourg authorities. If your partnership performs commercial activities or is deemed to perform commercial activities, then you are required to file tax form 300. Partnerships without a commercial activity need to file tax form 200.

We are often asked whether SIFs and RAIFs are also required to file tax form 200 as they benefit from a specific direct tax exemption. SIF and RAIF investors who are required to submit tax returns in Luxembourg already file their profit and net wealth split in this document. This is deemed adequate by the tax authorities so no further filing by the SIF or RAIF is necessary as per the current administrative practice.

## Subscription tax

Limited Partnerships set up as UCIs are generally subject to an annual subscription tax of 0.05% of the fund's net asset value. SIFs and RAIFs that have not opted for SICAR status benefit from a reduced annual rate of subscription tax: 0.01%.

Some funds of funds, pension schemes and money market funds are completely exempt from subscription taxes.

## Does transfer pricing affect GP remuneration?

The GP manages the Limited Partnership and bears an unlimited liability. Following the arm's length principle of transfer pricing, the GP should be remunerated accordingly. If the GPs waives remuneration in favor of a related party, then this could qualify as a deemed dividend distribution, with the related tax consequences.

## Are withholding taxes applied to profits when they are distributed?

Generally speaking, Limited Partnership's profits aren't subject to withholding tax upon distribution. The one exception is profits that are distributed by a subsidiary of the Limited Partnership, rather than the Limited Partnership itself. This situation may trigger dividend withholding taxes and should be declared in tax form 900. The form should be prepared carefully, taking into account the status of the investors in the Limited Partnership.

## Are withholding taxes applied to interest expenses incurred by the Limited Partnership?

Generally speaking, interest expenses do not trigger withholding taxes. However, there are exceptions such as if the expenses are paid to individual Luxembourg tax residents, and the Limited Partnership qualifies as an agent under the Retenue à la source libératoire (RELIBI) law.

## Do the GP and Limited Partnership pay VAT?

Unlike an FCP and its management company, which are treated as one taxpayer from a VAT standpoint, a Limited Partnership and its GP are considered separately for VAT purposes. It's recommended to look carefully at the activities of each to see what the consequences of different kinds of VAT treatment might be, depending on the activities of your fund. The Limited Partnership and GP may be required to register separately for VAT. We work with clients to help them understand whether this is necessary. We invite you to contact us for further support.

## Are management services rendered by the GP exempt from VAT?

Yes! Any services that qualify for exemption under Luxembourg law and fit the definition of "management services" are tax exempt. Some funds choose to outsource management services, to an AIFM for example. It's worth noting that not all outsourced services are tax exempt: we recommend getting the underlying legal documentation checked out by a VAT professional. Our experts would be happy to assist with these verifications.

## Is capital gains tax applied when interests in the Limited Partnership change hands?

As the Limited Partnership is tax transparent, this will depend. If the partner selling his interest in the Limited Partnership realizes Luxembourg-sourced income from the sale, then this income is subject to capital gains tax (unless an exemption applies, for example, by way of a double tax treaty).

## Are withholding taxes applied to liquidation proceeds when they are distributed?

No, liquidation proceeds (and their distribution) are not subject to Luxembourg withholding tax.

However, the liquidation of the Limited Partnership itself may trigger capital gains taxation at the level of the partners. If a partner realizes Luxembourg-sourced income from the liquidation, this income is subject to capital gains tax (unless an exemption applies, for example, by way of a double tax treaty).

# Need more? Let us help you get going.



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