



ATOZ ALERT

Luxembourg Releases Circular on the CIV Carve-Out from the Reverse Hybrid Mismatch Rule

29 August 2025

On 22 August 2025, the Luxembourg tax authorities (“LTA”) published a new [circular L.I.R. n°168quater/2](#) dated 12 August 2025. It provides clarifications on the interpretation of the carve-out from the reverse hybrid mismatch rule applicable to collective investment vehicles (“CIVs”) under Article 168quater, paragraph 2 of the Luxembourg Income Tax Law (“LITL”).

The reverse hybrid mismatch rule does not apply to a CIV, defined as an investment fund or vehicle that is widely held, holds a diversified portfolio of securities and is subject to investor-protection regulation in the country in which it is established. The new circular aims at clarifying the criteria that define a CIV under Article 168quater, paragraph 2 of the LITL for tax purposes¹.

We describe hereafter the clarifications brought by the LTA in this new circular.

Background

On 19 December 2019, the Luxembourg legislator passed the law implementing EU Directive 2017/952 of 29 May 2017 (the Anti-Tax Avoidance Directive 2 or “**ATAD 2**”) which provides for a comprehensive framework to tackle hybrid mismatch arrangements in a EU context and in transactions involving third States.

Hybrid mismatches are the consequence of differences in the tax treatment of an entity, a financial instrument or a permanent establishment under the laws of two or more jurisdictions and those differences may give rise to deduction without inclusion or double deduction outcomes.

The hybrid mismatch rules provided under Article 168ter of the LITL apply as from 1 January 2020 and target a variety of different situations including direct hybrid mismatches between

¹ The clarifications provided by the circular apply solely to the definition of “collective investment vehicle” under Article 168quater, paragraph 2 of the LITL and do not affect the interpretation of similar concepts in other regulatory or prudential laws such as in areas falling within the competence of the *Commission de Surveillance du Secteur Financier* (CSSF or Financial Sector Supervisory Commission).

associated enterprises, structured arrangements between third parties, imported hybrid mismatches and tax residency mismatches.

In addition, Article 168quater of the LITL provides for a reverse hybrid mismatch rule that applies as from tax year 2022.

Luxembourg investment funds are often established in the legal form of a partnership (for example, a “*société en commandite simple*”, “SCS”) or a contractual fund without legal personality (“*fonds commun de placement*” or “FCP”) that are viewed as fiscally transparent in Luxembourg. The Luxembourg reverse hybrid rules may apply when an entity established in Luxembourg and treated as transparent for Luxembourg tax purposes is treated as opaque by an associated non-resident investor holding a direct or indirect interest of 50% in the entity, either individually, together with related parties or “acting together” with other investors.

If the reverse hybrid rules apply, the affected entity would be treated as a Luxembourg resident taxpayer and be subject to Luxembourg CIT on the part of the income of the entity attributed to the associated investor, to the extent such income is not included in the ordinary income of the investor within a reasonable period of time or in accordance with CFC rules applicable in the investor’s jurisdictions.

There are certain exemptions from the reverse hybrid rules, including exemptions applicable to CIVs.

Qualification of UCIs, SIFs and RAIFs as CIVs under Article 168quater, Paragraph 2 of the LITL

The circular clarifies that as the activity of an investment undertaking or fund must, by definition, be limited to the pursuit of an investment objective, to the exclusion of any commercial activity, the term “collective investment undertaking” within the meaning of Article 168quater, paragraph 2 of the Income Tax Law refers, in particular, to:

- Undertakings for collective investment (“**UCIs**”) within the meaning of the Law of 17 December 2010 (i.e. both undertakings for collective investment in transferable securities, “UCITS”, within the meaning of part 1 of the UCI Law of 17 December 2010 and non-UCITS or alternative investment funds within the meaning of part 2 of the UCI Law);
- Specialised Investment Funds (“**SIFs**”) within the meaning of the Law of 13 February 2007;
- Reserved Alternative Investment Funds (“**RAIFs**”) within the meaning of the Law of 23 July 2016,

In accordance with the parliamentary documents to the law implementing ATAD 2 laying out the intention of the legislator, the LTA consider thus that UCIs, SIFs and RAIFs are deemed to be CIVs within Article 168quater, paragraph 2 of the LITL and should therefore be carved-out from the application of the reverse hybrid rule.

The circular includes additional clarifications with regard to investment vehicles other than those mentioned above.

Clarification of the Three Conditions to Qualify as a CIV, applicable to investment undertakings or funds other than UCIs, SIFs and RAIFs.

With regard to investment undertakings or funds other than UCIs, SIFs and RAIFs, the circular clarifies the conditions to be met in Article 168quater, paragraph 2 of the LITL.

- **Broad Investor Participation: the fund's shares or units must be marketed to multiple unrelated investors.**

In order to determine whether this condition is met, a number of circumstantial factors, which may be factual or intentional, must be taken into account. In this regard the circular specifies that:

- A limited number of investors does not automatically disqualify the fund, especially during the launch phase (up to 36 months to meet the condition), or during liquidation (if the failure is due to winding down).
- Two investors are considered "related" if:
 - one controls or holds directly or indirectly $\geq 50\%$ of voting rights or capital in the other,
 - a person controls or holds directly or indirectly $\geq 50\%$ of voting rights or capital of both investors,
 - they are family members (e.g., spouse, sibling, parent, child).
- If a master fund is held by one or more feeder fund(s), this condition is to be assessed at the level of the investors in the feeder fund(s).
- The condition is presumed met if ultimately, no individual investor holds directly or indirectly owns or controls more than 25% of the fund's capital or voting rights or controls it by other means. Verification may be based on the Register of Beneficial Owners.

- **Diversified Securities Portfolio: the fund must have a portfolio of diversified securities**

In order to determine whether this condition is met, the circular clarifies that:

- "Securities" must be understood in its broadest sense to include:
 - shares, partnership interests and other similar securities giving or potentially giving access to the capital of a legal entity,
 - profit-sharing units,
 - bonds and other debt securities,
 - shares in collective investment undertakings or funds,
 - deposits with credit institutions, and
 - derivative financial instruments, provided that the underlying asset consists of securities.
- Diversification is assessed based on:
 - the fund's investment policy,
 - market risk exposure.
- A fund is not considered as diversified if the risk distribution does not comply with the requirements for SIFs within the meaning of the 2007 SIF Law, i.e. if:
 - it invests $>30\%$ in securities issued by the same issuer without justification,
 - it uses derivatives without appropriate diversification of underlying assets.

- **Investor Protection Rules:** the fund must be subject to investor protection rules in its Country of Establishment

According to the circular, this condition is presumed met for:

- funds authorised and supervised by the CSSF (Luxembourg's financial regulator),
- alternative investment funds managed by authorised managers under EU Directive 2011/61/EU.

The circular does not explain how this condition should be interpreted in the unlikely event that a Luxembourg investment fund does not fall into one of the two situations listed above.

Conclusion

The circular provides welcome clarity on the scope and application of the carve-out from the reverse hybrid mismatch rule for CIVs under Luxembourg tax law. By confirming the qualification of UCIs, SIFs and RAIFs as CIVs, and by detailing the three key conditions applicable to other investment vehicles, the LTA offer valuable guidance to fund managers, investors, and tax practitioners navigating the complexities of ATAD 2.

While the circular strengthens legal certainty for most CIVs, stakeholders should carefully assess their fund structures against the clarified criteria and monitor future developments to ensure continued compliance with Luxembourg's hybrid mismatch rules.

Do you have any questions?



ANDREAS MEDLER
Partner
[International & Corporate Tax](#)
andreas.medler@atoz.lu
T +352 26 940 237



MARIE BENTLEY
Chief Knowledge Officer
marie.bentley@atoz.lu
T +352 26 940 903