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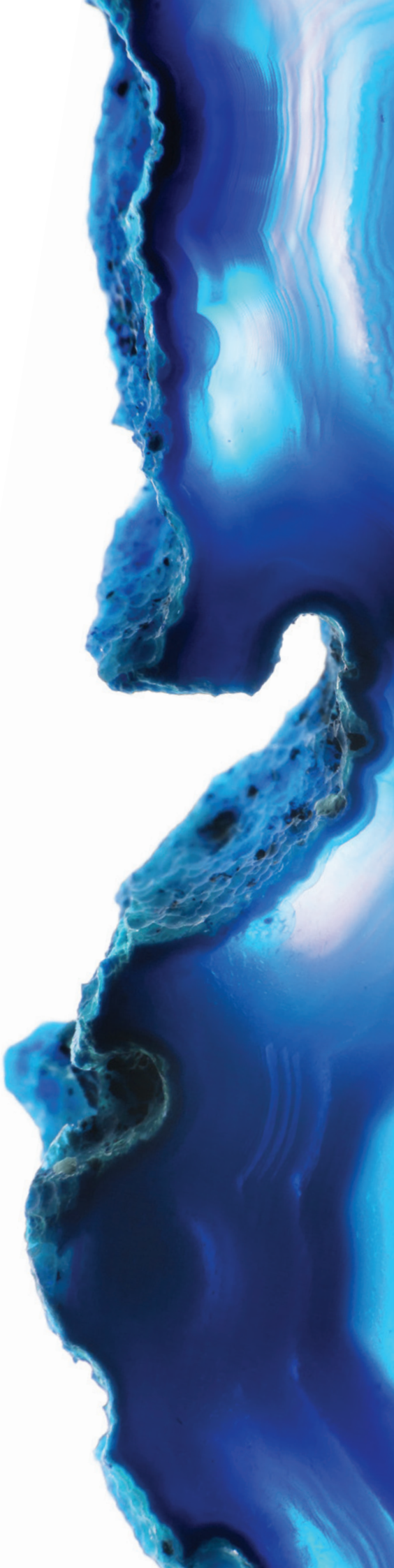
Luxembourg securitization vehicles

A practical overview



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Introduction

The Luxembourg financial market is renowned for its generous range of investment structures, including securitization vehicles, catering to a wide variety of investor needs and investment project requirements. In the eurozone, together with Ireland, Luxembourg is the leading venue for securitization vehicles due to the flexibility, investor protection and tax neutrality the vehicle offers.

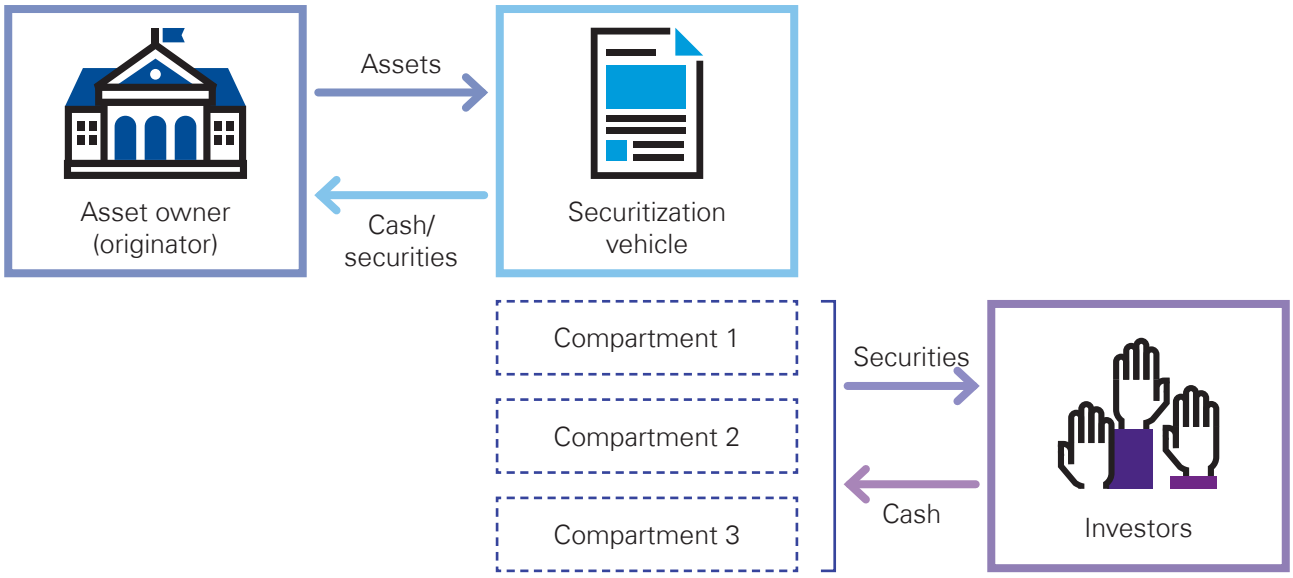
Luxembourg securitization vehicles play an essential role in converting a vast range of illiquid assets into securities, making them tradable and accessible to all types of investors. Securitization provides asset owners with necessary liquidity and enables non-banks to act as credit intermediaries in certain frameworks. This in turn can stimulate financial markets, especially in highly volatile phases.

THE SECURITIZATION PROCESS

This graph illustrates how illiquid assets are converted into securities. Investors contribute cash to the securitization vehicle for securities, while the asset owner (who may be the asset's originator) transfers its assets to the securitization vehicle for cash or securities.

Regulation (EU) 2017/2402 defines securitization as a transaction or scheme, whereby the credit risk of an exposure or a pool of exposures (i.e. the payments in the transaction or scheme depend on the exposure's or the pool of exposures' performance) is tranched (i.e. the tranche subordination determines the distribution of losses during the ongoing life of the transaction or scheme).

The definition of securitization under Luxembourg law is broader, as tranching is not required. Further, in addition to regulated Luxembourg securitization vehicles, also unregulated ones can be split into compartments that offer different risk profiles.

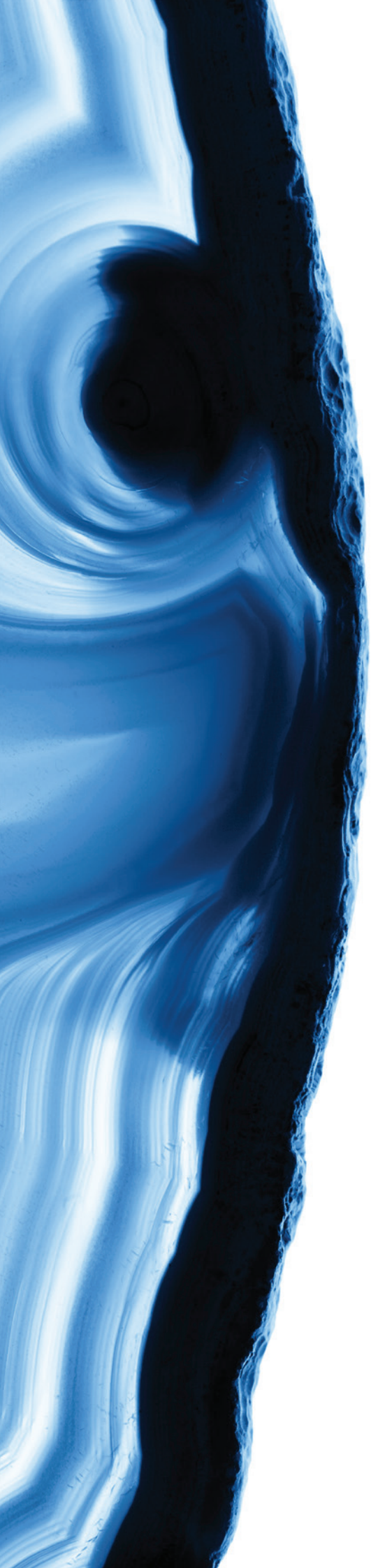


At a glance

The Luxembourg Law of 22 March 2004 on securitization, as amended ("Securitization Law"), allows the creation of securitization vehicles as a securitization fund or securitization company.	**Securitization fund**	**Securitization company**
Application	Acquisition/assumption of risks linked to various assets in consideration for the issuance of financial instruments whose value or yield is linked to these risks.	
Eligible investors	Generally no restrictions (as the vehicle can be regulated or unregulated).	
Eligible assets/risks	Generally no restrictions; active management of securitized risks constituted by receivables or debt instruments possible if the financial instruments issued to finance the acquisition of these risks are not offered to the public.	
Risk diversification	Not required, even if CSSF authorization and/or supervision is required.	
Authorization/supervision by the CSSF	Not required, unless securities are issued to the public on a continuous basis. If CSSF authorization is required, a Luxembourg custodian bank must be used.	
Legal form available	Co-ownership or fiduciary estate, managed by a management company.	Public limited company; partnership limited by shares; general partnership; limited partnership; special limited partnership; private limited company; co-operative organized as a public limited company; or simplified joint stock company.
Compartments	Possible, even if no CSSF authorization and/or supervision is required.	
Management of the securitization vehicle	Must be overseen by a management company or by the assignor/a third party. An AIFM is not required unless the fund qualifies as an AIF.	Self-managed or managed by the assignor/a third party. An AIFM is not required unless the company qualifies as an AIF.
Form of financing	Financial instruments in the form of debt or equity; warrants; or interim debt borrowing.	

	Securitization fund	Securitization company
Accounting framework	Lux GAAP mark-to-market or IFRS® Standards as adopted by the EU.	Lux GAAP historical cost convention, Lux GAAP fair value option, or IFRS Standards as adopted by the EU.
Consolidation required	As a passive, non-controlling vehicle, a Luxembourg securitization vehicle should not require the preparation of consolidated financial statements in principle.	
Equalization provision	Possible.	
Audit requirements	Annual accounts must be audited by an independent auditor. If CSSF authorization and/or supervision is required, the independent auditor must be authorized by the CSSF.	
Taxation of profits and net wealth	Transparent for corporate income tax, municipal business tax, and net wealth tax purposes.	Securitization companies in the form of bodies corporate are subject to corporate income tax and municipal business tax but commercial profit distributions can be deducted for tax purposes. Exempt from 0.5% net wealth tax but subject to minimum net wealth tax. For general partnerships, limited partnerships and special limited partnerships please see the taxation of securitization funds.
Subject to subscription tax	No.	
Entitled to double tax treaties and EU Directives	No, as tax transparent.	Yes, for securitization companies in the form of bodies corporate, from a Luxembourg tax standpoint. The target's/borrower's tax jurisdiction must be verified. For general partnerships, limited partnerships and special limited partnerships please see the taxation of securitization funds.
Subject to transfer pricing rules	Less relevant, as tax transparent.	Yes, for securitization companies in the form of bodies corporate, but no realization of a financing margin should be required. For general partnerships, limited partnerships and special limited partnerships please see the taxation of securitization funds.
Application of interest limitation rules	No, as tax transparent.	Yes, for securitization companies in the form of bodies corporate, unless exemptions apply. The rules are less relevant if income and expenses are symmetric. For general partnerships, limited partnerships and special limited partnerships please see the taxation of securitization funds.

	Securitization fund	Securitization company
Affected by anti-hybrid rules	Yes, potentially qualifies as a reverse hybrid entity.	Yes, for securitization companies in the form of bodies corporate, potential denial of expenses in the case of hybrid instruments. For general partnerships, limited partnerships and special limited partnerships please see the taxation of securitization funds.
Profit taxation of investors	No withholding tax is due on profit distributions (unless RELIBI applicable). Non-Luxembourg resident investors should only be subject to Luxembourg (corporate) income tax, municipal business tax, and net wealth tax on Luxembourg-sourced income that is fiscally realized via the tax transparent fund.	For securitization companies in the form of bodies corporate, no withholding tax is due on profit distributions (unless RELIBI applicable). Luxembourg resident investors are subject to Luxembourg (corporate) income tax and municipal business tax on their interest income, dividend income and capital gains derived from the securitization company. Non-Luxembourg resident investors should monitor non-resident capital gains taxation. For general partnerships, limited partnerships and special limited partnerships please see the taxation of securitization funds.
VAT treatment	Should be considered as an entrepreneur together with its management company for VAT purposes.	Should be considered as an entrepreneur for VAT purposes.
	Depending on the economic activity (e.g. non-EU loan portfolios), an input VAT deduction right and a VAT registration obligation under the standard regime may be given. Day-to-day management and investment advisory services rendered to the securitization vehicle may benefit from a VAT exemption.	
MLI/DAC 6 relevance	Less relevant, as tax transparent.	For securitization companies in the form of bodies corporate, this may be relevant in specific circumstances. For general partnerships, limited partnerships and special limited partnerships please see the taxation of securitization funds.
FATCA/CRS impacts	Securitization funds are classified as (reporting or non-reporting) Financial Institutions (FIs).	Securitization companies subject to CSSF authorization and supervision are classified as FIs. For others, a FATCA/CRS classification analysis should be made on a case-by-case basis.



Securitization vehicle Q&A

WHEN CAN A SECURITIZATION VEHICLE BE USED?

Under the Securitization Law, a Luxembourg securitization vehicle acquires or assumes — directly or through another undertaking — risks relating to claims, other assets, or obligations of third parties, or risks inherent to all or part of the activities of third parties. The vehicle then issues financial instruments or any form of loan whose values or yields are linked to these risks. Financial instruments are those defined in article 1, point 8 of the Law of 5 August 2005 on financial guarantee contracts, as amended, except the claims and rights considered in article 1, point 8, letter f) of this law.

If the securitization vehicle does not issue financial instruments to the public on a continuous basis, no prior authorization and supervision by the Luxembourg Commission de Surveillance du Secteur Financier (CSSF) is required, and no custodian bank is necessary. If the securitization vehicle is under CSSF authorization or supervision, this typically affects its bylaws, board members, shareholders and fiduciary representatives, and its assets must be held in custody by a Luxembourg bank.

Securitization vehicles are generally open to all investors, whether institutional or individual, and can be split into compartments even if they are not subject to CSSF authorization or supervision. They do not need to comply with risk diversification rules and are generally not restricted regarding the assets and risks that can be securitized.

A securitization vehicle or a third party can actively manage securitized risks constituted by receivables or debt instruments provided that the financial instruments issued to finance the acquisition of these risks are not offered to the public.

WHEN DO SECURITIZATION VEHICLES REQUIRE CSSF AUTHORIZATION?

Securitization vehicles that issue financial instruments to the public on a continuous basis require CSSF authorization to exercise their activities.

"On a continuous basis" is when a securitization vehicle issues financial instruments to the public more than three times a financial year. This number includes the total number of issues across all the vehicle's compartments. In the case of an issuance program, in principle, each series of financial instruments is considered as a distinct issuance, unless an assessment of the issuance program and series concludes that one single issue is given. The "to the public" principle requires an assessment of the targeted public to which the issued financial instruments are offered or distributed. An issue of financial instruments offered to the public is an issue:

— Which is not destined for professional clients under the meaning of article 1, point 5 of the law of 5 April 1993 relating to the financial sector, as amended,

— Whose denominations are less than EUR 100,000, and

— Which is not distributed in the form of a private placement.

The definition of private placements is assessed on a case-by-case basis. Under the Securitization Law, an institutional investor or financial intermediary that subscribes to financial instruments intending to place them with the public constitutes a public placement rather than a private one. Listings on a regulated or alternative market do not always constitute issues to the public.

Once the CSSF authorizes a securitization vehicle, it generally remains under the CSSF's supervision until the closing of its liquidation. However, if the securitization vehicle stops issuing financial instruments to the public on a continuous basis, and the financial instruments issued under supervision have matured and been refunded, the securitization vehicle can ask to be removed from the CSSF's list of authorized securitization vehicles.

WHICH LEGAL FORMS CAN A SECURITIZATION VEHICLE TAKE?

A Luxembourg securitization vehicle can be set up as a Luxembourg securitization fund or a Luxembourg securitization company. Both types of vehicles can be split into several compartments.

A Luxembourg securitization fund does not have a legal personality. It can be set up either as one or more co-ownerships or one or more fiduciary estates and must be overseen by a management company with a registered office (and, from a tax standpoint, also its central administration) in Luxembourg.

A Luxembourg securitization company can be set up as:

— A public limited company (SA)

— A partnership limited by shares (société en commandite par actions, or "SCA")

— A private limited company (SARL)

— A co-operative organized as a public limited company (société coopérative organisée comme une société anonyme)

— A general partnership (société en nom collectif, or "SNC")

— A limited partnership (société en commandite simple, or "SCS")

— A special limited partnership (société en commandite spéciale, or "SCSp") or

— A simplified joint stock company (société par actions simplifiée, or "SAS").

The securitization company must have its registered office (and, from a tax standpoint, also its central administration) in Luxembourg. While no minimum capital is required for a securitization fund or a securitization company in the form of an SNC, SCS or SCSp, the minimum capital required for the management company and the securitization company in the form of a body corporate depends on their legal form and is the same as for other commercial companies, i.e. EUR 30,000 for an SA/SCA/SAS and EUR 12,000 for an SARL.

HOW CAN A SECURITIZATION VEHICLE BE MANAGED?

A Luxembourg securitization fund's management company or a Luxembourg securitization company can either manage its assets or entrust this management to the assignor or a third party, who do not require authorization under the financial sector's legislation.

The following securitization vehicles do not qualify as alternative investment funds (AIFs) and do not require alternative investment fund managers (AIFMs):

— Vehicles that qualify as "securitization special purpose entities" as per the Luxembourg Law of 12 July 2013 on AIFMs, as amended ("AIFM Law").

— Vehicles that only issue debt instruments.

— Vehicles that are not managed according to an "investment policy" within the meaning of Article 4(1)(a) of the AIFM Law.

Securitization vehicles issuing structured products that offer a synthetic exposure to assets must be thoroughly assessed to determine whether they qualify as AIFs. Securitization vehicles acting as first lender and/or loan originator should qualify as AIFs.

WHICH ASSETS AND RISKS CAN BE HELD VIA A SECURITIZATION VEHICLE?

A Luxembourg securitization vehicle can assume a wide range of risks relating to all types of assets, whether movable or immovable, tangible or intangible, or risks resulting from third-party obligations or relating to all or part of third-party activities.

These risks can be assumed by a transfer of assets (traditional true sale securitization), a transfer of risks associated with the assets (synthetic securitization), and partial or whole business securitizations.

A securitization vehicle can securitize risks constituted by receivables or debt instruments which are actively managed by the securitization vehicle itself or by a third party, provided that the financial instruments issued to finance the acquisition of these risks are not offered to the public.

CAN THE SECURITIZATION TAKE PLACE IN THE FORM OF DEBT OR EQUITY?

Securitization vehicles typically issue financial instruments whose value or yield is linked to the underlying risks. It is possible to issue financial instruments whose value or yield depends on one or more specific compartments (trackers) or whose repayment depends on the prior repayment of other financial instruments, certain claims, or certain share classes (tranching).

The securitization vehicle can issue debt and equity instruments and warrants. The issued debt and equity do not need to have an equal value. Unless agreed otherwise, the units of a securitization fund are subordinated to other financial instruments issued and to loans contracted by the fund. For securitization companies, the Securitization Law defines the following ranking, unless agreed otherwise:

— Debt instruments with fixed yield,

— Debt instruments with variable yield,

— Beneficiary shares,

— Shares, corporate units or partnership interests.

In a transitional phase, a securitization vehicle may obtain external or intra-group debt to pre-finance its acquisition of the risks to be securitized by issuing financial instruments to investors.

WHICH ACCOUNTING RULES APPLY TO A SECURITIZATION VEHICLE?

The accounting rules depend on whether a securitization fund or a securitization company is used.

A Luxembourg securitization fund that is managed by a Luxembourg management company and governed by management regulations must comply with the Law of 19 December 2002 on the trade and companies register and the accounting and annual accounts of companies, as amended ("Accounting Law"), except:

— The content and layout of the annual report, and

— The valuation of the assets must follow the mark-to-market model, which is set out in the Law of 17 December 2010 on undertakings for collective investment, as amended ("UCI Law"). Therefore, the Luxembourg Generally Accepted Accounting Principles (Lux GAAP) with mark-to-market or the International Financial Reporting Standards as adopted by the EU (IFRS Standards) can be used.

Luxembourg securitization companies must comply with the Accounting Law's provisions. The Accounting Law allows the application of Lux GAAP with the historical cost convention, Lux GAAP with the fair value option, or IFRS Standards as adopted by the EU.

When compartments are financed by shares or corporate units, the balance sheet and profit and loss account prepared per compartment are only approved by the shareholders of this compartment, if this is provided for in the articles of association. Likewise, the profit, distributable reserves, legal reserve and distribution of the profits can be determined per compartment only, without considering the global situation of the securitization vehicle, if this is provided for in the articles of association.

WHEN IS AN EQUALIZATION PROVISION USED?

In many cases, a securitization vehicle finances its assets by issuing debt instruments that entitle investors to the assets' risks and rewards.

If the securitization vehicle suffers a loss on its assets, a limited recourse clause in the debt instruments regularly reduces the securitization vehicle's repayment obligations. This reduction of the amount repayable may be reflected in the accounts as an equalization provision — by reflecting an income. From an accounting standpoint, this means the securitization vehicle's losses and gains should in principle offset each other in the same accounting year.

Likewise, income from a reversal of a value adjustment recorded on the assets or realized and/or unrealized profits can increase the amount repayable of the debt instruments, which is reflected as an expense through the equalization provision. While from an accounting standpoint the net result may potentially be zero, from a tax perspective the gains and losses are not always fully neutral if tax rules require a divergence from Lux GAAP — e.g. under the interest limitation rules, which are covered later in this document.

A securitization vehicle that finances its assets through equity instruments may not compensate for losses on its assets by reducing its liabilities. From an accounting standpoint, the securitization vehicle would then realize net losses.

This section illustrates the Lux GAAP generally observed accounting policies for Luxembourg securitization vehicles.

WHICH AUDIT REQUIREMENTS ARE RELEVANT?

A securitization vehicle's annual accounts must be audited by an independent auditor (Réviseur d'entreprises). If a securitization vehicle is subject to CSSF authorization or supervision, this independent auditor must be authorized by the CSSF (Réviseur d'entreprises agréé) and the securitization vehicle may need to provide regular statements of its assets, liabilities and operating results.

HOW ARE A SECURITIZATION VEHICLE'S PROFITS AND NET WEALTH TAXED?

Securitization funds and securitization companies in the form of an SNC, SCS or SCSp should be transparent for the purposes of Luxembourg (corporate) income tax, municipal business tax and net wealth tax.

Securitization companies in the form of bodies corporate are generally subject to the same corporate income tax and municipal business tax as other Luxembourg tax resident corporates.

Therefore, Luxembourg securitization companies in the form of bodies corporate are levied a combined corporate income tax including the unemployment surcharge of 18.19%, and a municipal business tax depending on their location (6.75% for Luxembourg city in 2022).

However, given their securitization activity and intended tax neutrality, securitization companies in the form of bodies corporate that distribute their profits, or commit to distributing their profits, can generally consider them as tax-deductible expenses.

Securitization companies in the form of bodies corporate are not subject to the annual 0.5% net wealth tax. However, they are subject to the annual minimum net wealth tax of EUR 4,815, or an annual minimum net wealth tax ranging from EUR 535 to EUR 32,100, depending on their closing balance sheet of the preceding fiscal year.

Securitization vehicles are not subject to a subscription tax (taxe d'abonnement). Securitization companies are not subject to any capital duty, but are subject to a EUR 75 fixed registration duty upon their incorporation or any changes to their articles.

CAN SECURITIZATION VEHICLES BENEFIT FROM DOUBLE TAX TREATIES AND EU DIRECTIVES?

As Luxembourg securitization funds and securitization companies in the form of an SNC, SCS or SCSp are considered transparent for the purposes of Luxembourg (corporate) income tax, municipal business tax and net wealth tax, they are not entitled to Luxembourg double tax treaties or EU Directives.

With their registered office and central administration in Luxembourg, securitization companies in the form of bodies corporate should qualify as Luxembourg tax residents; generally be fully subject to the same Luxembourg corporate income tax and municipal business tax as other Luxembourg tax resident bodies corporate; and, from a Luxembourg tax standpoint, benefit from Luxembourg's treaty network and EU Directives.

However, given its passive activities, limited risks borne and tax-deductible expenses, a securitization company's beneficial ownership and related (withholding) tax consequences should be verified from the tax perspective of the target's/borrower's jurisdiction.

ARE SECURITIZATION COMPANIES SUBJECT TO TRANSFER PRICING RULES?

Yes, the arm's length principle and the rules regarding general transfer pricing documentation apply to all intra-group transactions, including the related party transactions that securitization companies (in the form of bodies corporate) in Luxembourg enter into.

However, please note that, due to Luxembourg's specific legal and regulatory requirements, a securitization company (in the form of a body corporate) cannot bear material risks. As such, the Luxembourg transfer pricing circular n° 56/1 – 56bis/1 on intra-group financing activities and related equity at risk/financing margins of 27 December 2016 cannot be, in principle, fully satisfied. In practice, it should not apply to securitization companies as they generally own third-party assets.

DO INTEREST LIMITATION RULES APPLY TO SECURITIZATION COMPANIES?

Securitization companies in the form of bodies corporate are generally subject to the same interest limitation rules as other Luxembourg tax resident bodies corporate. This includes the de minimis threshold of EUR 3 million (of deductible net interest expenses) per year and exemptions for grandfathered loans, stand-alone entities, and long-term infrastructure projects within the EU. A securitization company in the form of a body corporate that qualifies as an AIF is exempt from the Luxembourg interest limitation rules.

However, only a few Luxembourg securitization companies fall into these categories. Therefore, to preserve the vehicle's intended tax neutrality, the financial instruments issued by the securitization company in the form of a body corporate must be properly structured to realize symmetrical income and expenses. Otherwise unintended detrimental effects under the interest limitation rules may be triggered, for example when:

- The securitization company realizes taxable income other than interest income,
- The financial instruments are liquidity-oriented and cash payments follow a certain priority/ waterfall (generally containing a limited recourse clause), or
- Profits cannot be neutralized by an equalization provision.

ARE SECURITIZATION VEHICLES AFFECTED BY ANTI-HYBRID RULES?

Care should be taken that a securitization fund or a securitization company in the form of an SNC, SCS or SCSp does not constitute a reverse hybrid entity under the Luxembourg ATAD rules, i.e. not qualify as tax transparent from a Luxembourg tax standpoint

while tax opaque at the investor level. In these cases, the securitization fund or a securitization company in the form of an SNC, SCS or SCSp could be subject to Luxembourg corporate income tax under the reverse hybrid entity rules (that apply as from tax year 2022) and would no longer be tax neutral.

Likewise, the financial instruments between a securitization company in the form of a body corporate and its investors should not qualify as hybrid instruments. For example, restricting the deduction of expenses at the securitization company level could jeopardize the vehicle's intended tax neutrality. This is also relevant for commercial profit distributions that are treated as tax-deductible expenses.

HOW ARE INVESTORS TAXED ON PROFITS DERIVED FROM LUXEMBOURG SECURITIZATION VEHICLES?

A Luxembourg securitization vehicle's dividend distributions and interest expenses are generally not subject to Luxembourg withholding tax. However, regarding payments to Luxembourg tax resident individuals, it should be verified whether the securitization vehicle qualifies as an agent under the Retenue à la source libératoire (RELIBI) law, as in this case a 20% withholding tax could apply.

According to the fiscal transparency of a Luxembourg securitization fund or a securitization company in the form of an SNC, SCS or SCSp, the entity's profits and/or net wealth should be fiscally allocated to the investors on a pro rata basis, depending on their stake in the entity. The investors should then be subject to Luxembourg (corporate) income tax, municipal business tax and net wealth tax if:

— They are Luxembourg tax residents,

— They have a presence in Luxembourg, via a Luxembourg permanent establishment or permanent representative, or

— They derive Luxembourg-sourced income, e.g. that is linked to Luxembourg real estate, or dividends distributed by or capital gains on shares in Luxembourg tax resident bodies corporate.

Likewise, following the securitization fund's or – if in the form of an SNC, SCS or SCSp – a securitization company's tax transparency, a sale of assets by the entity or a sale of units in the entity by the investors should constitute a sale of the assets by the investors from a tax standpoint. Therefore, these sales should be taxed accordingly at the investor level.

Considering a Luxembourg securitization company's intended tax neutrality, dividends distributed by and capital gains on shares in a Luxembourg securitization company in the form of a body corporate should be fully taxable in the hands of Luxembourg tax resident investors. Non-resident investors need to monitor the applicable Luxembourg's capital gains taxation rules.

WHICH VAT ASPECTS SHOULD BE MONITORED?

— VAT status and resulting VAT registration obligations

As securitization vehicles qualify as VAT entrepreneurs per se, VAT registration requirements must be carefully monitored. If a securitization fund is set up like a fonds commun de placement (FCP) or an equivalent entity, it qualifies as a taxable person together with its management company. Therefore, VAT registration obligations must be evaluated based on the management company's overall activity.

The VAT registration regime also depends on the securitization vehicle's exact economic activity.

Generally, VAT registrations under the simplified regime (arising from the reverse charge mechanism) with no input VAT deduction rights are expected. However, if the securitization vehicle's portfolio contains non-EU receivables, it may benefit from an input VAT deduction right under the standard regime.

— Are VAT exemptions available?

The day-to-day management and investment advisory services rendered to a securitization vehicle should benefit from a VAT exemption, provided they are specific and essential to the vehicle's management. Services typically rendered to securitization vehicles like placement and underwriting should also be VAT exempt, reducing the overall VAT burden if any. Likewise, the VAT treatment of factoring services should also be reviewed in this light.

— Does Brexit matter?

Securitization vehicles with portfolios that include UK receivables should in principle benefit from an input VAT deduction right. To exercise this right, VAT registration under the standard regime is necessary.

ARE THE MULTILATERAL INSTRUMENT AND DAC 6 REPORTING OBLIGATIONS RELEVANT?

The OECD Multilateral Instrument (MLI) complements existing bilateral double tax treaties by adding, inter alia, anti-treaty shopping provisions like the Principal Purpose Test (PPT). According to the PPT, a treaty benefit can be denied if obtaining this benefit is one of the main reasons for an arrangement or transaction, unless this benefit was granted according to the object and purpose of the treaty's relevant provision.

Therefore, it should be verified that genuine economic activities are given — notably if the securitization transaction involves third-party targets and third-party investors — so that the MLI should be less relevant.

Generally, securitization vehicles are also affected by the Mandatory Disclosure Rules (MDR) under the Sixth European Council Directive on administrative cooperation in the field of taxation (DAC 6). Under the MDR, intermediaries or taxpayers may be required to report cross-border arrangements if certain hallmarks are met. Similar to the MLI, as securitization transactions usually include third-party targets and third-party investors, they may not be affected.

However, unintended mismatches can trigger hallmarks, like valuation differences or tax-deductible payments without corresponding taxation at the recipient level. Therefore, we recommend that DAC 6 rules are verified, both when the securitization transaction is initially set up and on an ongoing basis. If you would like assistance with this, please get in touch.

WHICH FATCA/CRS IMPACTS CAN BE EXPECTED?

All Luxembourg entities should comply with the Foreign Account Tax Compliance Act (FATCA) concerning US investors, and the Common Reporting Standard (CRS) concerning other investors that reside in CRS-participating jurisdictions. FATCA and CRS bear a broad range of due diligence, registration, withholding tax and reporting obligations.

As a first step, each securitization vehicle must determine its FATCA and CRS status.

Under the Luxembourg tax circular (ECHA – n° 2), the FATCA status of a securitization company that is not subject to CSSF authorization and supervision depends on the nature of the assets held and the number and volatility of its investors. A securitization fund or a securitization company subject to CSSF authorization and supervision is, in principle, an Investment Entity and, therefore, a (reporting or non-reporting) Financial Institution (FI). Similar conclusions can be drawn under CRS.

If the securitization vehicle is an FI, it has the following obligations:

— Create policies and procedures,

— Obtain self-certification forms of its investors,

— Carry out comprehensive internal audit or health checks,

— Ensure that existing reporting solutions are adequate, and

— Proceed to remediation if a correction is required for prior years' reporting.

KPMG Luxembourg offers a range of services, including pre-issuance analysis, planning, documentation review and issuance execution.

If you have any questions or would like to learn more, please get in touch.

Contact us

Main contacts

Christophe Diricks
Partner

T: +352 22 51 51 5111
E: christophe.diricks@kpmg.lu

Valeria Merkel
Partner

T: +352 22 51 51 6732
E: valeria.merkel@kpmg.lu

Audit team

Marco Weber
Partner

T: +352 22 51 51 6652
E: marco.weber@kpmg.lu

Muhammad Azeem
Partner

T: +352 22 51 51 6504
E: muhammad.azeem@kpmg.lu

Advisory team

Sven Mühlenbrock
Partner

T: +352 22 51 51 6819
E: sven.muehlenbrock@kpmg.lu

FATCA/CRS

Jean Kizito
Partner

T: +352 22 51 51 5492
E: jean.kizito@kpmg.lu

Corporate tax team

Pierre Kreemer
Partner

T: +352 22 51 51 5502
E: pierre.kreemer@kpmg.lu

Julien Bieber
Partner

T: +352 22 51 51 5599
E: julien.bieber@kpmg.lu

Thomas Adamkiewicz
Associate Partner

T: +352 22 51 51 5497
E: thomas.adamkiewicz@kpmg.lu

Christoph Alter
Senior Manager

T: +352 22 51 51 5402
E: christoph.alter@kpmg.lu

Transfer pricing team

Sophie Boulanger
Partner

T: +352 22 51 51 5423
E: sophie.boulanger@kpmg.lu

Laureen Tardy
Partner

T: +352 22 51 51 5593
E: laureen.tardy@kpmg.lu

Accounting team

Jérôme Luxembourger
Partner

T: +352 22 51 51 6374
E: jerome.luxembourger@kpmg.lu

VAT team

Maria Anna Nonweiler
Associate Partner

T: +352 22 51 51 5394
E: mariaanna.nonweiler@kpmg.lu

KPMG Luxembourg, Société anonyme
39, Avenue John F. Kennedy
L-1855 Luxembourg
T: +352 22 51 51 1

www.kpmg.lu