



European  
Region Conference  
Madrid - Spain  
11-13 March, 2026

# Private Equity and Investment Vehicles: Tax Treatment under Domestic Law and Tax Treaties





# Introduction

## Private Equity & Investment Funds Taxation

This session will provide an overview of trends affecting the taxation of private equity investors, investment funds, and their underlying investments.

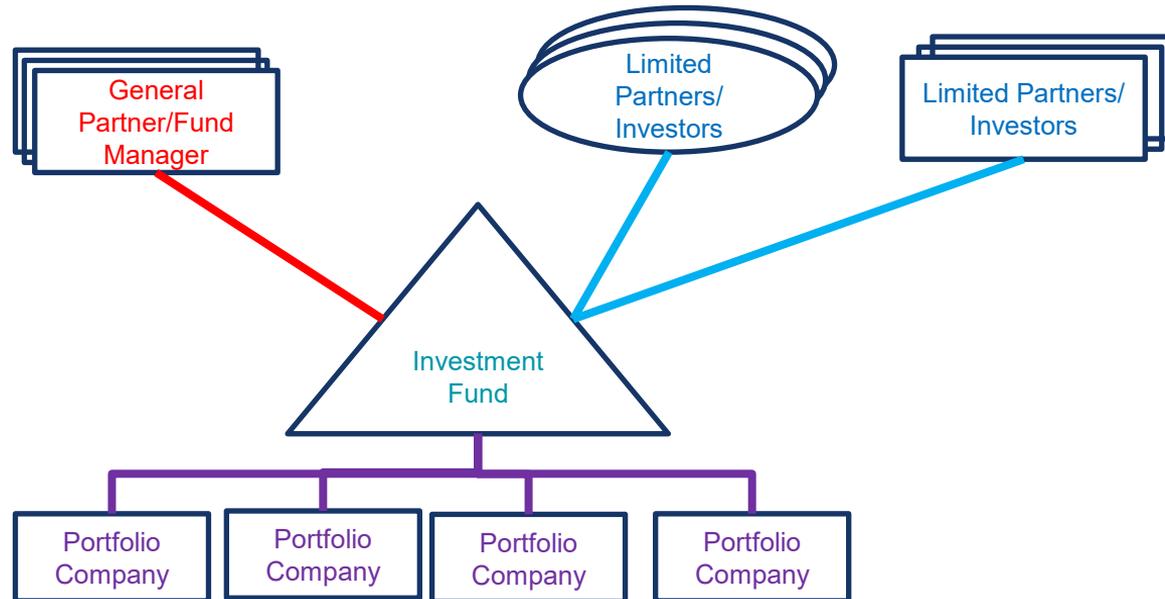
Key themes to be discussed will include:

- Global mobility of asset managers
- The evolving limited partner base, and
- Heightened tax authority scrutiny and its implications

# Introduction



## (Greatly!) Simplified Picture of a Typical Private Equity/Fund Structure



# Tax Issues Relevant to Fund Managers



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# Taxation of Fund Managers

## Carried interest

- Convergence towards “risk-based” capital gains treatment
- Expansion of anti-avoidance & income recharacterisation rules
- Structural adaptation to manager mobility & global teams



# Taxation of Fund Managers

## Compensation regimes

- Shift towards deferred & long-term incentive compensation
- Growth of co-investment & “skin in the game” participation



# Taxation of Fund Managers

## Mobility of asset managers

### KEY DRIVERS

- Tax & economic drivers
- Industry drivers

### IMPLICATIONS FOR FUNDS

- PE risk
- Profit allocation
- Operational considerations

# Carried interest



## French regime on carried interest

- In France, the tax regime applicable to carried interest has been stable over the past years:
  - Regime introduced in 2009 (so-called "Arthuis" regime)
  - List of conditions to qualify for the Arthuis regime:
    - 1° Qualifying vehicle: carried interest must be issued by an "eligible" private equity / venture capital investment vehicle (entities established in the EU, Island and Norway).
    - 2° Qualifying beneficiaries: beneficiaries must be employees or corporate officers, exercising functions in an eligible investment entity, its portfolio management company or a related management services provider with an arm's length remuneration at the time of subscription/acquisition;
    - 3° No upfront benefit/minimum investment: subscription/acquisition price must correspond to the actual/fair value of the carried interest;
    - 4° Single class and minimum investment: carried interest must form a single, clearly identified class with identical rights and subscription price, and total subscriptions for that class must meet the statutory minimum investment thresholds (1% / 0.5%, subject to exception);
    - 5° Subordinated, long-term return: carried interest must be a subordinated, preferential return, with no effective payment to qualifying employee-type beneficiaries before a 5-year period (amounts typically booked on a blocked account).
  - "In-or-out" regime: if the conditions are met, the capital gains tax regime applies (flat tax at 31.4%, without surtax); if even one condition is not met, the regime does not apply at all, and the income is taxed as "employment income" with a specific social contribution (up to 79%).

# Carried interest

## French regime on carried interest



- A specific regime which raises questions in an international context
  - Situation of carried interest holders relocating their tax residency to France:
    - French in-patriate tax regime: Foreign-source carried interest is generally excluded from this favorable regime, except where the fund distributes foreign-source interest or dividends rather than capital gains
    - Introduction of the so-called "Holroyd" regime in December 2018: temporary in-patriate regime granting capital gains treatment to the pre-existing carried interest in foreign entities for asset managers relocating to France between July 11, 2018, and December 31, 2022. This regime is interesting as it highlights, to some extent, the limits of the French "Arthuis" regime (in terms of eligible jurisdictions, beneficiaries and minimum investment requirements)
    - Uncertainties/potential exposure due to differing approaches between France and other jurisdictions (strict "in-or-out" test vs. safeguard/catch-all approach, e.g., UK, Italy)
  - Situation of carried interest holders relocating their tax residency outside France:
    - French "exit tax" filings and payment obligations (a point of attention for non-EU jurisdictions)
    - Significant risk of double taxation due to differing approaches between France and other jurisdictions (employment income vs. capital gains). Mutual agreement procedure in DTT is often required to settle qualification issues and eliminate double taxation.



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# Tax Issues Relevant to Investors





# Investor tax considerations

## Global investor base

### A. Evolving LP Base

- Sovereigns, family offices, and private wealth channels – what else?
- What changes are we seeing in the LP base? What is driving these changes?
- Different communication channels and expectations. Reporting challenges.

### B. Investor-Specific Issues

- Squeezing returns. Expansion into additional income types and resulting challenges (e.g., sec. 892 concerns for sovereigns).
- Reputational aspects (beyond ESG world).



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# Investment Fund Tax Issues





# Fund structure considerations

## General structure considerations

### Fund-Level Transparency:

- Tax-transparent vehicles: avoid entity-level taxation and pass income to investors directly. Single layer of tax – investor flexibility. Challenges related to classification of income and withholding taxes for investors.
- Corporate vehicles: corporate tax at entity level. Shields foreign/tax exempt investors. Participation exemption but double taxation risks.



# Fund structure considerations

## General structure considerations

- **Acquisition Structuring:** layered holding companies facilitate financing and optimize interest deductibility within regulatory limits.
- **Exit Planning:** exit strategies focus on minimizing capital gains tax and utilizing participation exemption regimes.
- **Impact of Anti-Avoidance Rules:** BEPS and ATAD impose substance requirements and limit hybrid mismatches.



# Fund structure considerations

## Jurisdictional preferences

- **Luxembourg as a preferred jurisdiction for private equity fund structure:**
  - Highly flexible legal structures (tax-transparent vehicles and subject-to-tax entities)
  - Political and economic stability
  - Competitive tax regime
  - Fund regulatory framework
  - Operational efficiency



# Fund structure considerations

## Jurisdictional preferences

### ▪ Spain – Private Equity Fund Structure

#### General regime:

- Participation Exemption - 95% exemption on qualifying dividends and gains
- Interest Deductibility- Limited to 30% of EBITDA
- Withholding Tax- 19%, reduced or exempt under EU Directive or treaties
- Tax Consolidation- Available for Spanish groups



# Fund structure considerations

## Jurisdictional preferences

**Spain – Private Equity Fund Structure**

**Venture capital special regime (SCR/FCR):**

Participation Exemption - 95% exemption on qualifying dividends and gains, but with simplified conditions



# Fund structure considerations

## Challenges for US Investors in European Structures

Entity classification issues

US investors and check-the-box (CTB) elections

Treaty access

European Directives and anti-abuse regulations



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# Tax Issues Affecting Portfolio Companies

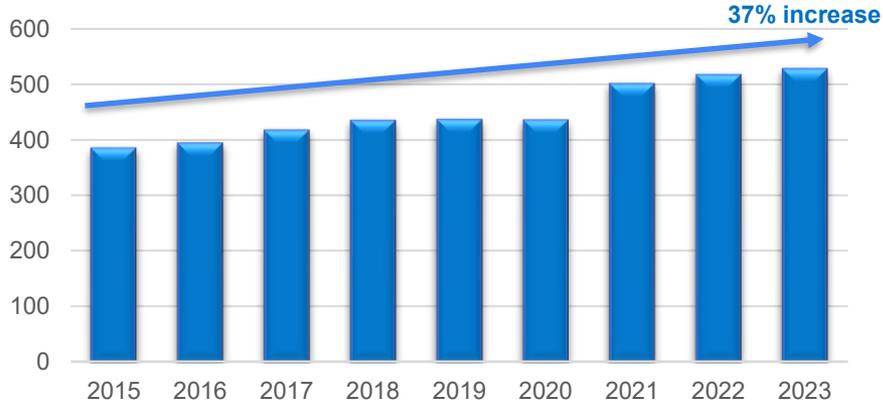


# Portfolio Company Tax Issues



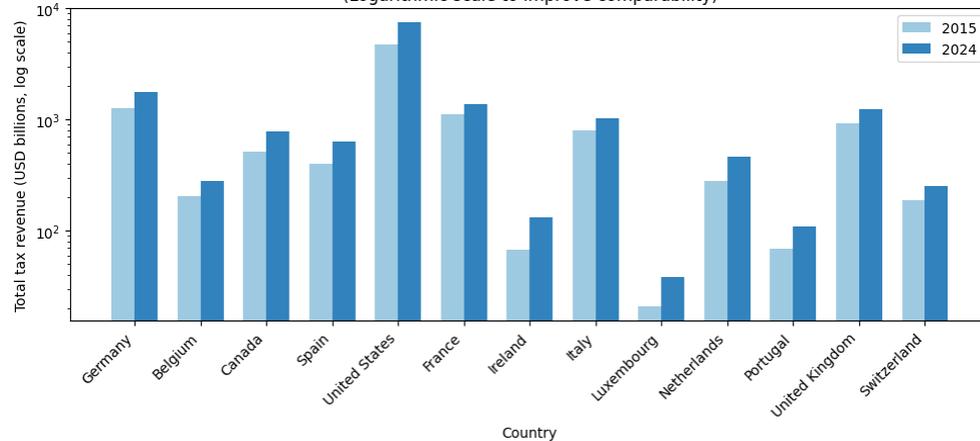
## Increasing Assertiveness of Tax Authorities

OECD's countries average of total tax revenue  
(in billions of US \$)



OCDE average tax revenues have increased steadily over the past decade.

Total tax revenue by country - 2015 vs 2024  
(Logarithmic scale to improve comparability)



# Portfolio Company Tax Issues



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## Increasing Assertiveness of Tax Authorities

### French Perspective – General considerations

- Several factors are driving an increase in French taxes and social security contributions:
  - Increase of the French public debt, notably due to the Covid-crisis (from 97.9% of GDP in 2019 to 111.9% in 2022)
  - Share of social spending in France's national budget: 57% (41% in social protection + 16% in health) in 2024
  - For the past four years, the Government has relied on Article 49(3) of the French Constitution to secure the adoption of the Finance Acts (i.e., specific procedure that does not require a vote from the National Assembly)
  - Polarization of French politics
- In France, additional tax revenues collected through audits conducted by the French Tax Authorities ("**FTA**") amounted to EUR 16.bn in 2024, representing an increase of EUR 1.5bn compared to 2023 (+9.9%). The FTA aim to achieve a 25% increase in tax audits of individuals by 2027.
- Recent increase in the criminal prosecution of tax-related matters:
  - Reform of the so-called 'Bercy lock' in 2018, introducing an automatic referral to the public prosecutor where the amount of tax reassessments exceed EUR 100,000 and resulted in the application of 100%, 80% or 40% penalties. Since then, the number of cases referred to the public prosecutor has increased by 75% (close to 2,000 cases in 2021).
  - Tax informant reward scheme (introduced in 2017) has expanded and generated 806 requests (204 in 2024) leading to EUR 182m recovered, with rewards reaching up to EUR 1m – or 15% in exceptional cases (and EUR 5m paid out so far to 16 individuals).

# Portfolio Company Tax Issued



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## Increasing Assertiveness of Tax Authorities

### French Perspective – LBO scrutinization

- LBOs have been under heavy scrutiny over the past 10-15 years:
  - Significant volume of leveraged acquisitions in France over the past years
  - Complex and various topics being audited by the FTA (and ruled by the French courts), notably:
    - Set-up of a French tax consolidation group (Montreuil Administrative Tribunal, June 16, 2011, n° 0914116, Façonnable)
    - Remuneration of shareholder loans (French Administrative Supreme Court, July 10, 2019, n°429426, SAS Wheelabrator Group)
    - Specific anti-abuse measure relating to OBOs (so-called "Charasse" mechanism) (French Administrative Supreme Court, December 6, 2021, n°439650, SAS Financière des Eparses)
    - Scrutiny of management packages and related instruments (French Administrative Supreme Court, July 13, 2021, n°435452, n°437498, n°428506 & French Civil Supreme Court, September 28, 2023, Alten, n°21-20.685)
    - Liability of the CEO in the situation of dividend distributions leaving the company with insufficient assets (French Supreme Court, September 9, 2020, n°18-12.444)
  - This trend appears to be continuing with several hot topics emerging on the French market:
    - Potential reclassification of shareholder loans as quasi-equity instruments (leading to a full add-back of interest expenses)
    - French WHT considerations applicable to dividend distributions (substance, beneficial ownership, PPT)
    - VAT recovery from holding companies
    - Other upcoming issues: management package, ATAD II...carried interest ?



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# Tax Risk Management



## CARRIED INTEREST STRUCTURING

- Ordinary income vs capital gains:
  - **Ordinary income (normally, salary income):** review of possible specific tax regimes:
    - Type of funds that trigger the tax treatment.
    - Need for a minimum holding tax period: proper documentation.
    - Need for a minimum investment outside the carried interest?
    - Persons to whom the beneficial tax regime applies: need to properly design the addressees.
    - Contemplate clawback situations.
    - Need for blockers or Carrycos?
  - **Capital gains treatment:** review of possible specific tax regimes:
    - Minimum investment requirements.
    - Minimum holding period.
    - Clawback clauses.
    - Good and bad leaver provisions affecting the tax nature of the proceeds.
    - Need for blockers or Carrycos?

# Tax Risk Management



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## STRUCTURING of INVESTMENT BY THE FUNDS

- The regulated funds and anti-abuse rules.
- Intermediate holding companies in disregarded or look-through funds: Are they a problem?
- The abuse of the beneficial ownership clauses: how to deal with them in private equity or venture fund schemes, where, as a rule, immediate distribution takes place?

# Thank you



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