

# THE GROWING APPETITE FOR ALTERNATIVES



# THE GROWING APPETITE FOR ALTERNATIVES



Moderator:

**Rajaa Mekouar-Schneider**

CEO

Luxembourg Private Equity  
and Venture Capital Association (LPEA)

 @lpea\_lux



**Cesare Buzzi-Ferraris**

Managing Director

Head of Italy  
SwanCap



**Thierry Lesage**

Partner

Arendt & Medernach

 @ArendtMedernach



**Katia Panichi**

Partner

Elvinger Hoss Prussen



# Implementation of ATAD 2 – anti-hybrid rules in Luxembourg

A major challenge for the fund industry

# Bill on ATAD 2 - overview

## Hybrid mismatches covered

- In line with ATAD 2: Deduction/ Non-Inclusion (D/NI) and Double Deduction (DD)
- Hybrid mismatches with **EU and non-EU countries**
- Hybrid mismatches relevant for Funds are essentially:
  - **Payment under a financial (hybrid) instrument (D/NI)**
  - **Payment to a hybrid entity (D/NI)**
  - **Payment by a hybrid entity (D/NI)**
  - **DD outcome**
- Rule on **reverse hybrids**

## Scope

- Associated enterprises
- Structured arrangement

## Specific measures for investment funds

- Acting together – *de minimis* threshold (10%)
- Reverse hybrids – exception for CIVs

## Entry into force

- Applicable to financial years starting as from 1.1.2020
- Exception: rules on reverse hybrids (1.1.2022)



# Bill on ATAD 2 - scope

## Associated enterprise

- Entity or individual
- General threshold: **50%** (voting rights / capital / profit share)
- Threshold for hybrid instruments: **25%**
- **Persons acting together must be added for the computation of relevant thresholds**

## Acting together

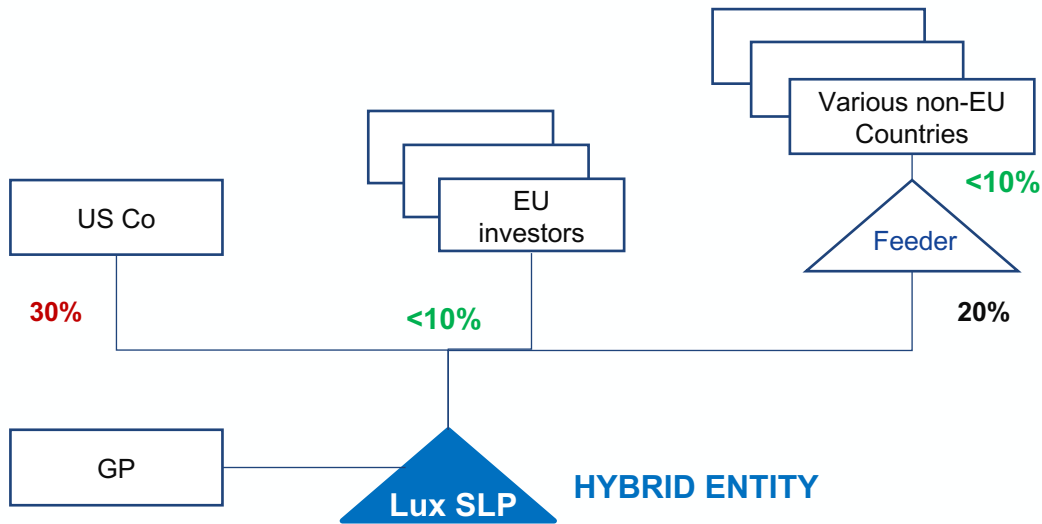
- **Simplification measure for investment funds**: investor holding directly or indirectly less than 10% in the interest of the fund and which is entitled to less than 10% of the profits of this fund will not (unless proved otherwise) be considered as acting together with another investor in the fund

## Structured arrangement

- Mismatch outcome is priced into the terms of the arrangement
- or an arrangement that has been designed to produce a hybrid mismatch outcome,
- unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch
- and did not share in the value of the tax benefit resulting from the hybrid mismatch

# Associated enterprises & acting together

## Example



Are the investors acting together?

IF NO

OUT OF SCOPE