Qualified Investor Fund: Tax Effective Solution

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However, the tax advantage is not the only advantage of qualified investor funds (QIF). The main problem that developers face nowadays are restrictions from banks, whether it is more difficult access to credit capital or provision of finances generally. If a developer needs to strengthen its capital positions, that is to prove to the bank that it puts more own sources into the project, QIF can become a means how to involve more investors in the project who will participate in the capital required by the bank.

Taxes and capital strength together with simplification of the whole procedure of founding and operating qualified investor funds which will be brought about by the amendment of the Act on Collective Investment already approved by the parliament represent an outstanding advantage and chance for developers. All experts participating in the recent discussion meeting of Stavební Forum (Construction Forum) agreed on it. The amended act should enter into effect this July or August and currently it is awaiting approval by the Senate and the President's signature. According to current data, there are 18 investment and 23 share funds operating in the regime of qualified investor funds in the Czech Republic and their assets amount to CZK 6,000,000,000.

What Are They?

How do the above mentioned "experts' funds" work in the market? As the term implies, these funds' securities are designed only for the so-called qualified investors. They are investors having experience in investments in capital market and they must confirm this fact in writing in a declaration. In accordance with the law, a fund can have up to one hundred investors and the low limit of the investment of each one is CZK 1,000,000. However, that is the minimum amount stipulated by law and each fund may deliberately increase it in its statutes. The equity capital of each fund has to reach at least CZK 50,000,000 within one year of the day of acquisition of the licence. QIF may be founded for no more than ten years and it is not possible to extend this period. However, it is possible to fuse with a "younger" fund and thus extend the existence of the original fund.

Qualified investor funds have been operating in the Czech Republic since 2006 when their activities were regulated by the Act on Collective Investment. They are suitable for investments in property, for founding a hedge fund or private equity fund. They are subject to close supervision by the Czech National Bank. The Act does not stipulate precisely where the funds are allowed to invest and where not, that is why their investment strategy has to be determined in great detail in the fund's statutes and according to it they are supervised by the Central Bank.

Share or Investment Funds?

According to experts from investment company Conseq, which currently manages four of these funds whose total volume of assets exceeds CZK 350,000,000, the law makes it possible for these funds to operate either as share funds or investment funds. A share fund may only be founded by a licensed investment company which then manages its assets and sells shares to investors. It is destined especially for natural persons' investments. A share fund may be open-end or closed-end. In an open-end fund, the number of issued shares is not limited and owners of its shares have the right to sell them back to the fund on their request. In closed-end funds, the investment company does not buy back shares. Their investment is not settled until within dissolution of the share fund.

Investment funds operate only on a closed-end basis; they are always founded as joint stock companies, which thanks to subscription of share acquire the needed financial resources which they re-invest. They are designated for legal entities' investments. Investors which decide to invest in an investment fund buy shares from its founder (investment company) and thus become the fund's shareholders.

In the process of founding an investment fund in form of a joint stock company it is necessary to found a new joint stock company. The fund cannot ask for a license if the company already exists and has been registered in the Companies Register. The law requires a company not yet registered in the register founded by a public notary's deed. The company is registered only after the fund receives a licence by the CNB. The only subject of enterprise of an investment fund may be collective investment and the fund may only be founded as closed-end. QIF cannot be offered publicly, for example on the stock-market. What is necessary for the activity of the fund is a depository which supervises the fund's activity within the scope stipulated by the law. The fund's depository is “its” bank. It checks observation of the fund's statutes, proceeds information about its transactions, carries out purchase of real estate or settlement of securities trading, in extreme cases it can even prevent the fund from dealing with its assets. The relatively close link with the bank is advantageous for the funds because from the depository they can get credits easier than is usual.

One-Percent Tax?

One of the above mentioned advantages of the QIF is lower taxation – they are subject to a five-percent corporate tax, rather than the usual twenty percent. They also provide for zero taxation of dividends, and natural persons who can invest in QIF in form of share funds can benefit from a zero tax after six months from the beginning of the investment.

As Radek Halíček from KPMG pointed out, a relatively strong pressure is currently exerted on reduction of the mentioned five-percent corporate tax to one percent.

The Finance Ministry wants to promote such reduction in order to attract foreign financial investors to the Czech market. For example, vice-minister Peter Chrenko has recently confirmed in press that the Finance Ministry prefers reduction of the corporate tax for “collective investment entities” – that is investment companies – from 5 to 1%. This reduction should be incorporated into the new law on income tax which should generally simplify tax collection – in ideal case already from 2010.

In reality it looks as follows: several bigger companies meet and found a joint stock company with the clear intention of investment. Afterwards, they submit an application for registration as QIF to the Central Bank. According to Conseq's experience you should be aware of the fact that it usually takes five months to take all the necessary steps to start a fund including approval from the Central Bank. Most of QIFs' investments go to construction in the Czech Republic.

The amendment to the Act on Collective Investment should also simplify the legal regulation of the funds' activities. Its main advantages were summed up by Ondřej Petr from the law office Havel & Holásek at the Forum. The amendment should notably simplify acquisition of real estate because as opposed to the past it will make it possible to put in the fund not only financial but also non-monetary investment, i.e. also real estate. Also the relationship between the fund and its depository should simplify.

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