

# **Investment fund as an investment company with variable capital**

## **Abstract**

The diploma thesis deals with an investment company with variable capital (“SICAV”), with its status and specialities. SICAV which is basically a special kind of a public limited company differs from a regular public limited company in many ways which puts high demands on the legislator who has to be precious while accepting new legislation, especially the tax legislation, not to make gaps and contradictions at the law. In the introductory part, the thesis describes a significant specialities of SICAV, then it tries to find a problematic provisions of the law with respect to SICAV. Then the thesis aims to resolving of such problematic provisions, which is made especially by a method of analysis, and others methods commonly used to interpretation of legal texts.

The first part of the thesis aims to definition of SICAV as an investment fund. The difference between funds of collective investment and funds of qualified (professional) investors, which are two main categories of investment funds in the Czech law, are highlighted here. Some of characters are analysed in more detail here as well. Especially the principle of publicity needs to be adjudicated in relation to every single sub-fund of SICAV independently. When it comes to analysis of the requirements for minimal fund capital with respect to SICAV, and its sub-funds, the thesis concludes that such requirements shall be interpreted in relation to each sub-fund separately.

Second part focuses on the income tax with respect to SICAV investment funds. Firstly, the evaluation analysis of taxation of a “basic investment fund” with respect to the amended tax law which is in force since January 1, 2019 is made. Albeit the thesis demonstrates that the wording of the amendment is sometimes inappropriate with respect to SICAV, it generally achieved its objective. However, the condition that restricts “basic investment funds” from maintaining trade business should be omitted from the amendment. When it comes to a verification of the hypothesis according which it is possible to use a specialities of SICAV, namely its sub-funds, to conduct tax optimization, the thesis concludes that it is possible to use SICAV to build up a corporate structure that reaches lower income tax designated for “basic investment funds” but the final tax burden for the final investor shows to be higher. The conclusion is that according currently effective tax laws it is not advantageous to make such structure.

The third part observes sub-funds of SICAV with respect to property tax, and property acquisition tax because the legislator did not take into account the existence of SICAV's sub-funds in the laws regulating these taxes. The thesis concludes that it is necessary to consider as a taxpayer a sub-fund, not the SICAV although the SICAV is *de iure* owner of the property. In the final part, the procedural status of SICAV and its sub-funds is examined, and it is clear from that analysis that the scope of the sub-fund's tax subjectivity is unclear, and it is questionable how wide the sub-fund's ability to be a taxpayer is.

**Key words:** Investment company with variable capital, SICAV, income tax of the investment fund with variable capital, SICAV as a taxpayer