

# *Managing assets* European real estate fund regimes

*This booklet seeks to compare more than 30 different types of fund vehicle in a summary form, by looking at a consistent set of key topics, and noting major pros and cons*

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## Introduction

*In recent years the number of different types of fund vehicle available to, and chosen by, sponsors and managers of real estate funds has proliferated, to a sometimes bewildering extent.*

Fund managers also increasingly face heavy pressures to control and minimise the regulatory and other operating costs of setting up and running fund structures, in a world that continues to look to impose regulation on all types of funds and their managers. Moreover, investors are increasingly sensitive towards incurring any significant tax leakages, and in particular tend more often to press sponsors to offer fund vehicles that best match the investors' specific tax attributes.

PwC European Real Estate Investment Management (REIM) tax group is a well-established informal network of our senior tax advisers who specialise in real estate fund structuring work. The REIM group has collaborated to prepare this booklet at a time when – as the real estate market picks itself up off the canvas after the heavy blows of the financial crisis – thoughts are turning once again to the launch of new real estate funds tailored to the changed environment of the 2010 decade.

This booklet seeks to compare more than 30 different types of fund vehicle in a summary form, by looking at a consistent set of key topics, and noting major pros and cons. We hope that you will find it a useful starting point, and a source of reference.

The members of our REIM group listed as country specialists in the booklet will be very happy to help you, by providing further information on any of the fund vehicles described.



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## Austria



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# Austria

## GmbH & Co. KG

<b>Background</b>	Austrian closed-end real estate funds are typically set up as an Austrian limited partnership (KG). Such vehicles are so far generally not subject to regulatory requirements and usually represent long-term investments with less risk diversification.
<b>Legal form</b>	Under Austrian commercial law, the GmbH & Co. KG is a special form of a limited partnership (KG). The general partner (unlimited liability) is a limited liability company. Investors are typically limited partners. The liability of the limited partners for the vehicle's obligations is generally limited to their contributions.
<b>Tax status</b>	The fund vehicle is transparent for Austrian income tax purposes.
<b>Tax treatment at entity level</b>	Dividends received, capital gains realised and other income received is not subject to income tax at the level of the fund.
<b>Treatment of investors</b>	For tax purposes, investors are basically deemed to receive their income from the KG pro rata to their participation, regardless of its actual distribution policy. Thus, the taxation of the fund's income will be triggered at the level of each investor, depending on the tax status of the investor and the nature of the received income.
<b>Withholding tax</b>	No withholding tax is levied on income distributed by the KG (due to the tax transparent status).
<b>Treaty status</b>	The KG itself does generally not have access to treaty benefits; from an Austrian perspective the investors can benefit from double tax treaties as the beneficial owners of the fund's income.
<b>Filing obligations</b>	The KG has to file an annual income tax return, whereat the profit will be determined at the level of the KG at a first stage and then tax wise allocated to the investors. Resident investors are, and non-resident investors may be required to file an Austrian tax return.
<b>Regulation</b>	The KG is not subject to regulatory investment supervision (non-regulated fund).
<b>Requirements for authorisation</b>	None.
<b>Investment restrictions</b>	None.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• Austrian closed-end funds in the form of a KG are well accepted among Austrian investors, especially for long-term investments with the focus on only one or few assets.</li> <li>• The legal form of a GmbH &amp; Co. KG provides for a fast establishment procedure, low cost and easy handling.</li> <li>• The fund vehicle is tax transparent and there are no withholding taxes on income distributions.</li> <li>• An increase of value in the property will principally only be taxed in case of the actual disposal of the asset.</li> <li>• More possibilities for investors to have some influence on the investment.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• The fund vehicle is not very flexible regarding the holding period of the investment.</li> <li>• There is generally no direct access to double tax treaties</li> </ul>

# Austria

## Immobilien-Sondervermögen

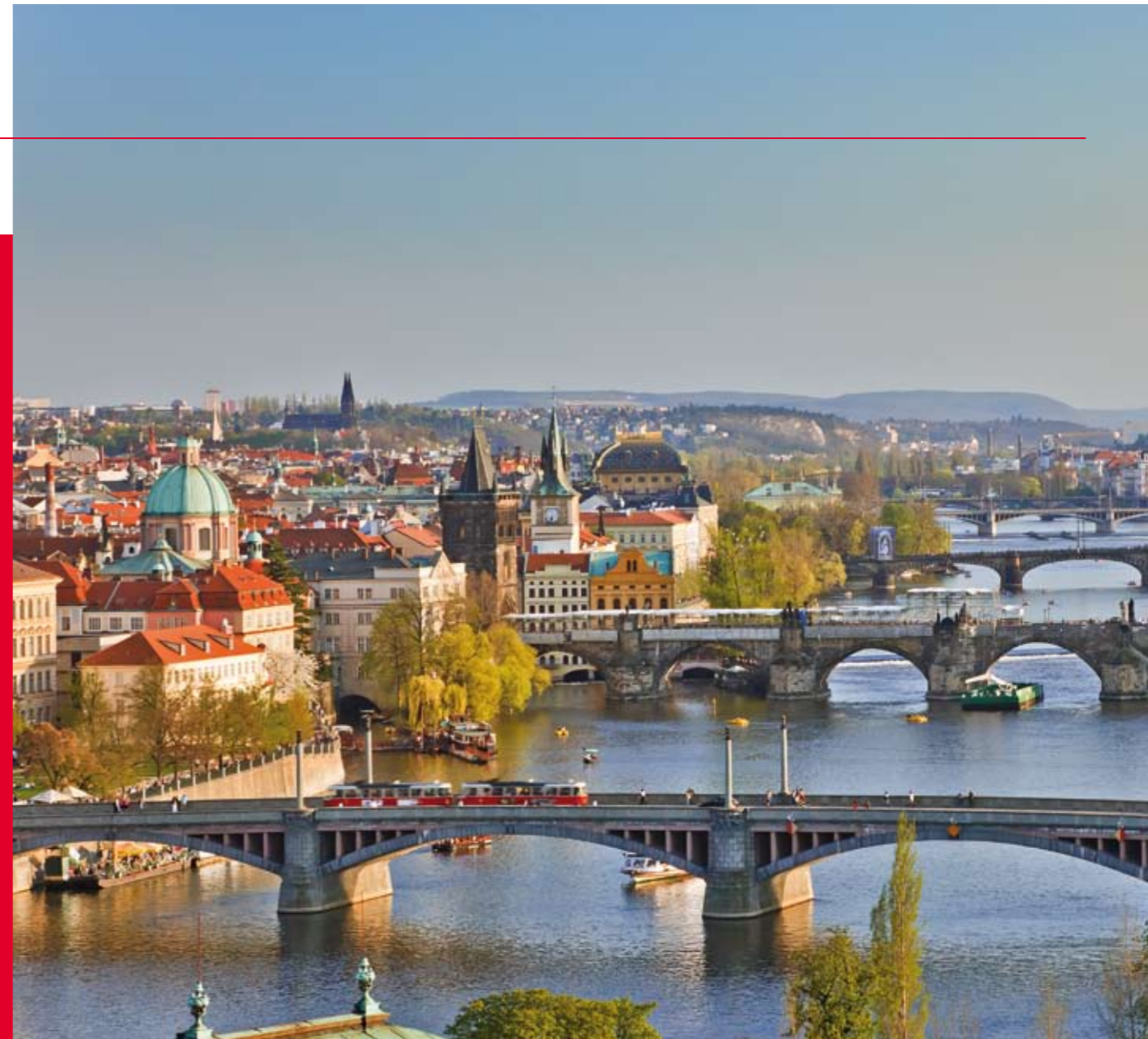
<b>Background</b>	The legislation regarding the Austrian <i>Immobilien-Sondervermögen</i> (Real Estate Investment Fund) was published in 2003, introducing a legal framework for Real Estate Investment Funds. It has been a long-lasting call of investors to introduce a regulated open-end real estate investment vehicle in Austria.
<b>Legal form</b>	An Austrian <i>Immobilien-Sondervermögen</i> is an open-end fund, primarily invested in real estate assets. The fund has no legal personality and is managed by an Austrian management company ( <i>Kapitalanlagegesellschaft</i> , KAG), which is either an Austrian limited liability company (GmbH) or a stock corporation (AG). Further, a depository bank usually governs the issuance and redemption of shares in the fund. An <i>Immobilien-Sondervermögen</i> is a real estate retail fund, accessible to all kinds of investors.
<b>Tax status</b>	The fund is transparent for Austrian income tax purposes.
<b>Tax treatment at entity level</b>	There is no income taxation at the level of the fund.
<b>Treatment of investors</b>	Investors are deemed to receive the fund income pro rata to their fund shares. From an Austrian tax perspective, the income will be taxed at the level of each investor, depending on the tax status of the investor and the nature of the received income. In case of non-resident investors, special provisions might apply. Further, the respective double tax treaties should be considered.
<b>Withholding tax</b>	Principally, withholding tax is levied on both distributed and accumulated income. The income is determined at the level of the fund and basically comprises income from the rent and lease of the real estate, the revaluation gains as well as domestic and foreign dividends, interest and other specified capital income sources. Further, foreign investors as the beneficial owners of the fund income might have access to a double tax treaty reducing the rate of withholding tax levied in Austria. Profits from foreign real estate held by the fund are exempt from Austrian taxation under those treaties, for which the method of exemption is applicable.
<b>Treaty status</b>	As regards treaty access for open investment funds, Austria has in principle adopted the "proportional approach" as contained in the OECD report on "The Granting of Treaty Benefits with Respect to Income of Collective Investment Vehicles". Whether this approach shall also apply to real estate funds is currently subject to ongoing discussion and therefore unclear. However, Austria issues certificates of residence to Austrian publicly offered real estate funds for the purpose of pursuing treaty entitlements and should thus in principle also recognise the treaty access of foreign publicly-offered real estate funds. Nevertheless, the view of the respective treaty partner might be different, whether treaty access should be granted to the fund itself, the KAG or the investors in the fund as the beneficial owners of the fund's income. There is no access to EU Parent-Subsidiary Directive for the fund.
<b>Filing obligations</b>	Depending on the nature of the investors, there might be an obligation to file tax returns with the local authorities. In the annual report of the <i>Immobilien-Sondervermögen</i> , the tax treatment for different investor types has to be published (i.e. so called "Steuerseite").
<b>Regulation</b>	The <i>Finanzmarktaufsicht</i> (FMA) is responsible for the regulatory supervision of the KAG, managing the fund.
<b>Requirements for authorisation</b>	The KAG needs a banking licence in order to set up the fund and is therefore subject to the respective capital market regulations. Before the units of the <i>Immobilien-Sondervermögen</i> are offered to the public, a prospectus and a simplified prospectus have to be published and provided to FMA.
<b>Investment restrictions</b>	The fund is restricted to invest in certain eligible real estate assets e.g. real estate properties or property rights. Excluded are acquisitions of other real estate funds, of shares in other than property companies or other investments in securities. Specific quotas regarding the gearing and investment of the fund apply.
<b>Minimum level of investment</b>	The fund has to invest consistently according to the principle of risk spreading, as detailed in legislation (at least ten property investments within four years).
<b>Pros</b>	<ul style="list-style-type: none"> <li>• The <i>Immobilien-Sondervermögen</i> is an investment vehicle for all types of investors.</li> <li>• The fund itself is not subject to tax.</li> <li>• The <i>Immobilien-Sondervermögen</i> represents a comparably safe vehicle due to capital market regulation.</li> <li>• The fund is principally obliged to redeem the shares upon request of the investors.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Austrian open-end funds may be unknown to some international investors.</li> <li>• The flexibility for Austrian and international investments and the range of eligible assets is limited.</li> <li>• Moreover there are gearing restrictions for real estate assets held by the fund.</li> <li>• The access to double tax treaties in some jurisdictions is not clear.</li> <li>• An increase of value in the property will principally be taxed regardless of the actual disposal of the asset.</li> </ul>

# Austria

## Immobilien-Spezialsondervermögen

<b>Background</b>	The Austrian <i>Immobilien-Spezialsondervermögen</i> is basically also governed by the respective regulations which apply to the <i>Immobilien-Sondervermögen</i> . However it represents a regime for institutional investors that provides for a more flexible investment environment.
<b>Legal form</b>	The Austrian <i>Immobilien-Spezialsondervermögen</i> is a closed-end fund with no legal personality, and is managed by an Austrian management company ( <i>Kapitalanlagegesellschaft, KAG</i> ), which is either an Austrian limited liability company (GmbH) or a stock corporation (AG). The number of institutional investors, investing in the fund is limited.
<b>Tax status</b>	The fund is transparent for Austrian income tax purposes.
<b>Tax treatment at entity level</b>	There is no income taxation at the level of the fund.
<b>Treatment of investors</b>	Investors are deemed to receive the fund income pro rata to their fund shares. From an Austrian tax perspective, the income will be taxed at the level of each investor, depending on the tax status of the investor and the nature of the received income. However, individuals can not invest in <i>Immobilien-Spezialsondervermögen</i> and the number of institutional investors is limited. In case of non-resident investors special provisions might apply. Further, the respective double tax treaties have to be regarded.
<b>Withholding tax</b>	Investors are deemed to receive the fund income pro rata to their fund shares. From an Austrian tax perspective, the income will be taxed at the level of each investor, depending on the tax status of the investor and the nature of the received income. However, individuals can not invest in <i>Immobilien-Spezialsondervermögen</i> and the number of institutional investors is limited. In case of non-resident investors special provisions might apply. Further, the respective double tax treaties have to be regarded.
<b>Treaty status</b>	Investors are deemed to receive the fund income pro rata to their fund shares. From an Austrian tax perspective, the income will be taxed at the level of each investor, depending on the tax status of the investor and the nature of the received income. However, individuals can not invest in <i>Immobilien-Spezialsondervermögen</i> and the number of institutional investors is limited. In case of non-resident investors special provisions might apply. Further, the respective double tax treaties have to be regarded.  There is no access to EU Parent-Subsidiary Directive for the fund.
<b>Filing obligations</b>	In contrary to the <i>Immobilien-Sondervermögen</i> , resident investors are generally required to file tax returns for income derived from the fund.
<b>Regulation</b>	In contrary to the <i>Immobilien-Sondervermögen</i> , resident investors are generally required to file tax returns for income derived from the fund.
<b>Requirements for authorisation</b>	The KAG needs a banking licence in order to set up the fund and is therefore subject to the respective capital market regulations. The <i>Immobilien-Spezialsondervermögen</i> is not required to publish and provide FMA with a prospectus or simplified prospectus.
<b>Investment restrictions</b>	The investment-vehicle targets institutional investors. Generally speaking, restrictions regarding the nature of investments (e.g. eligible assets, quotas) apply, as with the <i>Immobilien-Sondervermögen</i> . The investment vehicle is also restricted to invest in certain eligible real estate assets. Specific quotas regarding the gearing and investment of the fund apply. However, the investment restrictions are more flexible compared to <i>Immobilien-Sondervermögen</i> .
<b>Minimum level of investment</b>	The fund has to invest according to the principle of risk spreading, as detailed in legislation (at least five property investments within four years).
<b>Pros</b>	<ul style="list-style-type: none"> <li>• The <i>Immobilien-Spezialsondervermögen</i> is not subject to direct supervision from the FMA.</li> <li>• The fund does not have to issue a prospectus.</li> <li>• <i>Immobilien-Spezialsondervermögen</i> offer a flexible investment vehicle to institutional investors.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Individuals are not eligible investors.</li> <li>• <i>Immobilien-Spezialsondervermögen</i> generally represent a long-term investment.</li> <li>• The access to double tax treaties in some jurisdictions is not clear.</li> <li>• An increase of value in the property will principally be taxed regardless of the actual disposal of the asset.</li> </ul>

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# The Czech Republic

## Speciální Fond Nemovitostí

<b>Background</b>	<i>Speciální Fond Nemovitostí</i> (SFN) is a special property fund that is not covered by the UCIT Directives.
<b>Legal form</b>	The SFN is an open unit fund. It is not a legal entity per se; it is a pool of assets with its own tax identification number. SFN has to be managed by an investment company (asset management company).
<b>Tax status</b>	The SFN is not tax transparent for Czech income tax purposes. The corporate income tax rate applicable for SFN is currently 5% (compared with the 19% standard corporate income tax rate). Corporate income tax liabilities of SFNs are settled by the asset management company. The tax paid is settled from the assets of the fund from which the corporate income tax liability arose.
<b>Tax treatment at entity level</b>	<p>There is no special tax levied on capital gains in the Czech Republic. Any capital gain/loss is reflected in the income of the fund and taxed at the corporate income tax of 5% as described above. Rental income and gain/loss from the sale of real estate is also reflected in the income of the fund and taxed through the corporate tax return. Any loss from the sale of plots of land is not tax deductible. Generally tax losses realised by SFN in previous taxable periods can reduce the corporate income tax base in the subsequent five taxable periods.</p> <p>Dividends received from abroad are included in a separate corporate income tax base of the SFN, which is subject to a 15% flat corporate income tax rate. For potential reduction of the withholding tax rate based on the double tax treaties see section "Treaty status". Dividends received from the Czech Republic are generally subject to a 15% final withholding tax. Based on the legal status of SFN there is no possibility to access the benefits of EU Parent-Subsidiary Directive concerning dividends or capital gains.</p>
<b>Treatment of investors</b>	<p><b>Investor as a legal entity:</b></p> <p>There is no special tax levied on capital gains in the Czech Republic (taxed via the corporate income tax return as a part of the profit of the particular entity, see section "Tax status"). Dividends received from a SFN are generally subject to 15% final withholding tax.</p> <p><b>Investor as an individual:</b></p> <p>No special tax on capital gains is levied. For Czech tax purposes, the redemption of units (buy-backs of units) in a SFN is treated as a sale of units (sale of securities) and as such it is generally exempt from income taxation if sold more than six months after acquisition. If the units are sold within six months of acquisition, the total capital gain is included in the general tax base of the taxpayer. Loss from the sale of one unit can be compensated with profit from sale of another unit up to the total amount of profits from sales of securities in a given tax year. If units are included within an individual's business assets the exemption is generally not available and losses and profits are compensated. Dividend income of individual investors is generally subject to a final 15% withholding tax.</p> <p><b>Non-residential issues</b></p> <p>If a non-EEA resident redeems units in a SFN, the SFN should withhold from the gross proceeds 1% of the amount.</p> <p>If the 1% tax is withheld, the liability of the non-EEA resident seller is deemed to be satisfied, unless the non-resident seller declares tax in an annual tax return within the statute barred period of three years (option to file). A tax treaty, if applicable, can alter the above described treatment stipulated by Czech tax law.</p>
<b>Withholding tax</b>	Applicable at the rate of 15% for dividends.

# The Czech Republic

## Speciální Fond Nemovitostí

<b>Treaty status</b>	Since SFN is not a legal entity, this issue is unclear. However, we believe that SFN should be able to access treaty benefits.
<b>Filing obligations</b>	The asset management company of SFN is obliged to file tax returns on behalf of the SFN. The asset management company should submit the tax return for its particular SFN as an integral part of its own tax return, even if the tax base of any such fund is zero or if the expenses exceed revenues. For the purposes of computing the total tax amount, it is not allowed, in any taxable period, to offset the investment company's tax base (taxable income) or the tax loss against the tax base of the funds.
<b>Regulation</b>	The regulatory body is Czech National Bank (CNB). Regulation is rather extensive since the fund is designed for investments from the general public.
<b>Requirements for authorisation</b>	An SFN is required to have an authorised depository which controls whether SFN manages its assets in compliance with the legal regulations and in compliance with the statute of the SFN. The authorised depository could be a bank with its seat in the Czech Republic or a foreign bank with a branch in the Czech Republic. Further, a board of experts (minimum of three members) has to be established. The board of experts, among others, sets the value of real estate property in the possession of SFN and its stakes in real estate companies.
<b>Investment restrictions</b>	SFN should invest mainly in real estate that it acquires, operates or sells in order to realise a profit, and under certain conditions in shares in specific real estate companies. SFN must invest at least 20% and at most 49% of its value into supplementary liquid assets, state treasury bills issued by the State or CNB, securities of mutual funds or specific bonds. In the first three years of the functioning of the SFN, the value invested into one real estate asset should not exceed 60% of the value of the fund; in further years it cannot exceed 20% of the value of the fund.
<b>Minimum level of investment</b>	No legal requirements. The SFN (or the asset management company) can set the minimum level of investment for a particular SFN.
<b>Pros</b>	<ul style="list-style-type: none"> <li>No investor restrictions (intended for investment by the general public).</li> <li>Lower corporate income tax rate than standard corporate entities.</li> <li>Time test for individuals (while selling or redeeming units) is always six months if units are not covered in the individual's business assets.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>No access to UCIT Directives.</li> <li>Rather intense regulation.</li> <li>Based on the current legislation and legal status of SFN, there is no possibility to tax depreciate assets (real estate properties) in the possession of the fund (however, revaluation of real estate properties is allowed) or to create tax deductible reserves for repairs.</li> <li>Based on the legal status of SFN, there is no possibility to access the benefits of the EU Parent-Subsidiary Directive.</li> <li>Dividends are subject to tax of 15%, which is higher than the corporate income tax rate of SFN of 5%.</li> </ul>

# The Czech Republic

## Fond Kvalifikovaných Investorů

<b>Background</b>	<i>Fond Kvalifikovaných Investorů</i> (FKI) is a fund of qualified investors and is not covered by the UCIT Directives.
<b>Legal form</b>	An FKI can be an investment fund, which is a legal entity in the form of a joint-stock company. Alternatively, an FKI can have the form of an open- or closed-end unit fund, in which case it has to be managed by an asset management company.
<b>Tax status</b>	The FKI is not transparent for Czech tax purposes. The corporate income tax rate applicable for FKI is currently 5% (compared with the 19% standard corporate income tax rate). Collection of corporate income tax of FKI in the form of an investment fund is similar to other corporate entities, i.e. FKI files a corporate income tax return in which the tax liability is declared. Collection of corporate income tax of FKI in the form of a unit fund is the same as for SFN (see section "Tax status" of SFN).
<b>Tax treatment at entity level</b>	<p>There is no special tax levied on capital gains in the Czech Republic. Any capital gain/loss (which is not tax exempt based on the EU Parent-Subsidiary Directive for FKI in the form of investment fund) or booked revaluation difference is reflected in the income of the fund and is subject to the reduced corporate income tax of 5%. The same rules for rental income, income from sale of real estate and utilisation of tax losses applies as for SFN (see section "Tax treatment at entity level" of SFN).</p> <p>Dividends received from abroad are included in a separate corporate income tax base of the FKI which is subject to a 15% flat corporate income tax rate. For potential reduction of the withholding tax rate based on the double tax treaties, see section "Treaty status". Dividends received from the Czech Republic are generally subject to 15% final withholding tax. In case of FKI in the form of an investment fund, the EU Parent-Subsidiary Directive could be applied and thus the resulting tax exemptions on dividends and capital gains in joint-stock companies or limited-liability companies can be claimed. Moreover, those exemptions are also possible should dividends or capital gains be paid to a FKI (in the form of investment fund) by a company that is a resident in a double tax treaty country, has a similar legal form as a Czech joint-stock company, limited liability company or cooperative, and such FKI has at least a 10% share for at least 12 months in that company and the company is subject to corporate income tax lower than 12%.</p>
<b>Treatment of investors</b>	<p><b>Investor as a legal entity:</b></p> <p>There is no special tax levied on capital gains in the Czech Republic (taxed via corporate income tax return as a part of the profit of the particular entity, see section "Tax status"). Dividends received and other income from FKI profit distributions are generally subject to a final 15% withholding tax. For potential reduction of the withholding tax rate based on the double tax treaties, see section "Treaty status". The tax exemption based on the EU Parent-Subsidiary Directive is applicable for the dividends and capital gains paid by FKI in the form of an investment fund.</p> <p><b>Investor as an individual:</b></p> <p>No special tax on capital gains is levied. For Czech tax purposes, the redemption of units (buy-backs of units) by FKI in the form of an unit fund is treated as a sale of units (sale of securities) and as such is exempt from income taxation should it be sold more than six months after acquisition. A similar exemption applies also for the sale of shares of FKI in the form of an investment fund. This exemption is not effective should the total direct share of the investor in FKI in the form of investment fund exceed 5% in the period of 24 months before the sale. Moreover, this exemption does not apply to units (shares) included in the individual's business assets. If the units (shares) are sold within six months of the acquisition, the total capital gain is included in the general tax base of the taxpayer. Loss from the sale of one unit (share) can be compensated with profit from the sale of another unit (share) up to the total amount of profit from sales of securities in a given tax year. In case the units (shares) are included in the individual's business assets, the compensation is not possible in general. Dividend income of individual investors is generally subject to a final 15% withholding tax.</p> <p><b>Non-resident issues</b></p> <p>If a non-EEA resident sells units (shares) to a Czech buyer, the buyer should withhold from the gross proceeds 1% of the amount. If the 1% tax is withheld, the liability of the non-EEA resident seller is deemed to be satisfied, unless the non-resident seller declares tax in an annual tax return within the statute barred period of three years (option to file).</p> <p>If a non-Czech resident sells the shares of FKI in the form of an investment fund to another non-Czech resident (corporate entity), the receiver of the income should tax this income via a regular corporate income tax return.</p> <p>A tax treaty, if applicable, can alter the above described treatment stipulated by Czech tax law. For potential reduction of the withholding tax rate from dividends or capital gain exemptions available for corporate investors based on the double tax treaties, see section "Treaty status".</p>

# The Czech Republic

## Fond Kvalifikovaných Investorů

<b>Withholding tax</b>	Applicable at the rate of 15% for dividends.
<b>Treaty status</b>	FKI in the form of an investment fund has access to treaty benefits. We believe also that FKI in the form of an unit fund should be able to access treaty benefits.
<b>Filing obligations</b>	FKI in the form of an investment fund files a corporate income tax return for each taxable period itself. For FKI in the form of an unit fund, the same rules as for SFN apply.
<b>Regulation</b>	The regulatory body is Czech National Bank (CNB). The regulation is not that extensive as in the case of SFN and is rather declaratory. The function of CNB is rather to supervise, since FKI does not have a large scale informational duty.
<b>Requirements for authorisation</b>	FKI is required to have an authorised depository, which controls whether FKI manages its assets in compliance with the legal regulations and statute of the FKI.
<b>Investment restrictions</b>	Investors into FKIs should be special institutions such as banks, investment companies, pension funds, insurance companies, central bank etc. or other qualified investors (such legal entity or individual has to confirm in writing that it has experience with securities trading). The minimum number of investors in FKI is two and the maximum number is 100, however CNB could approve an increase of that limit. Securities or other investment instruments issued by the fund cannot be publicly offered. Further restrictions and limitations (types of investment etc.) are set by the fund itself in the statute of the FKI. Currently many FKIs invest in real estate.
<b>Minimum level of investment</b>	The minimum level of investment is CZK 1,000,000 (equivalent to approx. EUR 40,350) per one investor.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• Lower tax rate than other corporate entities.</li> <li>• Not very extensive regulation.</li> <li>• Access to the benefits of the EU Parent-Subsidiary Directive for FKI in the form of an investment fund.</li> <li>• Time test for individuals (for selling or redeeming units or shares) is always six months, if units (shares) are not covered in an individual's business assets.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• No access to UCIT Directives.</li> <li>• Investor restrictions (not intended for general public).</li> <li>• Based on the current legislation and the legal status of FKI in the form of a unit fund, there is no possibility to tax depreciate assets (real estate properties) in the possession of the fund (however, a revaluation of real estate properties is allowed) or to create tax deductible reserves for repairs.</li> <li>• Dividends are subject to a tax rate of 15%, which is higher than corporate income tax rate of FKI (5%).</li> </ul>

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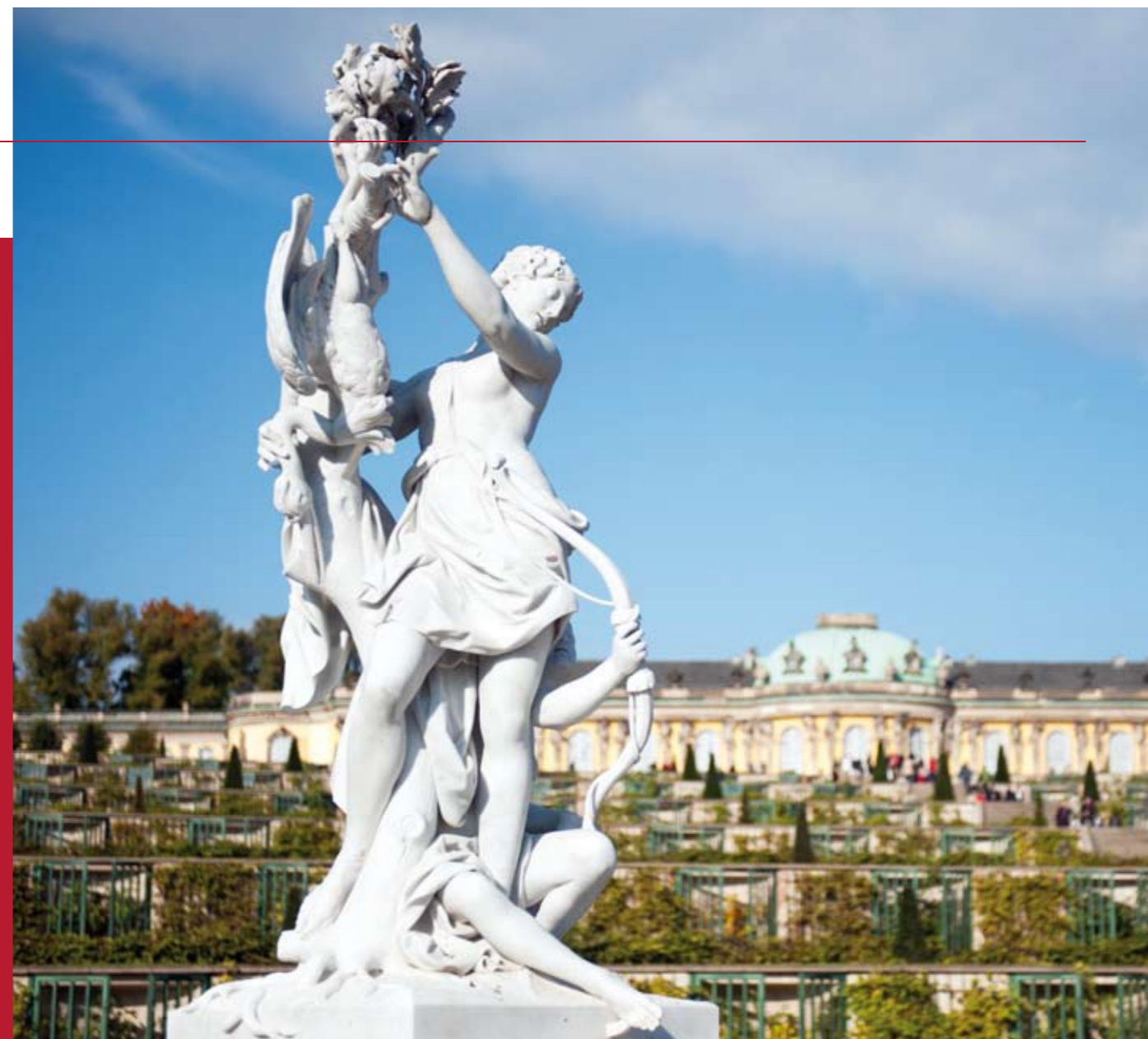
## France OPCI – FPI

<b>Background</b>	The <i>Organisme de Placement Collectif en Immobilier</i> (OPCI) was created in 2005. Its main purpose is the acquisition or construction of properties for renting or the holding of real estate shares. An OPCI is a regulated investment vehicle, and its implementation requires the prior approval of the French Market Authority.
<b>Legal form</b>	An OPCI can take the form of a <i>Fonds de Placement Immobilier</i> (FPI), which is in essence a pool of assets with no separate legal personality. It is subject to distribution requirements: at least 85% of rental income, 50% of capital gains and 100% of dividends must be distributed to investors.  The fund vehicle is managed by a regulated management company which is a type of portfolio management company ( <i>société de gestion de portefeuille</i> , or SGP).
<b>Tax status</b>	There is no French corporate income taxation at the fund vehicle level.
<b>Tax treatment at entity level</b>	Dividends received, capital gains and rental income recognised by the fund, are exempt from French corporate income tax.
<b>Treatment of investors</b>	Unit holders are generally subject to income tax only when the revenues recognised by the FPI are distributed. However gains on shares and securities are subject to income tax upon their recognition in the hands of the unit holders when at least 10% of the FPI is owned by an individual.  Income distributed by the FPI keeps its own qualification for the assessment of income tax payable by unit holders (rental income, interest, dividends).
<b>Withholding tax</b>	For non-French resident unit holders, the distribution of French-sourced dividends by an FPI triggers liability to the domestic withholding tax of 25% reduced to 18% for individual beneficiaries residing in the EU, Norway and Iceland.  Capital gains on non-real estate shares recognised by the FPI and distributed to non-French resident unit holders should not trigger any withholding tax liability in France.  Conversely, gains recognised on the disposal of French real asset (shares or properties) or units in the FPI are subject to a 33.33% withholding tax reduced to 16% for individuals residing in the EU, Norway and Iceland.
<b>Treaty status</b>	Generally the fund vehicle has no access to double tax treaties or EU Directive benefits.
<b>Regulation</b>	Both the FPI and the management company require prior approval and supervision by the French Market Authority.
<b>Investment restrictions</b>	At least 60% of the assets must consist of real estate assets, and 10% must be liquid assets. The direct or indirect holding of real property is possible.  Depending on the nature of the FPI (public, or limited to qualified investors), “diversification of risk” regulations may apply.
<b>Pros</b>	<ul style="list-style-type: none"> <li>No taxation at the FPI level.</li> <li>Possible automatic French 3% tax exemption (for public funds only).</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>No access to double tax treaties and subsequently no mitigation of French withholding tax.</li> <li>An FPI is a highly regulated fund vehicle with little flexibility and significant administrative costs.</li> <li>To date no FPIs have been set up.</li> </ul>

## France OPCI – SPPICAV

<b>Background</b>	The <i>Organisme de Placement Collectif en Immobilier</i> (OPCI) was created in 2005. Its main purpose is the acquisition or the construction of properties for renting or the holding of real estate shares. An OPCI is a regulated investment vehicle, and its implementation requires the prior approval of the French Market Authority.
<b>Legal form</b>	An OPCI can take the form of a <i>Société de Placement à Prépondérance Immobilière à Capital Variable</i> (SPPICAV), a corporate vehicle that enjoys a separate legal personality.  It is subject to distribution requirements: at least 85% of rental income, 50% of capital gains and 100% of dividends received must be distributed.  The SPPICAV is managed by a regulated management company which is a type of portfolio management company ( <i>société de gestion de portefeuille</i> , or SGP).
<b>Tax status</b>	The SPPICAV is exempt from French corporate income tax.
<b>Tax treatment at entity level</b>	An income tax return is filed annually by the SPPICAV. However, no corporate income tax is assessed on the income reported as long as the entity qualifies as an SPPICAV, meaning it complies, among other requirements, with its distribution requirements.
<b>Treatment of investors</b>	Income distributed by the SPPICAV qualifies as dividends.  For French individual investors, dividends are subject to income tax at a progressive rate of 0%, escalating to 40% (after a 40% rebate) or at the proportional rate of 18% (increased by 12.1% social taxes). Capital gains realised on the sale of the SPPICAV shares are subject to income tax at the rate of 18% (increased by 12.1% social taxes).  French corporate investors are subject to corporate income tax at the standard rate of 34.43% (including a social surtax).
<b>Withholding tax</b>	Distributions of dividends to non-French resident investors are subject to a 25% domestic withholding tax reduced to 18% for individuals residing in the EU, Norway and Iceland.  Capital gains recognised on the disposal of shares in an SPPICAV may be subject to the 33.33% French withholding tax where the seller owns more than 10% of the SPPICAV shares.
<b>Treaty status</b>	Application of double tax treaty benefits needs to be reviewed on a case-by-case basis. Recent double tax treaties concluded by France provide for mitigated rates of withholding tax on dividends paid by an SPPICAV. However there is no access to EU Directives.
<b>Regulation</b>	Both the SPPICAV and the management company require prior approval and supervision by the French Market Authority.
<b>Investment restrictions</b>	At least 60% of the assets must consist of real estate assets, and 10% must be liquid assets. The direct or indirect holding of properties via interposed tiers is possible.  Depending on the nature of the SPPICAV (public or limited to qualified investors), “diversification of risk” regulations may apply.
<b>Pros</b>	<ul style="list-style-type: none"> <li>Competitive advantage at the time of the investment subject to the condition that the SPPICAV keeps the real estate asset for at least five years: the seller benefits from a reduced rate of corporate income tax at 19.63% (including social surtax) on the gain realised. This favourable tax regime is due to terminate on 31 December 2011.</li> <li>Possible automatic French 3% tax exemption (for public funds only).</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Limited access to double tax treaties.</li> <li>Need for a regulated French management company.</li> </ul>

## Germany



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## Germany GmbH & Co. KG

<b>Background</b>	German closed-end real estate funds are most commonly set up as a German limited liability partnership (KG). These are largely non-regulated vehicles. At present, it is likely that managers of German closed-end funds will be subject to the planned EU Directive on Alternative Investment Fund Managers (AIFM Directive).
<b>Legal form</b>	Under German commercial law, the GmbH & Co. KG is a special form of limited partnership (KG). The general partner is not a natural person but a limited liability company (GmbH). Investors are typically limited partners. The liability of limited partners for the vehicle's obligations is generally limited to their contributions.
<b>Tax status</b>	The fund vehicle is transparent for German corporate income tax purposes. German trade tax may be due at the level of the fund vehicle, notably where there are commercial activities, where there is evidence that there is a business imprint, or participation in other business partnerships.
<b>Tax treatment at entity level</b>	Dividends received, capital gains realised and other incomes received are not taxed at the level of the fund. For trade tax purposes, an exemption for participations of at least 10% in EU companies and 15% in non-EU and domestic companies (active income required for non-EU companies) is generally available for dividends received. Other trade tax exemptions may be available.
<b>Treatment of investors</b>	For tax purposes, investors are deemed to receive their income from the KG pro rata to their participation, regardless of its actual distribution policy. The income is subject to tax according to the individual circumstances of the investor. Resident investors are, and non-resident investors may be (depending on the type of income), subject to German taxation on their income deriving from the fund.
<b>Withholding tax</b>	No withholding tax is levied on income distributed by the KG.
<b>Treaty status</b>	For the KG itself there is generally no access to treaty benefits; instead - from a German tax point of view - the investors can benefit from double tax treaties as the beneficial owners of the KG's income. There is no access to the EC Directives developed for corporations for the KG.
<b>Filing obligations</b>	The KG submits an annual income tax return, a so-called separate and uniform determination of profits. Resident investors are, and non-resident investors may be (depending on the type of income), required to file a German tax return including their income deriving from the KG (determined based on the KG's tax return).
<b>Regulation</b>	The KG is not subject to any form of regulatory investment supervision (non-regulated fund). However, it is likely that managers of German closed-end funds will be subject to the planned EU Directive on Alternative Investment Fund Managers in future.
<b>Requirements for authorisation</b>	In case of public placement in Germany, the fund's prospectus is subject to a formal review (20 days) by the regulatory authority <i>Bundesanstalt für Finanzdienstleistungsaufsicht</i> (BaFin) prior to publication.
<b>Investment restrictions</b>	None.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• German closed-end funds are widespread, and well accepted among German investors.</li> <li>• The legal form of a GmbH &amp; Co. KG provides for a fast establishment procedure, low cost and easy handling.</li> <li>• The vehicle is tax transparent (except for trade tax) and there are no withholding taxes on income distributions.</li> <li>• Possibility of long-term investments with the focus only on one or few assets.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• German closed-end funds may be unknown to some international investors.</li> <li>• German trade tax could apply at KG level. Furthermore, investors could be subject to tax in the target countries (tax transparent entity).</li> <li>• There is generally no access to double tax treaties and EU Directives.</li> </ul>

## Germany Immobilien – Sondervermögen

<b>Background</b>	The legislation regarding the German <i>Sondervermögen</i> was amended at the end of 2007, introducing some major changes from a regulatory point of view. The German tax authorities have recently published an updated version of the circular on tax issues concerning German and foreign investment funds. However, some questions still remain open, having not been finally resolved.
<b>Legal form</b>	A German <i>Sondervermögen</i> is a German open-end fund. The fund has no legal personality and is managed by a German management company ( <i>Kapitalanlagegesellschaft</i> , or KAG), which is either a German limited liability company (GmbH) or a stock corporation (AG). One KAG may set up several funds. An <i>Immobilien-Sondervermögen</i> is a real estate retail fund, accessible to all investors.
<b>Tax status</b>	The fund is exempt from German corporate income tax and from German trade tax.
<b>Tax treatment at entity level</b>	There is no income taxation at the level of the fund on dividends received, capital gains realised, and other income received.
<b>Treatment of investors</b>	Investors are deemed to receive the fund income pro rata to their fund shares. The income is subject to taxation at the level of the investors in accordance with the investors' personal tax status and the nature of the income. Income determination at fund level must comply with German tax provisions.
<b>Withholding tax</b>	Withholding tax is in principle levied on both distributed and retained fund income. Income derived from domestic and foreign dividends, interest and other capital income sources is liable to withholding tax at 26.375% (including the 5.5% solidarity surcharge) at fund level as from 1 January 2009. Redemptions and exceptions are available for certain investor types.
<b>Treaty status</b>	From both an OECD Model and German tax perspective, treaty access will be granted to the fund. From the point of view of the treaty partner there may be access either for the fund itself, the KAG, or the investors as the beneficial owners of the fund income. There is no access to EU Directives developed for corporations for the fund.
<b>Filing obligations</b>	Under the German Investment Tax Act, special tax reporting (indicating e.g. the taxable income per fund unit) has to be published on the website of the German Federal Gazette in order to ensure the tax transparent status of the fund. Deadlines apply. In case of a public fund there are no tax filing requirements for non-resident investors in Germany, and there should be no tax filing requirements for investors in target countries of the fund.
<b>Regulation</b>	The regulatory authority for German open-end funds is the <i>Bundesanstalt für Finanzdienstleistungsaufsicht</i> (BaFin). The fund is subject to its regulatory supervision.
<b>Requirements for authorisation</b>	Prior written regulatory approval is necessary for the KAG in order to set up the fund. For the fund itself, approval of the conditions of contract is required.
<b>Investment restrictions</b>	The fund is restricted to investments in eligible assets e.g. real estate properties (rental, commercial or mixed use), building land, property rights over real estate, shareholdings in real estate companies, cash, securities and REIT interests. Quotas apply.
<b>Minimum level of investment</b>	The fund has to invest consistent with the principle of risk spreading, as detailed in legislation.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• Immobilien-Sondervermögen are a widespread and highly trusted investment vehicle in Germany.</li> <li>• They offer daily redemption at NAV.</li> <li>• The fund is tax exempt.</li> <li>• There are no tax filing requirements for non-resident investors in Germany.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• German open-end funds may be unknown to some international investors.</li> <li>• The flexibility for German and international investments and the range of eligible assets is limited.</li> <li>• Moreover there are gearing restrictions for real estate companies held by the fund.</li> <li>• The access to double tax treaties in some jurisdictions is not clear. There is no access to EU Directives.</li> </ul>

# Germany

## Spezial-Sondervermögen

<b>Legal form</b>	<i>Spezial-Sondervermögen</i> is not a separate class of funds, but a regime that allows a fund to avoid certain regulatory requirements under the Investment Act (applicable e.g. to <i>Immobilien-Sondervermögen</i> ). The fund is a German open-end fund with no legal personality, and is managed by a German management company ( <i>Kapitalanlagegesellschaft</i> , KAG), which is either a German limited liability company (GmbH) or a stock corporation (AG).
<b>Tax status</b>	The fund is exempt from German corporate income tax and from German trade tax.
<b>Tax treatment at entity level</b>	There is no income taxation at the level of the fund on dividends received, capital gains realised, and other income received.
<b>Treatment of investors</b>	Investors are deemed to receive the fund income pro rata to their fund shares. The income is subject to taxation at the level of the investors in accordance with the investors' personal tax status. Income determination at fund level must comply with German tax provisions.
<b>Withholding tax</b>	Withholding tax is levied on both distributed and retained fund income. Income derived from domestic and foreign dividends, interest and other non-dividend sources is liable to withholding tax at 26.375% (including the 5.5% solidarity surcharge) at fund level as from 1 January 2009. Redemptions and exceptions are available for certain investor types.
<b>Treaty status</b>	From both an OECD Model and German tax perspective, treaty access should be granted to the fund. From the treaty partner's point of view there may be access either for the fund itself, the KAG, or the investors as the beneficial owners of the fund income. There is no access to EU Directives for the fund.
<b>Filing obligations</b>	There is no obligation to publish special fund reporting, provided however that data necessary for the investors' income determination is made available to investors. Non-resident investors are required to file tax returns for German-sourced real estate income derived from the fund.
<b>Regulation</b>	The fund is subject to BaFin regulatory supervision.
<b>Requirements for authorisation</b>	Prior written regulatory approval is necessary for the KAG in order to set up the fund. For the fund itself, however, no approval is required.
<b>Investment restrictions</b>	The fund is restricted to institutional investors. In principle, restrictions (e.g. eligible assets, quotas) apply. With the consent of investors, however, the fund can deviate from most restrictions.
<b>Minimum level of investment</b>	The fund has to invest according to the principle of risk spreading, as detailed in legislation.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• <i>Spezial-Sondervermögen</i> is well-known to German institutional investors.</li> <li>• The fund is tax exempt.</li> <li>• There are no tax filing requirements for non-resident investors in Germany (except for German source real estate income).</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• German open-end funds may be unknown to some international investors.</li> <li>• Despite the option to deviate from investment restrictions, regulatory constraints have to be observed.</li> <li>• Investors are required to file tax returns for German-sourced real estate income.</li> <li>• Moreover there are gearing restrictions for real estate companies held by the fund.</li> <li>• The access to double tax treaties in some jurisdictions is not clear. There is no access to EU Directives.</li> </ul>

## *Ireland*



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# Ireland

## Common Contractual Fund

<b>Background</b>	The Common Contractual Fund (CCF) legislation was originally introduced as a pension pooling vehicle with tax transparency. Subsequent amendments allow other categories of institutional investors without any impact on its tax transparency. The funds can be formed as open-end or closed-end. It requires the appointment of a management company to carry out the day-to-day activities of the fund.
<b>Legal form</b>	A CCF is a collective investment vehicle without a legal personality, established and managed by a management company.
<b>Tax status</b>	The CCF is transparent for income tax purposes.
<b>Tax treatment at entity level</b>	Dividends received, capital gains realised, and other income received is exempt from income taxation at the level of the fund (tax transparent).
<b>Treatment of investors</b>	The fund's income is directly allocated to the investors. However, non-resident investors are not subject to any Irish tax on income received from the fund.
<b>Withholding tax</b>	No Irish withholding tax is levied on fund distributions or on capital gains realised on fund investments.
<b>Other taxes</b>	Stamp duty is not chargeable on the issue, transfer or switching of fund units. No capital duty arises on the issue of units by the fund.
<b>Treaty status</b>	There is no access to treaty benefits by the fund itself but an investor should be able to access the relevant tax treaties between the investor's country of residence and the countries where the fund's investments are located. But a ruling from the relevant tax authorities, or an opinion from an appropriate tax advisor, may be required in certain cases.
<b>Filing obligations</b>	The fund must submit an annual tax return in respect of the calendar year by the following 28 February, detailing the total profits of the fund, together with details relating to the investors in the fund.
<b>Regulation</b>	The vehicle is subject to the regulatory supervision of the Irish Financial Regulator. As it is not a legal entity in its own right, the CCF must appoint an Irish management company to carry on its day-to-day activities. The Irish management company must appoint at least two Irish directors.
<b>Requirements for authorisation</b>	Approval is a two stage process, involving the approval of the fund's promoter and the authorisation of the fund itself. The fund must submit a standard application to the Irish Financial Regulator comprising various information and documentation, including the draft prospectus, deed of constitution and material contracts, details of service providers etc.
<b>Investment restrictions</b>	A Qualifying Investor Fund (QIF) is dedicated to institutional investors and has a minimum initial subscription requirement per investor of EUR 100,000. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied in the case of a QIF. A 24-hour authorisation process applies for QIFs.  The Professional Investor Fund (PIF), which is a specialised fund dedicated to professional investors, has a minimum initial subscription requirement per investor of EUR 125,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.
<b>Minimum level of investment</b>	See above.
<b>Pros</b>	<ul style="list-style-type: none"> <li>The set up, taking into account the appointment of service providers and the approval process of the fund vehicle, may take from six to eight weeks, with an indicative cost of around EUR 100,000.</li> <li>The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds.</li> <li>Moreover for reporting purposes, the fund has the option of reporting under various GAAPs, including IFRS, US GAAP or local GAAP. The fund can also be listed on the Irish Stock Exchange.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Restricted treaty access (a CCF is a tax transparent vehicle – treaty access may be granted to investors).</li> </ul>

# Ireland

## Variable Share Capital Investment Company

<b>Background</b>	The Investment Company is a corporate investment fund, the most common of which is the Variable Capital Investment Company (VCC), similar to the SICAV. It can operate with or without a management company.
<b>Legal form</b>	A VCC is an open or closed-end company limited by shares, which is marketed to the public or sold by private placement.
<b>Tax status</b>	Tax exempt on income and capital gains.
<b>Treatment of investors</b>	The income of the fund is normally paid to investors by means of dividends, or alternatively paid out on the realisation of the investment by the investor on redemption.
<b>Withholding tax</b>	Withholding tax is levied on both distributions, at a rate of 25%, and on gains from encashment, redemption or transfer of shares, at 28%. No tax is applied on income distribution or redemption payments made to non-residents, provided that the non-resident has signed the necessary non-resident declaration. A VCC that does not actively market to Irish investors may be allowed to operate without the need for non-resident declarations on meeting certain conditions.
<b>Other taxes</b>	Shares in the VCC are not liable to stamp duty or capital duty.
<b>Treaty status</b>	The VCC may be able to access treaty benefits in certain cases. This would need to be considered on a case-by-case basis.
<b>Filing obligations</b>	The fund must submit two six-monthly tax returns a year, due on 30 January and 30 July.
<b>Regulation</b>	The VCC is subject to the regulatory supervision of the Irish Financial Regulator. The promoter of the fund is also subject to approval by the Financial Regulator. The board of directors of the fund must include at least two Irish residents.
<b>Requirements for authorisation</b>	Approval is a two stage process involving the approval of the fund's promoter and the authorisation of the fund itself. The fund must submit a standard application to the Irish Financial Regulator comprising various information and documentation, including the draft prospectus, memorandum and articles of association and material contracts, details of the service providers etc.
<b>Investment restrictions</b>	A Qualifying Investor Fund (QIF) is dedicated to institutional investors and has a minimum initial subscription requirement per investor of EUR 100,000. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied in the case of a QIF. A 24-hour authorisation process applies for QIFs.  The Professional Investor Fund (PIF), which is a specialised fund dedicated to professional investors, has a minimum initial subscription requirement per investor of EUR 125,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.
<b>Minimum level of investment</b>	See above.
<b>Pros</b>	<ul style="list-style-type: none"> <li>The set up, taking into account the appointment of service providers and the approval process of the fund vehicle, may take from six to eight weeks, with an indicative cost of around EUR 100,000.</li> <li>The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds.</li> <li>Moreover for reporting purposes, the fund has the option of reporting under various GAAPs, including IFRS, US GAAP or local GAAP. The fund can also be listed on the Irish Stock Exchange.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Restricted treaty access. Positive developments have been made by the OECD to remove the uncertainty present on treaty access for collective investment vehicles. On 31 May 2010, the OECD Committee on Fiscal Affairs released a report which concludes and recommends that collective investment vehicles should be able to claim treaty access on behalf of investors.</li> </ul>

# Ireland

## Unit Trust

<b>Background</b>	The Unit Trust is an investment fund under trust law. Trustees are appointed under the trust deed. A management company must be appointed to carry out the day-to-day activities of the fund.
<b>Legal form</b>	A Unit Trust can be formed as an open or closed-end fund, which may be marketed to the public or sold by private placement.
<b>Tax status</b>	The Unit Trust is exempt from Irish taxation in respect of its income and gains.
<b>Treatment of investors</b>	The income of the fund is normally paid to investors by means of an income distribution, or alternatively paid out on the realisation of the investment by the investor on redemption.
<b>Withholding tax</b>	Withholding tax is levied on both distributions, at a rate of 25%, and on gains from encashment, redemption or transfer of shares, at 28%. No tax is applied on income distribution or redemption payments made to non-residents, provided that the non-resident has signed the necessary non-resident declaration. A Unit Trust that does not actively market to Irish investors may be allowed to operate without the need for non-resident declarations on meeting certain conditions.
<b>Other taxes</b>	Neither stamp duty nor capital duty is chargeable on the issue, transfer or switching of fund units.
<b>Treaty status</b>	The Unit Trust may be able to access treaty benefits in certain cases. This would need to be considered on a case-by-case basis.
<b>Filing obligations</b>	Similar to the VCC, the fund must submit two six-monthly tax returns a year, due on 30 January and 30 July.
<b>Regulation</b>	The Unit Trust is subject to the regulatory supervision of the Irish Financial Regulator. As it is not a legal personality in its own right, the Unit Trust must appoint trustees and a management company to carry on its day-to-day activities. The management company must appoint at least two Irish directors.
<b>Requirements for authorisation</b>	Approval is a two stage process involving the approval of the fund's promoter and the authorisation of the fund itself. The fund must submit a standard application to the Irish Financial Regulator comprising various information and documentation, including the draft prospectus, the trust deed and material contracts, details of the service providers etc.
<b>Investment restrictions</b>	<p>A Qualifying Investor Fund (QIF) is dedicated to institutional investors and has a minimum initial subscription requirement per investor of EUR 100,000. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied in the case of a QIF. A 24-hour authorisation process applies for QIFs.</p> <p>The Professional Investor Fund (PIF), which is a specialised fund dedicated to professional investors, has a minimum initial subscription requirement per investor of EUR 125,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.</p>
<b>Minimum level of investment</b>	See above.
<b>Pros</b>	<ul style="list-style-type: none"> <li>The set up, taking into account the appointment of service providers and the approval process of the fund vehicle, may take from six to eight weeks, with an indicative cost of around EUR 100,000.</li> <li>The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds.</li> <li>Moreover for reporting purposes, the fund has the option of reporting under various GAAPs, including IFRS, US GAAP or local GAAP. The fund can also be listed on the Irish Stock Exchange.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Restricted treaty access. Positive developments have been made by the OECD to remove the uncertainty present on treaty access for collective investment vehicles. On 31 May 2010, the OECD Committee on Fiscal Affairs released a report which concludes and recommends that collective investment vehicles should be able to claim treaty access on behalf of investors.</li> </ul>

# Ireland

## Irish Limited Partnership

<b>Background</b>	The Investment Limited Partnership (ILP) is a regulated fund structured as a limited partnership. It requires the appointment of a General Partner to carry out the day-to-day functions of the ILP.
<b>Legal form</b>	An ILP can be formed as an open- or closed-end fund which may be marketed to the public or sold by private placement.
<b>Tax status</b>	Tax exempt on income and capital gains.
<b>Treatment of investors</b>	The income of the fund is normally paid to investors by means of an income distribution or alternatively paid out on the realisation of the partnership interest by the investor.
<b>Withholding tax</b>	Withholding tax is levied on distributions, at a rate of 25%, and on gains from the realisation or transfer of partnership interests, at a rate of 28%. No tax is applied on income distribution or redemption payments made to non-residents provided that the non-resident has signed the necessary non-resident declaration. An ILP that does not actively market to Irish investors may be allowed to operate without the need for non-resident declarations on meeting certain conditions.
<b>Other taxes</b>	Neither stamp duty nor capital duty is chargeable on the issue, transfer or switching of partnership interests.
<b>Treaty status</b>	The ILP is generally not able to access to treaty benefits under Ireland's tax treaties, although it may be regarded as tax transparent in certain jurisdictions, in which case the investors may be able to access treaty rates under their own tax treaties. This would need to be considered on a case-by-case basis.
<b>Filing obligations</b>	Similar to the VCC, the fund must submit two six-monthly tax returns a year due on 30 January and 30 July.
<b>Regulation</b>	The ILP is subject to the regulatory supervision of the Irish Financial Regulator. As it is not a legal personality in its own right, the partnership agreement must provide for a general partner to carry on its day-to-day activities.
<b>Requirements for authorisation</b>	Approval is a two stage process involving the approval of the fund's promoter and the authorisation of the fund itself. The fund must submit a standard application to the Irish Financial Regulator comprising various information and documentation, including draft prospectus, partnership agreement and material contracts, details of the service providers, etc.
<b>Investment restrictions</b>	<p>A Qualifying Investor Fund (QIF) is dedicated to institutional investors and has a minimum initial subscription requirement per investor of EUR 100,000. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied in the case of a QIF. A 24-hour authorisation process applies for QIFs.</p> <p>The Professional Investor Fund (PIF), which is a specialised fund dedicated to professional investors, has a minimum of initial subscription requirement per investor of EUR 125,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.</p>
<b>Pros</b>	<ul style="list-style-type: none"> <li>The set up, taking into account the appointment of service providers and the approval process of the fund vehicle, may take from six to eight weeks, with an indicative cost of around EUR 100,000.</li> <li>The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds.</li> <li>Moreover for reporting purposes, the fund has the option of reporting under various GAAPs, including IFRS, US GAAP or local GAAP. The fund can also be listed on the Irish Stock Exchange.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Restricted treaty access (an ILP is a tax transparent vehicle – treaty access may be granted to investors).</li> </ul>

# Italy



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# Italy

## Real Estate Investment Fund

<b>Background</b>	<p>The Real Estate Investment Fund (REIF) was first introduced in Italy in 1994. Due to the continuous improvement in their regulation and their advantageous tax regime, REIFs have become one of the most appealing forms of investment in Italy for residents and non-residents alike.</p> <p>However, in order to prevent the use of REIFs as mere “vehicles” for private investments in real estate, rather than for the purpose for which they were originally created, in July 2010 the Italian government introduced slight amendments to the civil regime of Investment Funds and provided a new tax regime for REIFs.</p>
<b>Legal form</b>	<p>The Real Estate Investment Fund is a collective investment vehicle (closed-end regulated fund) without legal personality, established and managed by a management company known as an SGR (<i>Società di Gestione del Risparmio</i>). The SGR is a regulated Italian joint-stock company, which can manage one or more funds.</p> <p>According to the new rules enforced in July 2010, an Investment Fund is defined as: “the autonomous wealth derived, through one or more issuance of units, from a plurality of investors, with the purpose of investing the same according to a pre-defined investment plan; divided into units pertaining to a plurality of investors; collectively managed in the interest of participants, but autonomously from them”. In particular, compared with the previous definition of Investment Fund, the new one better outlines its economic function and introduces the following requirements: (i) collection of wealth from a plurality of investors; (ii) existence of investment programs defined in advance; (iii) management of the fund independent from participants (specific rules are provided for REIFs which are already in force at the date of introduction of the new rules and which do not comply with the new definition of Investment Fund).</p> <p>The fund’s assets are separated from those of the management company - or managed by the same - and of each unit holder; the fund is solely liable, with its own assets, for the obligations incurred on its behalf by the management company.</p>
<b>Tax status</b>	<p>The REIF is outside the scope of Italian corporate income tax (IRES) and Italian regional production tax (IRAP).</p> <p>However, in specific circumstances the REIF may be subject to a substitute tax in lieu of IRES and IRAP. In particular, for REIFs that do not comply with the new definition introduced in July 2010, management companies must take the necessary steps to adjust the fund’s organisational and governance structure and account for, on behalf of the fund, a substitute tax equal to 5% of the fund’s net asset value (NAV) as it appears in the report at 31 December 2009 (payable in three years, by annual instalments). REIFs that do not adopt the necessary steps have to be put into liquidation and the management company must account for a 7% substitute tax on the fund’s NAV (also payable in three years, by annual instalments).</p> <p>Liquidation must be completed within a maximum of five years. On profits accrued from 1 January 2010 to the end of the liquidation, the management companies must account for a further substitute tax of 7%.</p> <p>As a result of the introduction of the 5-7% substitute tax, the 1% net worth tax (<i>imposta patrimoniale</i>) introduced in 2008 for “low participated” and “family-owned” REIFs is repealed.</p>
<b>Tax treatment at entity level</b>	<p>Dividends received, capital gains realised and other income received is exempt from corporate income taxation at the level of the fund. For income normally subject to withholding tax at source, if the application of withholding tax is not expressly excluded for REIFs (as is the case, for example, for interest from bank deposits, income from certain foreign regulated funds, etc.), the withholding tax applies as a final payment (this is the case, for example, for interest derived from bonds issued by non-listed companies and “atypical” securities), with a rate ranging from 12.5% to 27%, according to the type of income.</p> <p>Fund units are not subject to registration tax.</p> <p>For real estate properties held by the REIF, the municipal property tax (ICI) applies ordinarily, with rates ranging between 0.4% and 0.7% (in certain cases 0.9%), being applied on the cadastral value of the property.</p>
<b>Treatment of investors</b>	<p>The REIF’s profits qualify as “income from capital”, regardless of their original sources. Profits are taxable upon distribution.</p> <p>REIF’s units are generally assimilated to bonds and similar securities.</p>

# Italy

## Real Estate Investment Fund

<b>Withholding tax</b>	<p>Withholding tax is levied on the REIF’s profit distributions, even on redemption, at a rate of 20%. The following exceptions apply:</p> <ul style="list-style-type: none"> <li>• 0%, when paid to Italian investment funds and Italian pension funds.</li> <li>• 0%, when paid to (i) foreign pension funds and foreign undertakings for collective investment of savings established in countries which have an adequate exchange of information with Italy (i.e., countries included in the so-called “White List”); (ii) international bodies established on the basis of International treaties that are valid in Italy, as well as central banks or entities that manage the official reserves of a State.</li> </ul> <p>Profits distributed to residents in countries for which a treaty against double taxation exists, may benefit of the lower withholding tax set out in the treaty. In this case, documentation proving the existence of the necessary conditions for the application of the treaty needs to be provided.</p> <p>However, distributions of profits referring to “management periods” up to 31 December 2009 are still tax exempt (as before the July 2010 changes), provided that the collector is resident in a country included in the “White List”, is the beneficial owner of the income, and the stated documentary requirements are fulfilled.</p> <p>Capital gains derived from the disposal of REIF units are subject to 12.5% substitute tax. Under the following circumstances a tax exemption for non-residents is provided:</p> <ul style="list-style-type: none"> <li>• In any case if the fund units are listed on a regulated market,</li> <li>• The recipient is the beneficial owner of the income (or qualifies as an institutional investor), does not have a permanent establishment in Italy and its residence country allows an effective exchange of tax information if the fund units are not listed on a regulated market.</li> </ul>
<b>Treaty status</b>	<p>A REIF does not have access to treaty benefits because, from an Italian perspective, it lacks legal personality and taxpayer status.</p>
<b>Filing obligations</b>	<p>Withholding tax agent reporting obligations are generally fulfilled on behalf of the REIF by the management company (SGR).</p>
<b>Regulation</b>	<p>The fund and the management company (SGR) are subject to the supervision of the Italian regulatory authority, the Bank of Italy.</p> <p>The rules enforced in July 2010 provide a form of “deregulation” for certain Investment Funds. In particular, for funds that are not subject to the rules established to mitigate and diversify risks (i.e., Investment Funds “reserved” for institutional/professional investors) the adoption and amendment of the fund’s rules no longer require prior approval by the regulatory authority. In addition, mergers of these funds no longer have to meet the regulatory provisions established for mergers between regulated funds.</p>
<b>Requirements for authorisation</b>	<p>For the management company (SGR), the following requirements apply:</p> <ul style="list-style-type: none"> <li>• The registered office and the head office must be located in Italy.</li> <li>• The paid-up share capital, complying with the minimum amount established by the Bank of Italy, is EUR 1,000,000.</li> <li>• The persons in charge of performing the administrative, managerial and control functions must fulfil professional and independence legal requirements.</li> <li>• Shareholders are also required to fulfil honourableness requirements.</li> <li>• Activities are limited to those allowed by law.</li> </ul> <p>Reserved funds that are only accessible to “qualified investors” have fewer restrictions than ordinary funds. Moreover, speculative funds are only accessible to a maximum of 200 investors who must each invest at least EUR 500,000. Secured funds require a guarantee for payment of capital invested, or a minimum return.</p>
<b>Investment restrictions</b>	<p>Investment assets have to be mainly or exclusively real estate assets, property rights over real estate assets and shareholdings of real estate companies, with value no lower than 2/3 of the total value of the REIF, but allowing some exceptions. Investment diversification requirements have to be observed, e.g. investments with a single zoning classification are generally limited to 1/3 of the total fund assets, and investments in companies allowed to carry on building development business are limited to 10% of the total fund assets.</p>

# Italy

## Real Estate Investment Fund

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**Minimum level of investment**

The REIF does not require a minimum level of investment, with the exception of speculative funds for which the minimum level is EUR 500,000.

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**Pros**

- Only distributions are subject to taxation. Exemptions for qualifying institutional foreign investors are available and thin capitalisation rules are not applicable.
- Not only do REIFs benefit from several tax reliefs in terms of direct taxes, but also in terms of indirect taxes.

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**Cons**

- Unit holders cannot manage the REIF.
  - Due to the fact that the fund is a regulated entity, it is subject to supervision by regulatory authorities.
  - Real estate properties have to be evaluated twice each year on the basis of external appraisals.
  - 5-7% substitute tax is due for funds that do not comply with the new definition of Investment Fund.
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## Luxembourg



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## Luxembourg UCIs Part II – FCP, SICAV, SICAF

<b>Background</b>	Real estate Undertakings for Collective Investments (UCIs) under the so-called “Part II” of the 2002 Law offer a wide range of investment possibilities, such as direct investment in real estate properties, and can be considered the classic type publicly distributed of regulated real estate fund vehicle in Luxembourg.
<b>Legal form</b>	The legal forms which publicly distributed UCIs may take are as follows: <ul style="list-style-type: none"> <li>• A <i>Fonds Commune de Placement</i> (FCP) is a contractual form, equivalent to the concept of “unit trust” as known in the UK and Germany. Having no separate legal status, it must be managed by a Luxembourg management company.</li> <li>• A <i>Société d’Investissement à Capital Variable</i> (SICAV) is an investment company, with a variable share capital that at all times equals the net asset value of the fund. It may operate either as an open-end or closed-end fund but can only be set up as a public limited company (<i>Société Anonyme</i>).</li> <li>• A <i>Société d’Investissement à Capital Fixe</i> (SICAF) is a corporate structure with fixed capital that may operate either as an open-end or closed-end fund. A SICAF can be set up in the legal form of a public limited company (SA) or partnership limited by shares (SCA).</li> </ul>
<b>Tax treatment at entity level</b>	The UCI vehicle is tax exempt. Dividends received, capital gains realised, and other income received is outside the scope of taxation.
<b>Treatment of investors</b>	The tax treatment of investors depends on the rules applicable in their country of residence. Some jurisdictions may treat the FCP form as tax transparent.
<b>Withholding tax</b>	Distributions by a Luxembourg Part II UCI, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax as a result of application of the European Savings Tax Directive.
<b>Other taxes</b>	Subscription tax ( <i>taxe d’abonnement</i> ) at a rate of 0.01% or 0.05% per annum is levied, depending on the investments made and the investor base, on the net asset value at the end of each quarter. There is no transcription tax or net wealth tax.  Services rendered directly to UCIs are exempt from VAT if they qualify as “management services”. The range of services covered by this definition is broad (accounting services, computation of the NAV, investment advice services etc.). However a 12% VAT rate remains applicable for custody services provided to UCIs.
<b>Treaty status</b>	For the FCP form there is no access to the double tax treaty network. SICAVs and SICAFs have access to Luxembourg double tax treaties with 26 countries. For all of the legal forms, there is no access to the EU Parent Subsidiary Directive.
<b>Regulation</b>	UCIs fall under the supervision of the Luxembourg financial sector regulator, the <i>Commission de Surveillance du Secteur Financier</i> (CSSF), which plays a key role by (i) authorising the vehicle and by (ii) supervising the ongoing operations of the structure.
<b>Requirements for authorisation</b>	<ul style="list-style-type: none"> <li>• The authorisation process focuses strongly on the constituting documents and offering documents.</li> <li>• A promoter is necessary. The “promoter” concept is not a legal requirement but is an administrative practice of the CSSF. The promoter must be an institution active in the financial sector with sufficient financial substance and adequate reputation.</li> <li>• A custodian bank and a central administration service provider, supervised by the CSSF, are required.</li> <li>• One or more independent property valuers are required.</li> <li>• A qualified auditor must audit the annual accounts of the fund.</li> </ul>
<b>Investment restrictions</b>	The investment restrictions are not onerous. Some risk diversification is required; consequently a maximum of 20% of the assets can be invested in a single investment. However, all types of investors are allowed to participate.
<b>Minimum level of investment</b>	The minimum asset base of a UCI is EUR 1,250,000. This amount has to be reached within six months of authorisation by the CSSF. Debt financing of up to 50% of the real estate value is possible. Publicly-distributed UCIs may have various sub-funds and can issue different classes of shares.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• A fund in one of the legal forms noted above is highly flexible, subject to expert and flexible supervision, and is well known by international investors.</li> <li>• Low tax leakage and scope for tax optimisation of carried interests.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Requirement to use a custodian bank</li> <li>• Subscription tax expense.</li> </ul>

## Luxembourg SIF Regime – FCP, SICAV, SICAF

<b>Background</b>	In February 2007, the Luxembourg parliament adopted a law (the “SIF Law”), to replace the 1991 Law on UCIs dedicated to institutional investors, thus formalising the concept of Specialised Investment Funds (SIFs). The main change compared to previous regulation concerns the scope of eligible investors, which has been broadened to include not only institutional investors but also professional and sophisticated investors.
<b>Legal form</b>	A SIF is in essence a special regulatory regime for non-retail funds. The SIF regime is available for FCPs ( <i>Fonds Commun de Placement</i> ) with a management company; for SICAVs ( <i>Société d’Investissement à Capital Variable</i> ) and for SICAFs ( <i>Société d’Investissement à Capital Fixe</i> ). Both the SICAV and the SICAF may choose from a number of legal forms – the limited liability company (Sàrl), the public limited company (SA), the (commonly-used) partnership limited by shares (SCA), or the cooperative in a form of a public limited company (SCSA).
<b>Tax treatment at entity level</b>	The SIF vehicle is tax exempt, irrespective of its legal form. Dividends received, capital gains realised and other income received are outside the scope of taxation.
<b>Treatment of investors</b>	The tax treatment of investors depends on the rules applicable in their country of residence. Some jurisdictions may treat the FCP form as tax transparent.
<b>Withholding tax</b>	Distributions by a Luxembourg SIF, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax as a result of application of the European Savings Tax Directive.
<b>Other taxes</b>	Subscription tax ( <i>taxe d’abonnement</i> ) at a rate of 0.01% per annum is levied on the net asset value at the end of each quarter. There is no transcription tax or net wealth tax.  Services rendered directly to SIFs are exempt from VAT if they qualify as “management services”. The range of services covered by this definition is broad (accounting services, computation of the NAV, investment advice services etc.). However a 12% VAT rate remains applicable for custody services provided to SIFs.
<b>Treaty status</b>	For the FCP form, there is no access to the double tax treaty network. SICAVs and SICAFs have access to Luxembourg double tax treaties with 26 countries. For all of the legal forms, there is no access to the EU Parent Subsidiary Directive.
<b>Regulation</b>	The regulatory authority is the CSSF ( <i>Commission de Surveillance du Secteur Financier</i> ).
<b>Requirements for authorisation</b>	<ul style="list-style-type: none"> <li>• Starting SIF activities may be undertaken without prior approval from the CSSF, although application for approval must be filed with the CSSF within one month following the creation of the SIF.</li> <li>• The promoter is not subject to regulatory approval; investment managers will not be subject to CSSF scrutiny; and a depository bank, while required in Luxembourg, has fewer responsibilities.</li> <li>• Semi-annual non-audited reports and long form reports are not required (only an annual audited report, with more flexibility on portfolio disclosure, is needed).</li> </ul>
<b>Investment restrictions</b>	The investment restrictions are not onerous. Some risk diversification is required, and consequently a maximum of 30% of the assets can be invested in a single investment. Participation in a SIF is only open to qualified investors, or high net worth individual investors who are investing at least EUR 125,000 or who can provide a bank confirmation of suitable experience.
<b>Minimum level of investment</b>	The minimum asset base of a SIF is EUR 1,250,000. This amount has to be reached within one year from authorisation by the CSSF. Debt financing of the real estate is not restricted. SIFs can have various sub-funds, and can issue different classes of shares. Units or shares issued by each of the sub-funds may have different values representing specific pools of assets and liabilities.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• The SIF is highly flexible and uses the well known Luxembourg fund types (FCP, SICAV).</li> <li>• Use of the SCA legal form allows fund managers to exercise strong influence.</li> <li>• Low tax leakage and scope for tax optimisation of carried interests.</li> <li>• The level of regulatory supervision is low, and authorisation can be granted often in a four to six week timeframe.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Requirement to use a custodian bank, although the duties of the custodian bank are less severe than for UCIs.</li> <li>• Subscription tax expense.</li> </ul>

# Luxembourg SICAR

<b>Background</b>	The SICAR Law of 15 June 2004 introduced the SICAR form of investment vehicle, which has enjoyed some popularity as a vehicle exclusively dedicated to investments in risk capital, and only available to “well-informed” investors.
<b>Legal form</b>	A SICAR ( <i>Société d’Investissement en Capital à Risque</i> ) is an investment company in risk capital for private equity and venture capital funds. A SICAR can be set up in a transparent form (partnership form) or non-transparent form (the corporate form). Various legal forms are available: <ul style="list-style-type: none"> <li>• A public limited company (SA)</li> <li>• A limited liability company (Sàrl)</li> <li>• A cooperative in the form of a public limited company (SCSA) (seldom used)</li> <li>• A limited partnership (SCS) (seldom used).</li> </ul>
<b>Tax status</b>	The limited partnership is transparent for tax purposes; consequently there is no taxation at the level of the fund. The other legal forms are fully taxable, although the income (including interest) which is connected with investments in risk bearing capital is tax exempt. All other income is subject to corporate income tax and municipal tax at an aggregate effective tax rate (in Luxembourg City) of 28.59% (2010) or 28.80% (2011).
<b>Treatment of investors</b>	Investors in an SCS-type SICAR are deemed to receive their income pro rata to their participations in the fund. For investors in SICARs in other legal forms, the tax treatment depends on the rules applicable in the country of their residence.
<b>Withholding tax</b>	Distributions (dividends or interests) by a SICAR, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax as a result of application of the European Savings Directive.
<b>Other taxes</b>	A SICAR is not subject to annual subscription tax. There is no transcription tax or net wealth tax.  Services rendered directly to SICARs are exempt from VAT if they qualify as “management services”. The range of services covered by this definition is broad (accounting services, investment advice services etc.). However a 12% VAT rate remains applicable for custody services provided to SICARs.
<b>Treaty status</b>	Non transparent SICARs (SA, Sàrl, SCSA) should generally be entitled to tax treaty benefits; however this has to be reviewed on a case-by-case basis as some countries are challenging treaty access. There is no access to most tax treaties for transparent entities, and SCS-type SICARs are not differentiated.
<b>Regulation</b>	<ul style="list-style-type: none"> <li>• A SICAR is subject to a light degree of regulation by the CSSF (<i>Commission du Surveillance de Secteur Financier</i>).</li> </ul>

# Luxembourg SICAR

<b>Requirements for authorisation</b>	<ul style="list-style-type: none"> <li>• The CSSF will ensure that the SICAR meets the requirement of the SICAR law. In particular, investment strategy will be a central element of the CSSF review.</li> <li>• A custodian bank and a central administration service provider, which is supervised by the CSSF, are required. However, in comparison with publicly-distributed UCIs, the custodian bank has a lightened scope of responsibilities;</li> <li>• A qualified auditor must audit the annual accounts of the fund.</li> </ul>
<b>Investment restrictions</b>	SICARs are, by definition, exclusively dedicated to investments in risk capital. Thus a SICAR does not have to comply with any kind of risk diversification requirement. A SICAR may, in principle, invest 100% of its assets in only one target investment. The CSSF accepts that real estate investments are “risk” assets for SICAR purposes so long as they are held via property-owning companies and have the potential to generate significant development or exit gains (i.e. are “opportunistic” profile investments). Participation in a SIF is only open to qualified investors, or high net worth individual investors who are investing at least EUR 125,000 or who can provide a bank confirmation of suitable experience.
<b>Minimum level of investment</b>	The subscribed share capital must be not less than EUR 1,000,000, and must be reached within the 12 months following CSSF authorisation. The share capital must then be fully subscribed, but need only be 5% paid up. There are no requirements for legal reserves.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• The SICAR is a flexible, tax efficient and tailored lightly regulated fund.</li> <li>• Compared to publicly-distributed UCIs, SICARs are subject to “lighter” regulation by the CSSF.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Some countries challenge treaty access, or withholding tax reductions under local law (although Luxembourg accepts that these apply to Luxembourg participations held by a SICAR).</li> <li>• Only available for “opportunistic” real estate funds.</li> <li>• The EU Commission has undertaken a “request for information” procedure whereby it has raised a list of technical questions relating to the SICAR regime. The purpose of this procedure is to assess whether or not the SICAR regime constitutes an illegal state aid scheme.</li> </ul>

# Luxembourg Securitisation Vehicle

<b>Background</b>	The Luxembourg Securitisation Law of 9 March 2004 provides a flexible legal framework for workable structures at reasonable cost. Securitisation works by grouping together assets with predictable cash flows, or rights to future income streams (such as mortgages, loans), and turning them into bond-style securities that are then sold to investors.
<b>Legal form</b>	Securitisation is a type of structured financing in which a pool of financial assets is transferred from an originating company to a Special Purpose Vehicle (SPV).  A securitisation vehicle can be organised in corporate forms, such as a public limited company (SA), a limited liability company (Sàrl), a cooperative in the form of a public company (SCSA), or a partnership limited by shares (SCA), as well as in a purely contractual form as a securitisation fund (FCP co-ownership).
<b>Tax status</b>	Securitisation vehicles organised as corporate entities are fully liable to corporate income tax and municipal business tax at the effective rate (in Luxembourg City) of 28.59% (2010) or 28.80% (2011).
<b>Tax treatment at entity level</b>	Dividends received, capital gains realised and other income received is taxable. However under the Securitisation Law, all commitments of a securitisation company to remunerate investors (as well as other creditors) in respect of bonds or shares qualify as interest on debts, even if paid as return on equity. Hence, all such outgoings are fully tax-deductible. The resulting tax neutrality is one of the key success factors of Luxembourg securitisation structures.
<b>Treatment of investors</b>	The tax treatment of investors depends on the rules applicable in their country of residence.
<b>Withholding tax</b>	Distributions (dividends or interests) made by a Securitisation vehicle, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax as a result of application of the European Savings Tax Directive.
<b>Other taxes</b>	No annual subscription tax, no net wealth tax, no registration duty and no transcription tax are levied on a securitisation vehicle.  According to the Luxembourg VAT authorities, securitisation companies should apply for a "simplified VAT registration regime" and only self-assess Luxembourg VAT on goods and certain non-exempt services received from abroad pursuant to the reverse charge mechanism.
<b>Treaty status</b>	Generally the vehicle should be entitled to double tax treaty benefits and access to EU Directives; however this has to be reviewed on a case-by-case basis as some countries are challenging this.
<b>Regulation</b>	A securitisation vehicle is only necessarily subject to CSSF supervision if it issues securities to the public on a continuous basis.
<b>Requirements for authorisation</b>	Where required, the CSSF has to approve the articles of incorporation or management regulations (subject to the provisions of the Securitisation Law) of the securitisation vehicle and, if necessary, authorise the management company.  Securitisation companies and management companies of securitisation funds must have an adequate organisation and adequate resources to exercise their activities. The directors of the securitisation vehicle must be of good repute and have adequate experience.
<b>Investment restrictions</b>	Investment in the SPV is possible for all types of investors. There are no investment restrictions or risk diversification requirements for the vehicle.
<b>Minimum level of investment</b>	The minimum amount of investment is the fixed capital, which depending on the legal form is EUR 12,500 or EUR 31,000. Securitisation vehicles offer the possibility of creating several compartments / classes of shares within one legal entity.
<b>Pros</b>	<ul style="list-style-type: none"> <li>The SPV is a tax efficient and highly flexible fund vehicle.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Not suitable for direct investments in real estate.</li> </ul>

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## The Netherlands Transparent Funds

<b>Legal form</b>	A <i>Fonds voor Gemene Rekening</i> (FGR) is a Dutch fund for joint account. A <i>Commanditaire Vennootschap</i> (CV) is a Dutch limited partnership.
<b>Tax status</b>	An FGR or CV is transparent for Dutch tax purposes if any transfer (legal or economic) of units or limited partnership interests is subject to the upfront written consent of all unit-holders and partners (“unanimous consent rule/UC rule”). The corporate documents may provide that if a limited partner or unit holder of an FGR or CV is deemed to agree to a transfer unless he or she has responded to the written request for approval within four weeks. For an FGR, transparency can also be achieved if its statutes provide that units can only be redeemed by the fund, which can also subsequently reissue units (“free redemption issue rule/FRI rule”). Note that in order for an FGR to qualify as transparent, the UC rule and the FRI rule cannot both apply.
<b>Tax treatment at entity level</b>	A tax transparent fund is not itself subject to taxation on dividends received, capital gains realised, or other income earned.
<b>Treatment of investors</b>	The income of the transparent FGR or of the transparent CV is allocated to the investors, and retains its underlying qualification for Dutch tax purposes (for instance as rental income, dividends or interest).
<b>Withholding tax</b>	No withholding tax is levied on distributions and interest payments made by the tax transparent fund.
<b>Treaty status</b>	From a Dutch perspective the fund has no access to treaty benefits and no access to EU Directives. Treaty benefits can in very specific circumstances apply to investors in the fund in relation to investments held by the fund (i.e. look through approach).
<b>Tax filing obligations</b>	No tax filing obligations apply.
<b>Regulation</b>	Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the <i>Autoriteit Financiële Markten</i> . Exceptions and exemptions can apply in specific circumstances.
<b>Investment restrictions</b>	None.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• A transparent fund is not subject to tax at the fund level.</li> <li>• There is no dividend withholding tax on earnings distributed by the fund.</li> <li>• The fund itself has low costs of establishment, and can be implemented relatively quickly.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• The fund vehicle has as such no access to treaty benefits and EU Directives.</li> </ul>

## The Netherlands Corporate Funds with Fiscale beleggingsinstelling (FBI) status

<b>Legal form</b>	Certain specific Dutch and foreign entities are eligible to benefit from the FBI regime, as long as these companies meet a set of ongoing requirements.
<b>Tax status</b>	Under the special FBI regime, income is subject to Dutch corporate income tax at a rate of 0%, provided the relevant conditions are met (for example with respect to the shareholders, its activities, its leverage, or the distribution of earnings). An FBI needs to distribute its earnings within eight months after the end of each book year to retain FBI status, unless earnings can be allocated to the so called ‘Reinvestment Reserve’ (limitations may apply).
<b>Tax treatment at entity level</b>	Dividends received, capital gains and other income are subject to corporate income tax at a rate of 0% (i.e., not exempt).
<b>Treatment of investors</b>	The income of the fund is not directly allocated to the investors.  Investors who hold a 5% or larger interest in any class of shares of an FBI (so-called substantial interest holders) may be subject to Dutch corporate income tax on dividends, capital gains and interest from that shareholding if the substantial interest does not form part of the investor’s business assets. Tax treaties generally provide protection against such tax.
<b>Withholding tax</b>	Dividend distributions are subject to 15% withholding tax but this may be reduced by double tax treaties. Distributions of the reinvestment reserve are subject to 0% withholding tax, and payments of interest are out of the scope of withholding tax.
<b>Treaty status</b>	The vehicle is entitled to treaty benefits. However, it generally has no access to EU Directives.
<b>Tax filing obligations</b>	The FBI is required to file an annual corporate income tax return as well as dividend withholding tax returns for each distribution.
<b>Regulation</b>	FBI’s are in principle subject to regulation. Exemptions are possible if certain criteria are met. The regulatory authority is the <i>Autoriteit Financiële Markten</i> .
<b>Investment restrictions</b>	The statutory purpose and actual activities of an FBI must in principle consist exclusively of passive investments. However, the FBI is allowed to hold shares in a taxable subsidiary if the main statutory goal and actual activities of that subsidiary are property development for the benefit of the FBI.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• A 0% tax rate applies at the level of the fund.</li> <li>• The fund has access to treaty benefits.</li> <li>• The 0% tax rate is not limited to real estate income.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Strict requirements need to be met on a continuous basis.</li> </ul>

## The Netherlands

### Corporate Funds with Vrijgestelde beleggingsinstelling (VBI) status

<b>Legal form</b>	Certain specific Dutch and foreign entities are eligible to claim the VBI regime, as long as these entities meet a set of ongoing requirements.
<b>Tax status</b>	Under the special tax regime the VBI is exempt from Dutch corporate income tax, provided that the relevant conditions, principally relating to the investors (collective investor test) and the investments made (financial instrument and portfolio investment activities), are met.  VBI status must be requested from the Dutch tax authorities.
<b>Tax treatment at entity level</b>	Dividends received, capital gains and other income earned are not subject to tax.
<b>Treatment of investors</b>	The income of the VBI is not directly allocated to the investors.
<b>Withholding tax</b>	Distributions by a VBI are not subject to withholding tax.
<b>Treaty status</b>	The fund itself has no access to treaty benefits, and has no access to EU Directives.
<b>Tax filing obligations</b>	A VBI does not have any tax return filing obligations.
<b>Regulation</b>	VBI's are in principle subject to regulation. Exemptions are possible if certain criteria are met. The regulatory authority is the <i>Autoriteit Financiële Markten</i> .
<b>Investment restrictions</b>	VBI vehicles can only invest in financial instruments. A VBI cannot therefore invest directly in real estate. Indirect investment in real estate are allowed unless the real estate is located in the Netherlands and the investment is via transparent vehicle. The investment activities must furthermore exclusively comprise portfolio investment holding.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• There is no taxation at the level of the VBI and no withholding tax on distributions made by the VBI.</li> <li>• Although there is a requirement that two or more investors invest in the vehicle (collective investors test), there are no other specific investor restrictions.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• The fund has no access to treaty benefits and EU Directives.</li> <li>• The fund may only invest in financial instruments, and not directly in real estate.</li> </ul>

## The Netherlands

### Taxable Corporation Funds

<b>Legal form</b>	A <i>Naamloze Vennootschap</i> (NV) is a public limited company, and a <i>Besloten Vennootschap</i> (BV) is a limited company.
<b>Tax status</b>	NVs and BVs are not transparent. Income is subject to Dutch corporate income tax at the general rate of 25.5%. The first EUR 200,000 of income is subject to a lower rate of 20% (2010 rates).
<b>Tax treatment at entity level</b>	All income is in principle subject to corporate income tax. If the conditions of the participation exemption are met, dividend income and capital gains are exempt from corporate income tax.
<b>Treatment of investors</b>	The income of a taxable corporation is not directly allocated to its investors.  Investors that hold a 5% or larger interest in any class of shares of a Dutch taxable corporation (so-called substantial interest holders) may be subject to Dutch tax on dividends, capital gains and interest from that shareholding if the substantial interest does not form part of the investor's business assets. Tax treaties generally provide protection against such tax.
<b>Withholding tax</b>	No withholding tax is levied on interest. Dividend distributions are subject to 15% withholding tax, but this may be reduced by double tax treaties or EU Directives.
<b>Treaty status</b>	The vehicle is generally entitled to treaty benefits and to the benefits of EU Directives.
<b>Tax filing obligations</b>	NVs and BVs are required to file an annual corporate income tax return, as well as dividend withholding tax returns for each distribution.
<b>Regulation</b>	Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the <i>Autoriteit Financiële Markten</i> . Exceptions and exemptions can apply in specific circumstances.
<b>Investment restrictions</b>	None.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• There are no investor restrictions.</li> <li>• There is access to treaty benefits and EU Directives.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Income, to the extent not covered by the participation exemption, is in principle subject to taxation in the Netherlands at the normal corporate income tax rate.</li> </ul>

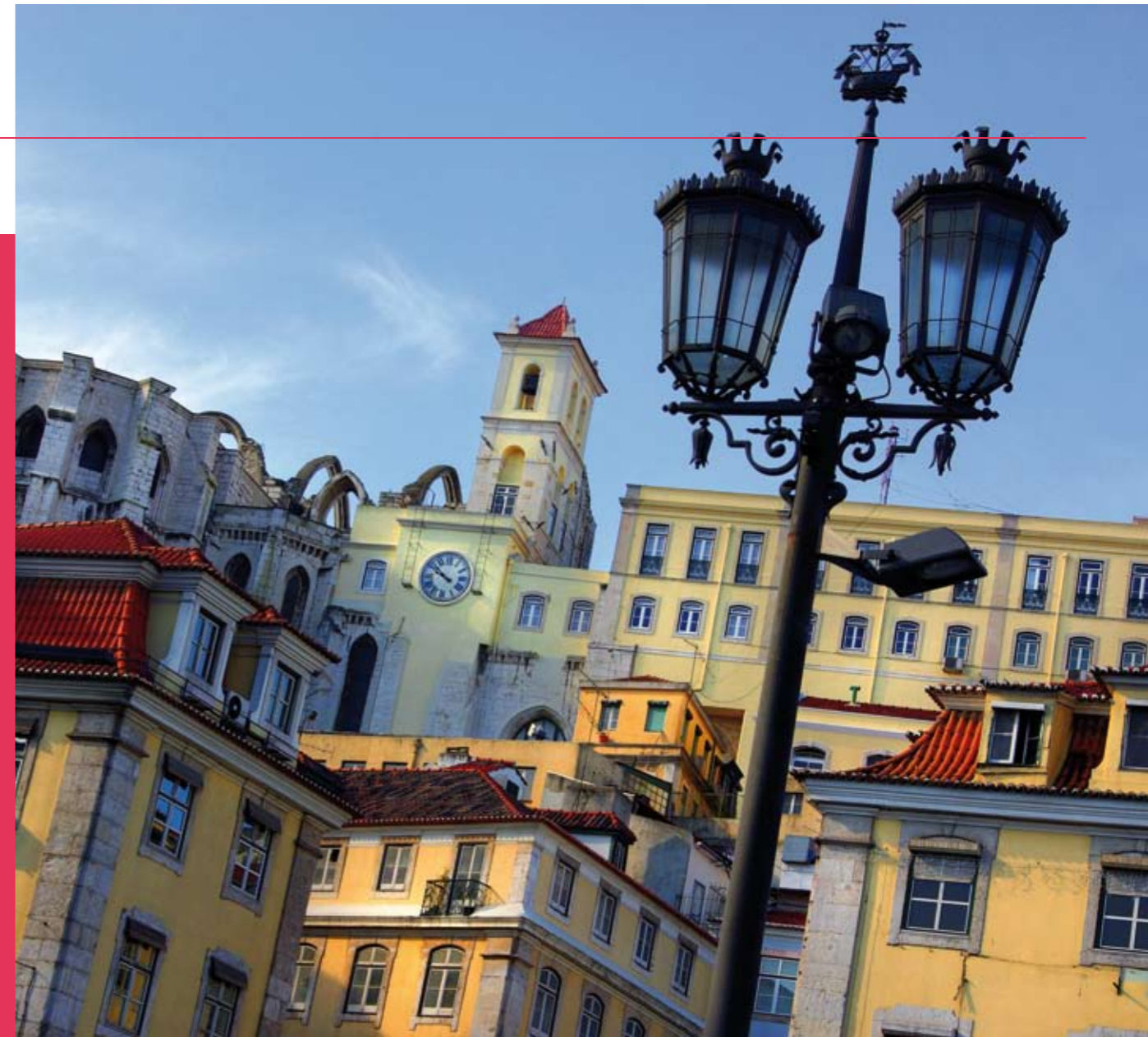
## The Netherlands Co-operatives

<b>Legal form</b>	A <i>Coöperatie</i> (COOP), in essence, is a corporation.
<b>Tax status</b>	The COOP is non transparent, and its income is subject to Dutch corporate income tax at the general rate of 25.5%. The first EUR 200,000 of income is subject to a lower rate of 20% (2010 rates).
<b>Tax treatment at entity level</b>	All income is in principle subject to corporate income tax. If the conditions of the participation exemption are met, dividends received and capital gains realised are exempt from corporate income tax.
<b>Treatment of investors</b>	The income of a COOP is not directly allocated to its investors.  Investors that hold a 5% or larger interest in a COOP (so-called substantial interest holders) may be subject to Dutch tax on distributions, capital gains and interest earned on loans to the COOP if the substantial interest does not form part of the investor's business assets. Tax treaties generally provide protection against such tax.
<b>Withholding tax</b>	No withholding tax is levied on interest. Distributions by the COOP are not subject to dividend withholding tax as long as the capital of the COOP is not divided into shares.
<b>Treaty status</b>	Similar to NVs and BVs, the COOP is entitled to treaty benefits and to certain benefits of the EU Directives.
<b>Tax filing obligations</b>	A COOP is required to file an annual corporate income tax return.
<b>Regulation</b>	Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the <i>Autoriteit Financiële Markten</i> . Exceptions and exemptions can apply in specific circumstances.
<b>Investment restrictions</b>	None.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• Distributions are generally not subjected to dividend withholding tax.</li> <li>• The civil law rules for COOPs are similar to the flexible rules applicable to partnerships.</li> <li>• There are no investor restrictions, except that a COOP requires at least two members on formation.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• In any case where a COOP is a fund entity, the policy of the Dutch tax authorities is not to grant any tax ruling. Therefore, the COOP is mostly used as a subsidiary holding company platform.</li> <li>• Income which is not covered by the participation exemption is in principle taxable.</li> </ul>

## The Netherlands Non-transparent FGR – CV

<b>Legal form</b>	A <i>Fonds voor Gemene Rekening</i> (FGR) is a Dutch fund for joint account. A <i>Commanditaire Vennootschap</i> (CV) is a Dutch limited partnership.
<b>Tax status</b>	The fund vehicle is not transparent for tax purposes if the transfer of units meets neither the UC rule nor the FRI rule (as described for transparent funds). Thus the income is subject to Dutch corporate income tax. Income is subject to Dutch corporate income tax at the general rate of 25.5%. The first EUR 200,000 of income is subject to a lower rate of 20% (2010 rates).
<b>Tax treatment at entity level</b>	All income is in principle subject to corporate income tax. If the conditions of the participation exemption are met, dividends received and capital gains realised are exempt from corporate income tax.
<b>Treatment of investors</b>	The income of the non-transparent FGR / CV is not directly allocated to its investors.  In general investors that hold a 5% interest in a non-transparent CV / FGR (so-called substantial interest holders) may be subject to Dutch tax on distributions, capital gains and interest earned on loans to the FGR - CV if substantial interest does not form part of the investor's business assets. Tax treaties generally protect against such tax..
<b>Withholding tax</b>	No withholding tax is levied on interest. Dividends are subject to 15% withholding tax, but this may be reduced by double tax treaties or EU Directives.
<b>Treaty status</b>	The non-transparent FGR / CV is in principle entitled to treaty benefits and certain EU Directive benefits.
<b>Filing obligations</b>	Non-transparent FGRs and CVs are required to file an annual corporate income tax return, as well as dividend withholding tax returns for each distribution.
<b>Regulation</b>	Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the <i>Autoriteit Financiële Markten</i> . Exceptions and exemptions can apply in specific circumstances.
<b>Investment restrictions</b>	None.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• There are no investor restrictions.</li> <li>• The fund is flexible from a civil law perspective, has low costs of establishment, and can be implemented relatively quickly.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Income, to the extent not covered by the participation exemption, is in principle subject to taxation in the Netherlands at the normal corporate income tax rate.</li> </ul>

## Portugal



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# Portugal

## Fundo de Investimento Imobiliário

<b>Background</b>	The <i>Fundo de Investimento Imobiliário</i> (FII) is a common real estate investment vehicle in Portugal. It has been used by both the banking industry as well as by investors.
<b>Legal form</b>	An FII is a separate and autonomous pool of assets that is jointly owned by its unit holders. FIIs can be open-end, closed-end or semi closed-end collective investment vehicles. An FII is established and managed by a management company having the legal form of a joint stock company ( <i>sociedade anónima</i> ) with effective head office in Portugal, having as its primary object the managing of one or more FII. Assets are entrusted to a depository bank.
<b>Tax status</b>	The FII is tax neutral and hence should result in similar taxation to that pertaining to investments made and held directly by an individual investor.
<b>Tax treatment at FII level</b>	<p>Rental income is subject to tax at a flat rate of 20%. Further maintenance and repair expenses related to the property are tax deductible. Depreciation or the deduction of interest is not allowed.</p> <p>Capital gains realised on the sale of real estate are subject to a flat tax rate of 12.5% (25% levied on 50% of the net capital gain).</p> <p>Dividends received from shares held in non-resident entities are taxed at 20%, while dividends received from shares held in resident entities, are taxed at 21.5%.”</p> <p>The annual net capital gain arising on the sale of shares is subject to a 10% flat tax rate. Shares held by open-end FII and closed-end FIIs subject to public offer, for more than 12 months will be exempt from taxation. For other FIIs, semi closed-end and privately placed closed-end ones, the annual net capital gain on the sale of shares held for more than 12 months is taxed at 20% flat tax rate.</p> <p>Other residual income is taxed at 25%.</p>
<b>Treatment of investors</b>	<p>The treatment of investors depends on the tax status of the investors (i.e. non-resident investors or resident investors, individuals or other entities).</p> <p>Non-resident investors receiving income from the FII are tax exempt on both periodical distributions and redemption of units. Capital gains arising from the sale of units are also tax exempt to the extent the seller is not resident in a tax haven jurisdiction.</p> <p>For resident investors receiving income from the FII, this can only be tax exempt in the hands of individuals. A 20% tax is levied on capital gains from the sale of units when held by individuals. Further income and capital gains are taxed in the hands of companies and other entities at their applicable rates. However, all tax borne or paid by the fund can be recovered by investors.</p>
<b>Withholding tax</b>	None.
<b>Other taxes</b>	<p>Open-end FIIs are fully exempt from property transfer tax (IMT) and from the annual property tax (IMI).</p> <p>However, semi closed-end FII and privately placed closed-end FIIs do not benefit from the above mentioned exemption, which means that property acquisitions by these are fully subject to IMT and properties held by these funds are subject to IMI.</p> <p>The general IMT rate levied on offices, retail and other commercial property is 6.5%.</p> <p>IMI rates vary depending on the municipality where the property is located. As general rule, for urban property appraised in accordance with the IMI rules, the rate varies from 0.2% and 0.4%; rates for urban property appraised under the old rules vary from 0.4% and 0.7%.</p>
<b>Treaty status</b>	An FII has access to treaty benefits but not to EU Directives.
<b>Filing obligations</b>	Periodical financial reports are sent by the management company to the CMVM (Comissão do Mercado de Valores Mobiliários), the Portuguese Securities’ Market Commission.
<b>Regulation</b>	There is regulatory supervision of the FII, the regulatory authority being the CMVM. The management company is governed by the banking law, is supervised by the Bank of Portugal and is only allowed to manage regulated funds.

# Portugal

## Fundo de Investimento Imobiliário

<b>Requirements for authorisation</b>	Authorisation of the FII is by the CMVM, and is granted upon the request of the management company
<b>Investment restrictions</b>	<p>There are several investment restrictions for FIIs, imposed by risk diversification rules. Eligible assets are real estate, real estate rights <i>in rem</i>, shares in real estate companies (subject to further restrictions), investment units in real estate funds, and cash and other instruments. Also the composition of the portfolio is subject to certain restrictions, and eligible real estate assets have to account for at least 75% of the total assets.</p> <p>For open-end funds, (i) projects under construction cannot exceed a maximum of 25% of the total assets; (ii) one single real estate asset cannot represent more than 20%; and (iii) the fund leverage cannot exceed a maximum of 33%. Conversely, the requirements are not so strict for closed-end funds. For instance, for privately placed closed-end funds with no more than five investors that are not exclusively institutional investors, or if there are more than five institutional investors, these limits do not apply.</p>
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>Privately placed closed-end FIIs have a flexible portfolio composition and leveraging rules.</li> <li>A favourable property tax regime for open-end funds.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>The FII needs a Portuguese management company.</li> <li>There is taxation of rental income; depreciation and interest expenses are not tax deductible.</li> <li>Semi closed-end and privately placed closed-end funds are fully subject to property taxes (IMT and IMI).</li> </ul>

## Portugal

### Sociedades de Investimento Imobiliário

<b>Background</b>	The <i>Sociedades de Investimento Imobiliário</i> (SIIMO) was introduced in June 2010. They are regulated investment vehicles for investing in real estate. As they are quite recent, there is no information about their actual use and practical experience about them. Tax regime of SIIMOs has been approved.
<b>Legal form</b>	SIIMOs are collective investment schemes adopting the legal form of a joint stock company ( <i>sociedade anónima</i> ), that can either be a fixed capital company (SICAFI) or a variable capital company (SICAVI), whose assets are managed, on a fiduciary basis, on the sole interest of their shareholders. SIIMOs can be internally managed or managed by an independent management company. Assets are entrusted to a depository bank.
<b>Tax status</b>	Tax neutrality also applies for SIIMOs.  SIIMOs are taxed under the same rules as apply for FII: SICAFI are taxed like closed-end FIIs and SICAVI are taxed like open-end FIIs.
<b>Tax treatment at SIIMO level</b>	Rental income is subject to tax at a flat rate of 20%. Further maintenance and repair expenses related to the property are tax deductible. Depreciation or the deduction of interest is not allowed.  Capital gains realised on the sale of real estate are subject to a flat tax rate of 12.5% (25% levied on 50% of the net capital gains).  Dividends received from shares held in non-resident entities are taxed at 20%, while dividends received from shares held in resident entities, are taxed at 21.5%.  The annual net capital gain arising on the sale of shares is subject to a 10% flat tax rate. Shares held by SICAVI, for more than 12 months will be exempt from taxation. For SICAFI, the annual net capital gain on the sale of shares held for more than 12 months is taxed at 20% flat tax rate.  Other residual income is taxed at 25%.
<b>Treatment of investors</b>	The treatment of investors, in this case, shareholders, depends on the tax status of the shareholders (i.e. non-resident shareholders or resident shareholders, individuals or other entities).  Non-resident shareholders receiving dividend income from the SIIMO are tax exempt on both periodical dividend distributions and share redemptions. Capital gains arising from the sale of the shares are also tax exempt to the extent the seller is not resident in a tax haven jurisdiction.  For resident shareholders receiving dividend income from an SIIMO, this can only be tax exempt in the hands of individuals. A 20% tax is levied on capital gains from the sale of shares when held by individuals. Further income and capital gains are taxed in the hands of companies and other entities at their applicable rates. However, all tax borne or paid by the SIIMO can be recovered by shareholders.

## Portugal

### Sociedades de Investimento Imobiliário

<b>Withholding tax</b>	None.
<b>Other taxes</b>	SICAVI are fully exempt from property transfer tax (IMT) and annual property tax (IMI).  However, SICAFI do not benefit from the above mentioned exemption, which means that property acquisitions are fully subject to IMT and property held by SICAFI are subject to IMI.  The general IMT rate levied on offices, retail and other commercial real estate is 6.5%.  IMI rates vary depending on the municipality where the real estate is located. As general rule, for urban real estate appraised in accordance with the IMI rules, the rate varies from 0.2% and 0.4%, for urban real estate appraised under the old rules the rate varies from 0.4% and 0.7%.
<b>Treaty status</b>	An SIIMO has access to treaty benefits but not to EU Directives.
<b>Filing obligations</b>	Periodical financial reports are sent by the management company to the CMVM ( <i>Comissão do Mercado de Valores Mobiliários</i> ), the Portuguese Securities' Market Commission.
<b>Regulation</b>	There is regulatory supervision of the SIIMO, the regulatory authority being the CMVM. The management company, if any, is governed by the banking law, is supervised by the Bank of Portugal and is only allowed to manage regulated funds.
<b>Requirements for authorisation</b>	The authorisation of the SIIMO is given by the CMVM.
<b>Investment restrictions</b>	These matters are ruled by the same rules that apply for FII. In principle, SICAVI follow the same regime of the open-ended/open-end FII and the SICAFI of the close-d -ended unless otherwise ruled.
<b>Minimum level of investment</b>	At incorporation, the minimum capital required for SIIMO is Euro 375,000. On an ongoing basis, SIIMO should have a minimum NAV of Euro 5,000,000.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• SIIMO can be internally managed, not requiring a management company, which can be an advantage in certain situations.</li> <li>• SICAFI may have a flexible portfolio composition and leveraging rules.</li> <li>• A favourable property tax regime for SICAVI.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• There is taxation of rental income; depreciation and interest expenses are not tax deductible for both SICAVI and SICAFI.</li> <li>• SICAFI are subject to property taxes (IMT and IMI).</li> </ul>

## Spain



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## Spain

### Fondo de Inversión Inmobiliaria

<b>Legal form</b>	A Spanish Real Estate Investment Fund is a collective investment institution with no legal personality. The fund is managed by a management company known as SGIC. The SGIC is a regulated Spanish public limited company (S.A.) with effective head office in Spain. Assets are entrusted to a depository bank.
<b>Tax status</b>	The fund is considered a taxpayer for Corporate Income Tax purposes.
<b>Tax treatment at entity level</b>	Income is taxed at 1%. This reduced rate is not limited to real estate income. Excess of withholding tax borne is refundable.  Other tax benefits may be applicable.
<b>Treatment of investors</b>	Capital gains are taxable upon transfer or redemption of units. Taxation at the level of investors shall be in accordance with their personal tax status.
<b>Withholding tax</b>	Capital gains are subject to 19% withholding tax but this may be reduced by double tax treaties.
<b>Treaty status</b>	From a Spanish tax perspective, treaty access should be granted to the fund.
<b>Filing obligations</b>	The FI is obliged to file an annual corporate income tax return as well as withholding tax returns.
<b>Regulation</b>	The fund is subject to CNMV ( <i>Comisión Nacional del Mercado de Valores</i> ) regulatory supervision.
<b>Requirements for authorisation</b>	Prior regulatory approval by the CNMV is necessary for the SGIC in order to set up the fund.
<b>Investment restrictions</b>	The fund has to invest consistent with the principles of risk spreading as detailed in legislation. At least 70% of the assets must comprise eligible real estate for lease, and 10% must be liquid assets. Shareholdings in real estate entities are limited to a maximum 15% of total assets. Real estate assets require a minimum holding period of three years.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>Income taxable at 1% at fund level vs. 30% standard Corporate Income Tax rate.</li> <li>Taxation of investors due only upon transfer or redemption of units.</li> <li>The fund should be entitled to double tax treaties.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Subject to supervision authorities as a regulated collective investment institution.</li> <li>Need for a regulated Spanish management company.</li> <li>Minimum of 100 investors.</li> </ul>

## Spain

### Sociedad de Inversión Inmobiliaria

<b>Legal form</b>	A Spanish Real Estate Investment Company (SII) is a collective investment institution with a legal personality. The SII is a regulated public limited company (S.A.) with effective head office in Spain.
<b>Tax status</b>	The SII is considered a taxpayer for Corporate Income Tax purposes.
<b>Tax treatment at entity level</b>	Income is taxed at 1%. This reduced rate is not limited to real estate income. Excess of withholding tax borne is refundable.  Other tax benefits may be applicable.
<b>Treatment of investors</b>	Dividends and capital gains are taxable at the level of investors depending on their tax status.
<b>Withholding tax</b>	Dividends and capital gains are subject to 19% withholding tax but this may be reduced by double tax treaties and EU Directives.
<b>Treaty status</b>	The vehicle is entitled to double tax treaty benefits and has access to EU Directives.
<b>Filing obligations</b>	The SII is obliged to file an annual corporate income tax return as well as withholding tax returns.
<b>Regulation</b>	The SII is subject to CNMV ( <i>Comisión Nacional del Mercado de Valores</i> ) regulatory supervision.
<b>Requirements for authorisation</b>	Prior regulatory approval by the CNMV is necessary.
<b>Investment restrictions</b>	The SII has to invest consistent with the principles of risk spreading as detailed in legislation. At least 80% of the assets must comprise eligible real estate for lease, and 10% must be liquid assets. Shareholdings in real estate entities are limited to a maximum 15% of total assets. Real estate assets require a minimum holding period of three years.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>Income taxable at 1% at SII level vs. 30% standard Corporate Income Tax rate.</li> <li>There is access to double tax treaties and EU Directives.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Subject to supervision authorities as a regulated collective investment institution.</li> <li>Minimum of 100 shareholders.</li> </ul>

## Switzerland



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# Switzerland

## Swiss Collective Investment Schemes

<b>Background</b>	The legislation regarding collective investments (Collective Investment Schemes Act, “ <i>Bundesgesetz über die kollektiven Kapitalanlagen</i> ”) came into force on 1 January 2007. In addition, the Swiss Federal Tax Administration published the Circular Letters No 24 and 25 (issued in January and March 2009), providing additional information on its tax practice regarding collective investment schemes. Several questions of interpretation still remain, as the practice of the Swiss Federal Tax Administration has not yet finally been defined.
<b>Legal form</b>	A “collective investment scheme” is a pool of assets brought together by investors with the purpose of collective investments, managed for the account of the investors. The collective investment scheme may be an open-end scheme (a contractual collective investment scheme, or an investment company with variable capital (SICAV)) or a closed-end scheme (a limited partnership for collective investments, or an investment company with fixed capital (SICAF)).
<b>Tax status</b>	The collective investment scheme is generally transparent for tax purposes. The only exemptions are a SICAF, which is regarded as a taxable entity, and collective investment schemes with direct real estate investments which are treated as opaque for the income derived from the real estate investment.
<b>Tax treatment at entity level</b>	Generally, contractual collective investment schemes, SICAVs and limited partnerships for collective investments are disregarded for tax purposes. On the other hand a SICAF is regarded as opaque for tax purposes, and is taxed as a corporate entity. An exception to this rule occurs where a generally transparent collective investment scheme directly holds real estate. In such a case income derived from Swiss real estate is subject to corporate income tax at a preferential rate of 4.25% and to cantonal and communal taxes at a preferential rate of 9.3% (Canton Zurich), both at the level of the collective investment scheme. Dividends and capital gains not related to Swiss real estate remain outside the scope of taxation (tax transparent).
<b>Treatment of investors</b>	<p>The tax treatment in the hands of investors is rather complicated. Generally, a distinction must be made between individual investors and corporate investors. For individual investors a further distinction must be made between investors holding their investment in the collective investment scheme as private assets, or as business assets. Only capital gains from investments held as private assets by individual investors are regarded as tax free capital gains. Depending on whether the collective investment scheme qualifies as an accumulating collective investment scheme or as a distributing collective investment scheme, further differentiations with regard to individual investors are necessary.</p> <p>Corporate investors are taxed on distributions, and on the profit realised on the sale or redemption of the fund shares or if the book value of the fund shares held has been increased (taxation following the accounting treatment).</p>
<b>Withholding tax</b>	<p>Distributions (dividends and interest payments) are subject to a 35% withholding tax. Distributions of capital gains are not subject to withholding tax as long as the capital gains are distributed by a separate coupon or are separately disclosed.</p> <p>With regard to the timing of this withholding tax obligation, a distinction must be made between accumulating and distributing collective investment schemes. Distributing funds must declare and pay the withholding tax due on distributions to investors within 30 days from the due date of the distribution. Accumulating funds must declare and pay the withholding tax due on accumulated income within 30 days from the time of its credit (accumulation).</p> <p>Exceptions to the above filing requirements for withholding taxes purposes can apply to funds when following the Affidavit procedure (a requirement is that income is at least 80% foreign sourced).</p>
<b>Other taxes</b>	<p>The issuance of collective investment scheme shares is exempt from issuance stamp tax. The issuance and redemption of collective investment scheme shares is exempt from securities transfer tax.</p> <p>In the course of a purchase, sale or transfer of shares in a Swiss collective investment scheme (secondary market transactions) through a Swiss securities dealer (e.g. Swiss bank), a security transfer tax will be levied, which in general has to be borne equally by the seller and purchaser.</p> <p>Transactions in taxable securities for the account of the fund vehicle are not subject to securities transfer tax (the fund vehicle is a tax exempt party). Other taxes such as capital duty on incorporation, and wealth tax, are not levied on collective investment schemes that qualify as tax transparent.</p> <p>Opaque collective investments schemes, and investment schemes that hold Swiss real estate directly, are taxed as corporate entities and are hence subject to capital duty.</p>

# Switzerland

## Swiss Collective Investment Schemes

<b>Treaty status</b>	The fund vehicle has generally no access to treaty benefits. Exceptionally, a collective investment scheme may have access to treaty benefits on behalf of its Swiss investors and for the amount relating to the Swiss investors, if the collective investment scheme distributes at least 70% or more of its income, and the fund applies to the “Affidavit” procedure. There is no access to EU Directive benefits.
<b>Filing obligations</b>	The collective investment scheme is subject to withholding tax filing obligations. Additionally, collective investment schemes with direct holdings of real estate are subject to filing obligations with regard to income realised from the real estate.
<b>Regulation</b>	The regulatory authority for the collective investment scheme and the manager is the <i>Eidgenössische Finanzmarktaufsicht</i> (FINMA). With regard to anti-money laundering regulations, various rules apply, set by each of the different financial industry associations that the manager of the collective investment scheme is expected to join.
<b>Requirements for authorisation</b>	The authorisation of the fund vehicle is granted by FINMA, based on the fulfilment of the various conditions of CISA (Swiss Collective Investment Scheme Act) and related ordinances, as well as the code of conduct of the relevant financial industry association.
<b>Investment restrictions</b>	The authorisation of the fund vehicle is granted by FINMA, based on the fulfilment of the various conditions of CISA (Swiss Collective Investment Scheme Act) and related ordinances, as well as the code of conduct of the relevant financial industry association.
<b>Minimum level of investment</b>	CISA and/or other regulatory authorities may set a minimum investment for certain types of collective investment schemes (e.g. a self-managed SICAV requires its investors to make a capital commitment of a minimum of CHF 500,000).
<b>Pros</b>	<ul style="list-style-type: none"> <li>The collective investment scheme may have a simplified approval procedure if access is limited to qualified investors.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>The set up, application and approval process may require between four and six months, depending on the complexity and experience of the management company and the attitude of the Swiss authorities.</li> </ul>

## United Kingdom



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## United Kingdom Limited Partnership

<b>Legal form</b>	A Limited Partnership (LP) is a business arrangement with one or more general partners, who manage the day to day business of the LP and assume the legal debts and obligations of the LP. The investors will be limited partners and are only liable to the extent of their investment. Limited partners typically enjoy a right to the partnership's net income and capital gains.
<b>Tax status</b>	The LP is transparent for UK direct tax purposes.
<b>Tax treatment at entity level</b>	There is no tax levied at the level of the LP.
<b>Treatment of investors</b>	Investors are allocated the net income / losses and capital gains / losses of the LP pro rata to their participation in the LP. Investors are generally taxed in their home territory (depending on any applicable double tax treaty).
<b>Withholding tax</b>	Withholding tax is not levied by the LP, although dividends and interest income received by the LP may suffer withholding tax depending on the underlying territory making the payment.
<b>Other taxes</b>	Normally Stamp Duty Land Tax will be payable on the purchase of UK property and land. In addition Stamp Duty Land Tax may be payable in respect of changes in partnership interests in the LP.  The LP is not liable to capital duty.
<b>Treaty status</b>	The LP cannot generally access double tax treaties. However, limited partners may be able to access the treaties applicable to the underlying subsidiary entities.  There is no access to EU Directives, but the EU Savings Tax Directive might be applicable when interest payments are allocated to the investors.
<b>Filing obligations</b>	The LP is required to submit an annual partnership return if requested to do so by Her Majesty's Revenue and Customs (HMRC).  Where the LP invests directly in UK real estate, non-UK resident investors in the LP would normally register under the non-resident landlord scheme and be required to file non-resident landlord returns with HMRC.
<b>Regulation</b>	The LP isn't per se under any regulatory supervision or regulatory authority, although the General Partner could be subject to such regulation.
<b>Requirements for authorisation</b>	None.
<b>Investment restrictions</b>	None.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• A simple, flexible structure, which is well understood in the real estate industry as an investment fund vehicle.</li> <li>• Not necessarily subject to regulatory supervision.</li> <li>• Tax transparency gives non-UK investors the opportunity to benefit from lower tax rates available for non resident landlords and pay no UK capital gains tax.</li> <li>• The structure easily accommodates "carry" arrangements for the management team.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• An LP cannot be listed without prior incorporation.</li> <li>• The legal form is unsuited to open-end funds.</li> </ul>

## United Kingdom Property Authorised Investment Fund

<b>Legal form</b>	A Property Authorised Investment Fund (PAIF) is a Property Investment Fund, structured as an open-end Investment Company (OEIC).
<b>Tax status</b>	The PAIF is opaque for UK corporate income tax purposes. However, tax exemptions are available for qualifying activities.
<b>Tax treatment at entity level</b>	Property investment business income is exempt from corporate income tax (e.g. income from property rental business, shares in UK REITs or non-UK REIT equivalents). Certain UK dividends received and capital gains realised by the PAIF should also be exempt from UK tax. Moreover residual income (e.g. interest income) is subject to corporate taxes – however, a corresponding deduction should be available, so consequently there is effectively no taxation at the level of the fund.
<b>Treatment of investors</b>	Corporate investors may have to pay corporate taxes on all income and gains, with the exception of dividend income which may be exempt from UK tax. Individual investors pay income tax at a rate of 50% on property income distributions and interest, 36.1% (effective) on dividends, and 28% on gains.
<b>Withholding tax</b>	Withholding tax is levied at a rate of 20% on distributions of rental income or interest unless the investor is eligible to receive this income gross, e.g. UK pension funds. Reduced rates potentially available.
<b>Treaty status</b>	In principle the PAIF has access to the UK treaties, as well as to EU Directives.
<b>Filing obligations</b>	The fund submits a UK corporate income tax return.
<b>Regulation</b>	The PAIF is regulated by the UK Financial Services Authority.
<b>Requirements for authorisation</b>	The OEIC needs to fulfil the following conditions: <ul style="list-style-type: none"> <li>• Property investment business conditions</li> <li>• Genuine diversity of ownership conditions</li> <li>• A corporate ownership condition</li> <li>• Loan creditor conditions (where relevant)</li> <li>• A balance of business condition, and if relevant an additional condition for property AIFs that are qualified investor schemes.</li> </ul>
<b>Investment restrictions</b>	Maximum thresholds may apply to individual investments made by the PAIF.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>• The PAIF is a regulated, onshore vehicle for UK investments, which can be exempt from UK tax.</li> <li>• There is no entry charge for the vehicle to enter the regime.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• The PAIF is a new vehicle, and has not been widely used.</li> <li>• The vehicle is fairly heavily regulated, with a number of restrictions (e.g. gearing only up to 10% of net assets).</li> </ul>

# United Kingdom

## Unauthorised Unit Trust

<b>Legal form</b>	An unauthorised unit trust (UUT) is any UK resident unit trust which is not authorised by the Financial Services Authority. These vehicles can access a wider range of investments than authorised unit trusts – however they cannot be marketed to the general public.
<b>Tax status</b>	The UUT is not transparent for UK income tax purposes, but may be exempt from UK capital gains tax depending upon the tax profile of the investors.
<b>Tax treatment at entity level</b>	<p>The trustees of the UUT will be liable to UK income tax at the basic rate of tax, currently 20%, on income arising in the UUT. This tax arises irrespective of whether the income is distributed or accumulated. The UUT is not entitled to any deduction for expenses incurred in the cost of management or the running of the UUT.</p> <p>Where investment in the UUT is only made available to investors who are exempt from UK capital gains tax, any capital gains which accrue to the UUT will not be chargeable to UK capital gains tax. In other cases capital gains will be taxed.</p>
<b>Treatment of investors</b>	Investors will obtain credit for any tax paid by the trustees of the UUT, and will be entitled to reclaim such tax where all investors in the trust are exempt from UK tax.
<b>Withholding tax</b>	The UUT will be treated as distributing to its investors all income available for distribution as disclosed in the UUT accounts, and will be deemed to have withheld tax at the basic rate of income tax from the deemed distributions. To the extent that the withheld tax on a deemed distribution to the investors is matched by the taxable profits of the UUT, no further tax should be payable.
<b>Other taxes</b>	The transfer of units is subject to stamp taxes at a rate of 0.5%.
<b>Treaty status</b>	Access to treaty benefits depends on the treaty concerned. However, a UUT has no access to EU Directives.
<b>Filing obligations</b>	The UUT has to submit an annual tax return.
<b>Regulation</b>	The UUT is not under any regulatory supervision or regulatory authority.
<b>Requirements for authorisation</b>	None.
<b>Investment restrictions</b>	None.
<b>Minimum level of investment</b>	None.
<b>Pros</b>	<ul style="list-style-type: none"> <li>Where the UUT is only marketed to investors who are exempt from UK tax, the investors will be able to reclaim the tax paid by the UUT on its profits and the UUT will be exempt from tax on capital gains, making it highly tax efficient for this class of investors.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Where there are UK taxpaying investors investing in the UUT, tax will be suffered on capital gains in the UUT, which cannot be used to frank distributions to investors.</li> </ul>

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