www.pwc.com/realestate

Click to launch

Choosing an investment vehicle
European Real Estate Fund Regimes

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

November 2011

pwc

Introduction

Real estate fund managers face a period of new challenges and opportunities. The industry that is emerging from the market turmoil of recent years is very different from the industry in the boom years prior to the sub-prime crisis of 2007.

Investors are becoming more demanding and both the traditional closed-ended and open-ended fund model showed its weaknesses during the period of volatility. The recovery of the market for fund raising is likely to see the emergence of new types of funds seeking to cater for the varied demands of investors. There has been an increase in interest in debt funds and the move from defined benefit to defined contribution pension provision is also creating a driver for product development. We have also seen the emergence of arrangements that blur the boundaries between what was traditionally regarded as a fund and what was traditionally regarded as a segregated account.

Real estate fund managers are also facing a wave of regulatory changes, some of which will have a direct impact, such as the European Union Alternative Investment Fund Managers Directive and others, such as Solvency II, where the impact will be indirect from changes in the behaviour of investors. Changes in lease accounting will also have an impact.

All of this is creating a fertile environment for product development. Choice of fund vehicle is an important decision within this. 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 European Real Estate Investment Management (REIM) tax 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.

John Forbes
Partner, Real Estate Funds
PwC UK
Tel: +44 20 7804 3161
Fax: +44 20 7804 1001
Mob: +44 7764 235 488
e-mail: john.forbes@uk.pwc.com

7 More London Riverside,
London, SE1 2RT

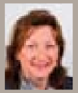
Uwe Stoschek
Partner, Real Estate Industry Leader EMEA
PwC Germany
Tel: +49 30 2636-5286
Mobile: +49 160 5820641
email: uwe.stoschek@de.pwc.com

Lise-Meitner-Str. 1,
D-10589 Berlin

Austria

- GmbH & Co. KG
- Immobilien-Sondervermögen
- Immobilien-Spezialsondervermögen

Contacts



Margit Frank
+43 1 501 88 32 00
margit.frank@at.pwc.com

Erik Malle
+43 1 501 88 37 34
erik.malle@at.pwc.com

Austria
GmbH & Co. KG

Background

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.

Legal form

Under Austrian commercial law, the GmbH & Co. KG is a special form of 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.

Tax status

The fund vehicle is transparent for Austrian income tax purposes.

Tax treatment at entity level

Dividends received, capital gains realised and other income received is not subject to income tax at the level of the fund.

Treatment of investors

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. As a result, 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.

Withholding tax

No withholding tax is levied on income distributed by the KG (due to the tax-transparent status).

Treaty status

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.

Filing obligations

The KG has to file an annual income tax return, whereby the profit will be determined at the level of the KG at a first stage and will then be allocated to the investors on the basis of their participation. Resident investors are, and non-resident investors may be, required to file an Austrian tax return.

Regulation

The KG is not subject to regulatory investment supervision (non-regulated fund).

Requirements for authorisation

None.

Investment restrictions

None.

Minimum level of investment

None.

Pros

- 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 a few assets.
- The fund vehicle is tax-transparent and there are no withholding taxes on income distributions.
- An increase of value in the property will principally only be taxed in case of the actual disposal of the asset.
- More possibilities for investors to have some influence on the investment.

Cons

- The fund vehicle is not very flexible regarding the holding period of the investment.
- There is generally no direct access to double tax treaties.

Austria
Immobilien-Sondervermögen

Background

The legislation regarding the Austrian Immobilien-Sondervermögen (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.

Legal form

An Austrian Immobilien-Sondervermögen 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 (Kapitalanlagegesellschaft, 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 Immobilien-Sondervermögen is a real estate retail fund, accessible to all kinds of investors.

Tax status

The fund is transparent for Austrian income tax purposes.

Tax treatment at entity level

There is no income taxation at the level of the fund.

Treatment of investors

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.

Withholding tax

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.

Treaty status

Regarding treaty access for open-end 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, 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.

Filing obligations

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 Immobilien-Sondervermögen, the tax treatment for different investor types has to be published (i.e. so-called "Steuerseite").

Regulation

The *Finanzmarktaufsicht* (FMA) is responsible for the regulatory supervision of the KAG, managing the fund.

Requirements for authorisation

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 Immobilien-Sondervermögen are offered to the public, a prospectus and a simplified prospectus have to be published and provided to the FMA.

Investment restrictions

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.

Minimum level of investment

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).

Pros

- The Immobilien-Sondervermögen is an investment vehicle for all types of investors.
- The fund itself is not subject to tax.
- The Immobilien-Sondervermögen represents a comparably safe vehicle, due to capital market regulation.
- The fund is principally obliged to redeem the shares upon request of the investors.

Cons

- Austrian open-end funds may be unknown to some international investors.
- The flexibility for Austrian and international investments and the range of eligible assets is limited.
- Moreover, there are gearing restrictions for real estate assets held by the fund.
- The access to double tax treaties in some jurisdictions is not clear.
- An increase of value in the property will principally be taxed, regardless of the actual disposal of the asset.

Austria
Immobilien-Spezialsondervermögen

Background

The Austrian *Immobilien-Spezialsondervermögen* is basically also governed by the respective regulations that apply to the Immobilien-Sondervermögen. However, it represents a regime for institutional investors that provides for a more flexible investment environment.

Legal form

The Austrian Immobilien-Spezialsondervermögen is a closed-end fund with no legal personality, and is managed by an Austrian management company (Kapitalanlagegesellschaft, KAG), 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.

Tax status

The fund is transparent for Austrian income tax purposes.

Tax treatment at entity level

There is no income taxation at the level of the fund.

Treatment of investors

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 cannot invest in Immobilien-Spezialsondervermögen 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.

Withholding tax

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 cannot invest in Immobilien-Spezialsondervermögen 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.

Treaty status

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 cannot invest in Immobilien-Spezialsondervermögen 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.

Filing obligations

In contrary to the Immobilien-Sondervermögen, resident investors are generally required to file tax returns for income derived from the fund.

Regulation

In contrary to the Immobilien-Sondervermögen, resident investors are generally required to file tax returns for income derived from the fund.

Requirements for authorisation

The KAG needs a banking licence in order to set up the fund and is therefore subject to the respective capital market regulations. The Immobilien-Spezialsondervermögen is not required to publish and provide FMA with a prospectus, or simplified prospectus.

Investment restrictions

The investment-vehicle targets institutional investors. Generally speaking, restrictions regarding the nature of investments (e.g. eligible assets, quotas) apply, as with the Immobilien-Sondervermögen. 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 Immobilien-Sondervermögen.

Minimum level of investment

The fund has to invest according to the principle of risk spreading, as detailed in legislation (at least five property investments within four years).

Pros

- The Immobilien-Spezialsondervermögen is not subject to direct supervision from the FMA.
- The fund does not have to issue a prospectus.
- The Immobilien-Spezialsondervermögen offers a flexible investment vehicle to institutional investors.

Cons

- Individuals are not eligible investors.
- The Immobilien-Spezialsondervermögen generally represents a long-term investment.
- The access to double tax treaties in some jurisdictions is not clear.
- An increase of value in the property will principally be taxed, regardless of the actual disposal of the asset.

The Czech Republic

- ***Speciální Fond Nemovitostí***
- ***Fond Kvalifikovaných Investorů***

Contacts

Glen Lonie
+420 251 152 619
glen.lonie@cz.pwc.com

Zenon Folwarczny
+420 251 152 580
zenon.folwarczny@cz.pwc.com

The Czech Republic
Speciální Fond Nemovitostí

Background

The *Speciální Fond Nemovitostí* (SFN) is a special property fund that is not covered by the UCIT Directives.

Legal form

The SFN is an open-end unit fund. It is not a legal entity per se; it is a pool of assets with its own tax identification number. The SFN has to be managed by an investment company (asset management company).

Tax status

The SFN is defined as the taxpayer liable to corporate income tax. It is not tax-transparent for Czech income tax purposes. The corporate income tax rate applicable for the 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.

Tax treatment at entity level

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 the SFN in previous taxable periods can reduce the corporate income tax base in the subsequent five taxable periods.

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 the SFN there is no possibility to access the benefits of EU Parent–Subsidiary Directive concerning dividends.

Treatment of investors

Investor as a legal entity:

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 an SFN are generally subject to 15% final withholding tax.

Investor as an individual:

No special tax on capital gains is levied. For Czech tax purposes, the redemption of units (buy-backs of units) in an 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 the 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 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.

Non-residential issues:

If a non-EEA resident redeems units in an SFN, the SFN 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). A tax treaty, if applicable, can alter the above described treatment stipulated by Czech tax law.

Withholding tax

Applicable at the rate of 15% for dividends.

Treaty status

Since the SFN is defined as the taxpayer the SFN should be able to access treaty benefits.

Filing obligations

The asset management company of the 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.

Regulation

The regulatory body is the Czech National Bank (CNB). Regulation is rather extensive since the fund is designed for investments from the general public.

Requirements for authorisation

An SFN is required to have an authorised depository that controls whether the 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 the SFN and its stakes in real estate companies.

The Czech Republic
Speciální Fond Nemovitostí (continued)

Investment restrictions

The 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. The 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.

Minimum level of investment

No legal requirements. The SFN (or the asset management company) can set the minimum level of investment for a particular SFN.

Pros

- No investor restrictions (intended for investment by the general public).
- Lower corporate income tax rate than standard corporate entities.
- Time test for individuals (while selling or redeeming units) is always six months if units are not covered in the individual's business assets.

Cons

- No access to UCIT Directives.
- Rather intense regulation.
- Based on the current legislation and legal status of the SFN, there is no possibility to tax depreciated 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.
- Based on the legal status of the SFN, there is no possibility to access the benefits of the EU Parent–Subsidiary Directive.
- Dividends are subject to tax of 15%, which is higher than the corporate income tax rate of the SFN of 5%.

Czech Republic
Fond Kvalifikovaných Investorů

Background

Fond Kvalifikovanych Investorů (FKI) is a fund of qualified investors and is not covered by the directives.

Legal form

An FKI can be an investment fund, which is a legal entity in the form of a joint-stock company. Alternatively, a 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.

Tax status

The FKI is not transparent for Czech tax purposes. The corporate income tax rate applicable for an FKI is currently 5% (compared with the 19% standard corporate income tax rate). Collection of corporate income tax of an 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 the FKI in the form of a unit fund is the same as for SFN (see section "Tax status" of SFN).

Tax treatment at entity level

There is no special tax levied on capital gains in the Czech Republic. Any capital gain/loss (which is not tax-exempt under the conditions of the EU Parent–Subsidiary Directive for the 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 an SFN).

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 so 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 for received dividends, or capital gains paid to an FKI (in the form of an 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%.

Treatment of investors

Investor as a legal entity:

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.

Investor as an individual:

No special tax on capital gains is levied. For Czech tax purposes, the redemption of units (buybacks of units) by FKI in the form of a 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.

Non-resident issues:

If a non-EEA resident sells units (shares) to a Czech buyer, the buyer should withhold from the gross proceeds, 1% of the amount. In the case that the non-resident seller subsequently does not declare tax in an annual tax return within the statute barred period of three years, the liability of the non-EEA resident seller could be deemed to be satisfied by the tax authority.

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.

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".

Withholding tax

Applicable at the rate of 15% for dividends.

Treaty status

FKI in the form of an investment fund and also in the form of a unit fund has access to treaty benefits.

Filing obligations

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 a unit fund, the same rules as for SFN apply.

Regulation

The regulatory body is the Czech National Bank (CNB). The regulation is not that extensive as in the case of SFN and is rather declaratory. The function of the CNB is rather to supervise, since FKI does not have a large-scale informational duty.

Czech Republic
Fond Kvalifikovaných Investorů (continued)

Requirements for authorisation

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.

Investment restrictions

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 an FKI is two and the maximum number is 100; however, the 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.

Minimum level of investment

The minimum level of investment is CZK 1m (equivalent to approx. EUR 40,350) per investor.

Pros

- Lower tax rate than other corporate entities.
- Not very extensive regulation.
- Access to the benefits of the EU Parent–Subsidiary Directive for FKI in the form of an investment fund.
- 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.

Cons

- No access to UCIT Directives.
- Investor restrictions (not intended for general public).
- Based on the current legislation and the legal status of FKI in the form of a unit fund, there is no possibility to tax depreciated 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.
- Dividends are subject to a tax rate of 15%, which is higher than the corporate income tax rate of FKI (5%).

France

- ***OPCI-FPI***
- ***OPCI-SPPICAV***

Contacts

Bruno Lunghi
+33 1 56 57 82 79
bruno.lunghi@fr.landwellglobal.com

Philippe Emiel
+33 1 56 57 41 66
philippe.emiel@fr.landwellglobal.com

France
OPCI-FPI

Background

The *Organisme de Placement Collectif en Immobilier* (OPCI) was created in 2005. Its main purpose is the acquisition or construction of properties (directly or through entities that are not subject to corporate tax) for renting.

An OPCI is a regulated investment vehicle and its implementation requires the prior approval of the French Market Authority.

Legal form

An OPCI can take the form of a *Fonds de Placement Immobilier (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 *(Société de Gestion de Portefeuille,* or SGP).

Tax status

There is no French corporate income taxation at the fund vehicle level.

Tax treatment at entity level

Rental income, capital gains on the disposal of properties, dividends and interest received are exempt from French corporate income tax.

Treatment of investors

Unitholders are generally subject to income tax only when the income recognised by the FPI is distributed.

Income distributed by the FPI keeps its own qualification and source (French or non-French) for the assessment of income tax payable by unitholders (rental income, capital gains on real estate, interest, dividends).

Withholding tax

Given the investment constraints imposed on FPIs, most of the income recognised by FPIs consists of rental income and capital gains on the disposal of properties, or of shares in pass-through entities holding properties.

Unitholders who are non-French tax resident individuals are subject to French personal income tax when they receive distributions of French source rental income from FPIs.

Capital gains realised on the disposal of French properties (or shares in French pass-through entities) realised by FPIs are subject to a 33.33% withholding tax when they are distributed to unitholders who are non-French tax resident individuals. The rate of this withholding tax is reduced to 19% for individuals residing in the EU, Norway and Iceland. The same tax regime applies regarding the disposal of units in FPIs by non-French tax-resident individuals

Non-French corporate investors are subject to French corporate income tax at the rate of 33.33% when they receive distributions from FPIs corresponding to French source rental income and capital gains, or when they realise capital gains on the disposal of units in FPIs.

Treaty status

Generally, the fund vehicle has no access to double tax treaties or EU Directive benefits.

Regulation

Both the FPI and the management company require prior approval and supervision by the French Market Authority.

Investment restrictions

At least 60% of the assets must consist of real estate assets. The indirect holding of properties is possible, but only through entities that are not subject to corporate tax.

Depending on the nature of the FPI (public, or limited to qualified investors), prudential investment ratios and a 10% liquid assets ratio may apply.

Pros

- No taxation at the FPI level.
- Possible automatic French 3% tax exemption (for public funds only).

Cons

- No access to double tax treaties and subsequently no mitigation of French withholding tax.
- An FPI is a regulated fund vehicle with little flexibility and significant administrative costs.
- To date no FPIs have been set up.

France
OPCI-SPPICAV

Background

The *Organisme de Placement Collectif en Immobilier* (OPCI) was created in 2005. Its main purpose is the acquisition or the construction of properties (directly or indirectly, i.e. through interposed companies) for renting. An OPCI is a regulated investment vehicle and its implementation requires the prior approval of the French Market Authority.

Legal form

An OPCI can take the form of a *Société de Placement à Prépondérance Immobilière à Capital Variable* (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 (*Société de Gestion de Portefeuille*, or SGP).

Tax status

The SPPICAV is exempt from French corporate income tax.

Tax treatment at entity level

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.

Treatment of investors

Income distributed by the SPPICAV qualifies as dividends.

For French individual investors, dividends are subject to personal income tax at a progressive rate of 0%, escalating to 41%, increased by 13.5% social taxes (out of which 5.8% is deductible for the personal income tax computation). Capital gains realised on the sale of the SPPICAV shares are subject to income tax at the rate of 19% (increased by 13.5% social taxes).

French corporate investors are subject to corporate income tax at the standard rate of 34.43% (including a social surtax).

Withholding tax

Distributions of dividends to non-French resident investors are subject to a 25% domestic withholding tax.

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.

Treaty status

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.

Regulation

Both the SPPICAV and the management company require prior approval and supervision by the French Market Authority.

Investment restrictions

At least 60% of the assets must consist of real estate 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), prudential investment ratios and a 10% of liquid assets ratio may apply.

Pros

- No taxation at the SPPICAV level.
- 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.
- Possible automatic French 3% tax exemption (for public funds only).

Cons

- Limited access to double tax treaties.
- Need for a regulated French management company.

Germany

- ***GmbH & Co. KG***
- ***Spezial-Sondervermögen (Institutional Investor Fund)***
- ***Immobilien-Sondervermögen (Retail Fund)***

Contacts

Uwe Stoschek
+49 30 2636 5286
uwe.stoschek@de.pwc.com

Sven Behrends
+49 89 5790 5887
sven.behrends@de.pwc.com

Antje Schumacher
+49 30 2636 5427
antje.schumacher@de.pwc.com

Germany
GmbH & Co. KG

Background

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).

Legal form

Under German commercial law, the GmbH & Co. KG is a special form of limited partnership. 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.

Tax status

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.

Tax treatment at entity level

Dividends received, capital gains realised and other income received is 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.

Treatment of investors

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.

Withholding tax

No withholding tax is levied on income distributed by the KG.

Treaty status

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 EU Directives developed for corporations for the KG.

Filing obligations

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).

Regulation

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 proposed EU Directive on Alternative Investment Fund Managers in the future.

Requirements for authorisation

In case of public placement in Germany, the fund's prospectus is subject to a formal review (20 days) by the regulatory authority, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), prior to publication.

Investment restrictions

None.

Minimum level of investment

None.

Pros

- German closed-end funds are widespread and well accepted among German investors.
- The legal form of a GmbH & Co. KG provides for a fast establishment procedure, low cost and easy handling.
- The vehicle is tax-transparent (except for trade tax) and there are no withholding taxes on income distributions.
- Possibility of long-term investments with the focus only on one or a few assets.

Cons

- German closed-end funds may be unknown to some international investors.
- German trade tax could apply at KG level. Furthermore, investors could be subject to tax in the target countries (tax-transparent entity).
- There is generally no access to double tax treaties and EU Directives.

Germany
Immobilien-Sondervermögen (Retail Fund)

Background

The legislation regarding the German Sondervermögen was amended at the end of 2007, introducing some major changes from a regulatory point of view. Though the German tax authorities have published an updated version of the circular on tax issues concerning German and foreign investment funds, some questions still remain open, having not being finally resolved.

Legal form

A German Sondervermögen is a German open-end fund. The fund has no legal personality and is managed by a German management company (Kapitalanlagegesellschaft, or KAG), which is either a German limited liability company (GmbH), or a stock corporation (AG). One KAG may set up several funds. An Immobilien-Sondervermögen is a real estate retail fund, accessible to all investors.

Tax status

The fund is exempt from German corporate income tax and from German trade tax.

Tax treatment at entity level

There is no income taxation at the level of the fund on dividends received, capital gains realised and other income received.

Treatment of investors

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.

Withholding tax

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 subject to withholding tax at a rate of 26.375% (including 5.5% solidarity surcharge) at fund level. Distributed income derived from domestic rental income and capital gains realised on the disposal of German properties is subject to withholding tax at a rate of 26.375% (including 5.5% solidarity surcharge). Withholding tax rate may be reduced, due to national rules for certain investor types, or due to individual rules in relation to double tax treaties for international investors.

Treaty status

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.

Filing obligations

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.

Regulation

The regulatory authority for German open-end funds is the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). The fund is subject to its regulatory supervision.

Requirements for authorisation

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.

Investment restrictions

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.

Minimum level of investment

The fund has to invest, consistent with the principle of risk spreading, as detailed in legislation.

Pros

- Immobilien-Sondervermögen is a widespread and highly trusted investment vehicle in Germany.
- They offer daily redemption at NAV.
- The fund is tax-exempt.
- There are no tax filing requirements for non-resident investors in Germany.

Cons

- German open-end funds may be unknown to some international investors.
- The flexibility for German and international investments and the range of eligible assets is limited.
- Moreover, there are gearing restrictions for real estate companies held by the fund.
- The access to double tax treaties in some jurisdictions is not clear. There is no access to EU Directives.

Germany
Spezial-Sondervermögen (Institutional Investor Fund)

Legal form

Spezial-Sondervermögen 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 Immobilien-Sondervermögen). The fund is a German open-end fund with no legal personality, and is managed by a German management company (Kapitalanlagegesellschaft, KAG), which is either a German limited liability company (GmbH), or a stock corporation (AG).

Tax status

The fund is exempt from German corporate income tax and from German trade tax.

Tax treatment at entity level

There is no income taxation at the level of the fund on dividends received, capital gains realised and other income received.

Treatment of investors

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.

Withholding tax

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 subject to withholding tax at a rate of 26.375% (including 5.5% solidarity surcharge) at fund level. Distributed income derived from domestic rental income and capital gains realised on the disposal of German properties is subject to withholding tax at a rate of 26.375% (including 5.5% solidarity surcharge). Withholding tax rate may be reduced, due to national rules for certain investor types, or due to individual rules in relation to double tax treaties for international investors.

Treaty status

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.

Filing obligations

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.

Regulation

The fund is subject to BaFin regulatory supervision.

Requirements for authorisation

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.

Investment restrictions

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.

Minimum level of investment

The fund has to invest according to the principle of risk spreading, as detailed in legislation.

Pros

- Spezial-Sondervermögen is well known to German institutional investors.
- The fund is tax-exempt.
- There are no tax filing requirements for non-resident investors in Germany (except for German source real estate income).

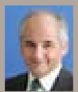
Cons

- German open-end funds may be unknown to some international investors.
- Despite the option to deviate from investment restrictions, regulatory constraints have to be observed.
- Investors are required to file tax returns for German-sourced real estate income.
- Moreover, there are gearing restrictions for real estate companies held by the fund.
- The access to double tax treaties in some jurisdictions is not clear. There is no access to EU Directives.

Ireland

- ***Common Contractual Fund***
- ***Variable Share Capital Investment Company***
- ***Unit Trust***
- ***Irish Limited Partnership***

Contacts



Enda Faughnan
+353 1 7926359
enda.faughnan@ie.pwc.com

Pat Convery
+353 1 7928687
pat.convery@ie.pwc.com

Ireland
Common Contractual Fund

Background

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.

Legal form

A CCF is a collective investment vehicle without a legal personality, established and managed by a management company.

Tax status

The CCF is transparent for income tax purposes.

Tax treatment at entity level

Dividends received, capital gains realised and other income received is exempt from income taxation at the level of the fund (tax-transparent).

Treatment of investors

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.

Withholding tax

No Irish withholding tax is levied on fund distributions, or on capital gains realised on fund investments.

Other taxes

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.

Treaty status

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 adviser may be required in certain cases

Filing obligations

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.

Regulation

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.

Requirements for authorisation

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.

Investment restrictions

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 100,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.

Minimum level of investment

See above.

Pros

- 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.
- The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds.
- 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.

Cons

- Restricted treaty access (a CCF is a tax-transparent vehicle – treaty access may be granted to investors.

Ireland
Variable Share Capital Investment Company

Background

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.

Legal form

A VCC is an open- or closed-end company limited by shares, which is marketed to the public, or sold by private placement.

Tax status

Tax-exempt on income and capital gains.

Treatment of investors

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.

Withholding tax

Withholding tax is levied on both distributions, at a rate of 27%, and on gains from encashment, redemption, or transfer of shares, at 30%. 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.

Other taxes

Shares in the VCC are not liable to stamp duty or capital duty.

Treaty status

The VCC may be able to access treaty benefits in certain cases. This would need to be considered on a case-by-case basis.

Filing obligations

The fund must submit two six-monthly tax returns a year, due on 30 January and 30 July, respectively.

Regulation

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.

Requirements for authorisation

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.

Investment restrictions

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 100,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.

Minimum level of investment

See above.

Pros

- 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.
- The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds.
- 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.

Cons

- Restricted treaty access. Positive developments have been made by the OECD to remove the uncertainty present on treaty access for widely held collective investment vehicles (CIVs). On 31 May 2010, the OECD Committee on Fiscal Affairs released a report that concludes and recommends that collective investment vehicles should be able to claim treaty access on behalf of investors. In addition, on 22 July 2010, the commentary to the OECD Model Tax Treaty was amended to include references to CIVs.

Ireland
Unit Trust

Background

The Unit Trust is an investment fund formed 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.

Legal form

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.

Tax status

The Unit Trust is exempt from Irish taxation in respect of its income and gains.

Treatment of investors

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.

Withholding tax

Withholding tax is levied on both distributions, at a rate of 27%, and on gains from encashment, redemption, or transfer of shares, at 30%. 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.

Other taxes

Neither stamp duty nor capital duty is chargeable on the issue, transfer, or switching of fund units.

Treaty status

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.

Filing obligations

Similar to the VCC, the fund must submit two six-monthly tax returns a year, due on 30 January and 30 July, respectively.

Regulation

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.

Requirements for authorisation

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.

Investment restrictions

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 100,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.

Minimum level of investment

See above.

Pros

- 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.
- The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds.
- 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.

Cons

- Restricted treaty access. Positive developments have been made by the OECD to remove the uncertainty present on treaty access for widely held collective investment vehicles (CIVs). On 31 May 2010, the OECD Committee on Fiscal Affairs released a report that concludes and recommends that collective investment vehicles should be able to claim treaty access on behalf of investors. In addition, on 22 July 2010, the commentary to the OECD Model Tax Treaty was amended to include references to CIV.

Ireland
Irish Limited Partnership

Background

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.

Legal form

An ILP can be formed as an open- or closed-end fund, which may be marketed to the public, or sold by private placement.

Tax status

Tax-exempt on income and capital gains.

Treatment of investors

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.

Withholding tax

Withholding tax is levied on distributions, at a rate of 27%, and on gains from the realisation, or transfer of partnership interests, at a rate of 30%. 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.

Other taxes

Neither stamp duty nor capital duty is chargeable on the issue, transfer, or switching of partnership interests.

Treaty status

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.

Filing obligations

Similar to the VCC, the fund must submit two six-monthly tax returns a year, due on 30 January and 30 July, respectively.

Regulation

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.

Requirements for authorisation

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.

Investment restrictions

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 of initial subscription requirement per investor of EUR 100,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.

Pros

- 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.
- The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds.
- 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.

Cons

- Restricted treaty access. Positive developments have been made by the OECD to remove the uncertainty present on treaty access for widely held collective investment vehicles (CIVs). On 31 May 2010, the OECD Committee on Fiscal Affairs released a report that concludes and recommends that collective investment vehicles should be able to claim treaty access on behalf of investors. In addition, on 22 July 2010, the commentary to the OECD Model Tax Treaty was amended to include references to CIV.

Italy

▶ Real Estate Investment Fund

Contacts

Fabrizio Acerbis
+39 2 91605001
fabrizio.acerbis@it.pwc.com

Daniele Di Michele
+39 2 91605002
daniele.di.michele@it.pwc.com

Italy
Real Estate Investment Fund

Background

The Real Estate Investment Fund (REIF) was first introduced in Italy in 1994. Due to the continuous improvement in its regulation and its advantageous tax regime, the REIF has become one of the most appealing forms of investment in Italy for residents and non-residents alike.

Nevertheless, in order to prevent the use of the REIF as a mere "vehicle" for private investments in real estate, rather than for the purpose for which it was 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 the REIF which, before its complete enforcement, was also reviewed and partially reformed in May 2011.

The current tax regime is provided by Law Decree 25 September 2001, no. 351 (converted by Law 23 November 2001, no. 410), as last amended and integrated by Law Decree 13 May 2011, no. 70 (converted by Law 12 July 2011, no. 106).

Legal form

The Real Estate Investment Fund is a collective investment vehicle without legal personality (i.e. closed-end regulated contractual fund), established and managed by a management company: the SGR *(Società di Gestione del Risparmio)*. The SGR is a regulated Italian joint-stock company, which can manage one or more investment funds.

According to the 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 programmes defined in advance; (iii) management of the fund independent from participants.

The investment fund's assets are separated from those of the SGR – or managed by the same – and of each unitholder; the investment fund is solely liable, with its own assets, for the obligations incurred on its behalf by the SGR.

Tax status

The REIF is outside the scope of Italian corporate income tax (IRES – ordinary rate: 27.5%) and regional tax on production (IRAP – ordinary rate: 3.9%).

REIF's profits are conversely taxable in the hands of the unitholders, pursuant to different methods and/or limits in consideration of the unitholders' nature/tax status, as provided by the new tax rules enforced in May 2011. As a result of the introduction of the new tax rules in 2010 and 2011, the 1% net worth tax (imposta patrimoniale) introduced in 2008 for "low participated" and "family-owned" REIFs has been repealed.

Tax treatment at entity level

Dividends received, capital gains realised and other incomes earned by the REIF are exempt from corporate income taxation at the level of the REIF. For income normally subject to withholding tax at source, if the application of the withholding tax is not expressly excluded for REIFs (as it is the case, for example, for interest from bank deposits, income from certain foreign regulated funds, etc.), such withholding tax applies as a final payment (this is the case, for example, of 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 (a sole rate of 20% will be generally applicable from 2012).

REIF units are not subject to registration tax.

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%), on the cadastral value of the properties.

As far as VAT and other indirect taxes are concerned, REIF follows the ordinary rules; however, it can benefit from some tax reliefs with regard to indirect/transfer taxes.

Treatment of investors

The new tax regime enforced in May 2011 identifies two categories of REIFs, according to the nature of the unitholders:

- "institutional funds": REIFs entirely owned by "institutional" investors;
- "non-institutional funds": REIFs owned also by investors different from "institutional"ones.

For this purpose, "institutional" investors are deemed to be the following: a) States or public entities/bodies; b) undertakings for collective investment of savings; c) pension funds; d) insurance companies (limited to investments related to "technical reserve" coverage); e) banking and financial intermediaries that are subject to prudential surveillance; f) entities indicated in previous letters from a) to e), established in countries included in the so-called "White List" (this list includes the countries that have specific agreements for the exchange of tax information with Italy) and that allow the identification of beneficial owner of income; g) non-profits/charities resident in Italy; h) SPVs owned for more than 50% by any of the entities listed under previous letters from a) to g).

With reference to "institutional funds", REIF's profit distributions are subject to a 20% withholding tax at source (certain reductions/exemptions are provided); for investors subject to corporate income tax, REIF's profits collected are taxed accordingly and the withholding tax is credited against the corporate income tax due.

Regarding "non-institutional funds", the following rules are provided:

- for "institutional" investors (regardless the amount of their interest in the REIF) and "non-institutional"investors owning (directly or indirectly) up to 5% of the REIF, REIF's profit distributions are subject to the 20% withholding tax at source according to the ordinary rules (with reductions/exemptions, where applicable); for investors subject to corporate income tax, REIF's profits collected are taxed accordingly and the withholding tax is credited against the corporate income tax due;

Italy
Real Estate Investment Fund (continued)

- for "non-institutional" investors that own (directly or indirectly) more than 5% of the REIF, the annual REIF's profit is attributed to the investors in proportion to their interest in the REIF (which, as a result, acts as a tax-transparent entity), regardless of its actual distribution, and is taxed in their hands according to their tax regime/status (consequently, withholding tax at source does not apply);
- for "non-resident investors" REIF's profit distributions should be in any case taxable upon distribution through the 20% final withholding tax at source, according to the ordinary rules (with reductions/exemptions, where applicable).

For "non-institutional funds" a one-off substitute tax is also provided. This substitute tax only applies to "non-institutional", investors which held (directly or indirectly) more than 5% of the REIF as of 31 December 2010. This substitute tax amounts to 5% of the average value of the pertaining REIF units held during the REIF's management period 2010. The tax can be paid either by (i) the investor(s) within the deadline for year 2011 income tax payments (i.e. ordinarily 16 June 2012), or (ii) the SGR (or the custodian bank, when provided) on behalf of the investor(s) in two equal instalments, on 16 December 2011 and 16 June 2012, respectively (if the investor does not provide sufficient funds, the SGR can dispose of the REIF units to pay the tax).

In addition, the underwriting or purchase cost of the REIF units will only be recognised for tax purposes within the limit of the amount that constitutes the taxable base for the substitute tax. Losses incurred upon sale, or disposal will be irrelevant for tax purposes.

As an alternative to the application of the tax-transparent regime for "non-institutional" investors with relevant interest in the REIF, upon investors' decision, the REIF can be put into liquidation by 31 December 2011. In this case, the SGR must account for a 7% substitute tax on the REIF's NAV as of 31 December 2010 (payable in three years, by annual instalments, from 2012 to 2014). Liquidation must be completed within a maximum of five years. On annual profits accrued from 1 January 2011 to the end of the liquidation, the SGR must account for a further substitute tax of 7%. REIF's profit distributions are not subject to withholding tax and are not taxable up to the amount that was subject to the 7% substitute tax. In order to facilitate the liquidation, some tax reliefs are provided, regarding indirect/transfer taxes.

Withholding tax

Withholding tax is levied on the REIF's profit distributions, even on redemption, at a rate of 20% (in case of REIF units reimbursement, distributions of REIF's profits earned before 25 June 2008 – as per REIF's income statements approved before this term – benefit from the previous lower withholding tax rate of 12.5%).

However, in the following cases the withholding tax is not applicable:

- "non-institutional" relevant unitholder subject to transparency taxation;
- REIF in liquidation with liquidation profits already subject to the 7% substitute taxes;
- Italian pension funds and Italian undertakings for the collective investment;
- foreign pension funds and foreign undertakings for the collective investment of savings established in countries that have an adequate exchange of information with Italy (i.e. countries included in the so-called "White List");
- 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.

REIF's profits distributed to investors, residents in countries for which a treaty against double taxation exists may benefit from the more favourable regime tax set out in the treaty (reference is generally made to provisions concerning "interest", unless the relevant treaty expressly regulates the income from real estate funds). For this purpose, subjective, objective and documentary requirements have to be fulfilled (e.g. "beneficial owner" status; tax certificate issued by the tax authority of the country of residence of the beneficial owner, valid until 31 March of the following year). 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.

Capital gains derived from the disposal of REIF units are subject to 12.5% substitute tax (increased to 20% from 2012), unless they are realised in the context of business activity, subject to business income taxation rules. However, under the following circumstances, a non-resident may benefit from tax exemption:

- REIF units listed in a regulated market;
- for unlisted REIF units, if the recipient is the beneficial owner of the capital gain (or qualifies as an institutional investor), does not have a permanent establishment in Italy to which the income is referable and its residence country allows an effective exchange of tax information with Italy.

Treaty status

A REIF should not have access to treaty benefits because, from an Italian perspective, it lacks legal personality and taxpayer status.

Filing obligations

Withholding tax agent reporting obligations are generally fulfilled on behalf of the REIF by the company (SGR).

Regulation

The REIF and the SGR are subject to the supervision of the Italian regulatory authority, the Bank of Italy.

The rules enforced in July 2010 provide a form of "deregulation" for certain investment funds. In particular, for investment funds that are not subject to the rules established to mitigate and diversify risks (i.e. investment funds "reserved" to 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.

Requirements for authorisation

For the SGR, the following requirements apply:

- The registered office and the head office must be located in Italy.
- The paid-up share capital, complying with the minimum amount established by the Bank of Italy, is EUR 1m.

Italy
Real Estate Investment Fund (continued)

- The persons in charge of performing the administrative, managerial and control functions must fulfil professional and independence legal requirements.
- Shareholders are also required to fulfil honourableness requirements.
- Activities are limited to those allowed by law.

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.

Investment restrictions

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 two-thirds 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 one-third of the total REIF's assets (some exceptions are provided), and investments in companies allowed to carry on building development business are limited to 10% of the total REIF's fund assets.

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.

Pros

- REIF is not subject to income taxes: limitations provided in the corporate income taxation system do not apply (e.g. thin capitalisation rules/interest deductibility limitations).
- REIF's profits are taxed only upon distribution and/or reimbursement of the units, with the exception of holdings exceeding 5% held by resident "non-institutional" investors, which are subject to tax transparency taxation methods.
- Exemptions for certain foreign "qualifying institutional foreign" investors is available. Other foreign investors can benefit from DTTs reduction/exemption.
- REIF benefit from several tax reliefs in terms of indirect taxes.

Cons

- REIF's profits in favour of foreign investors not entitled to exemption are subject to 20% withholding tax (reducible, however, under DTTs as interest, unless differently provided by the relevant DTT).
- REIF's profits in favour of resident "non-institutional" investors holding more than 5% are taxed on an accrual basis (tax-transparency taxation method).
- A one-off substitute tax equal to 5% of the investment value as of 31 December 2010 is due by "non-institutional" investors holding more than 5% at same date.
- Compulsory liquidation of the REIF is provided if it is not intended to apply the new tax regime to unitholders, with a one-off 7% substitute tax on the REIF's NAV as of 31 December 2010 and a further 7% on the annual REIF's liquidation profits, if any.
- Unitholders cannot manage the REIF: this role is executed by the management company (SGR), which is independent from the investors.
- Due to the fact that the REIF 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.

Luxembourg

- ▶ *UCIs Part II – FCP, SICAV, SICAF*
- ▶ *SIF Regime – FCP, SICAV, SICAF*
- ▶ *SICAR*
- ▶ *Securitisation Vehicle*

Contacts

Alexandre Jaumotte
+352 49 48 48 1
alexandre.jaumotte@lu.pwc.com

Valerie Tollet
+352 49 48 48 1
valerie.tollet@lu.pwc.com

Luxembourg
UCIs Part II – FCP, SICAV, SICAF

Background

Real estate Undertakings for Collective Investments (UCIs) under the so-called “Part II” of the law of 17 December 2010 offer a wide range of investment possibilities, such as direct investment in real estate properties, and can be considered as the classic type publicly distributed of regulated real estate fund vehicle in Luxembourg.

Legal form

The legal forms which publicly distributed UCIs may take are as follows:

- A Fonds Commune de Placement (FCP) is a contractual form, equivalent to the concept of UK “unit trust” or German “Sondervermögen”. Having no separate legal status, it must be managed by a Luxembourg management company.
- A Société d’Investissement à Capital Variable (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 (*Société Anonyme*).
- A Société d’Investissement à Capital Fixe (SICAF) is a corporate structure with fixed capital, which 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 (*Société Anonyme – “SA”*) or partnership limited by shares (*Société en Commandite par Actions* – “SCA”).

Tax treatment at entity level

The UCI vehicle is tax-exempt. Dividends received, capital gains realised and other income received are outside the scope of taxation.

Treatment of investors

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.

Withholding tax

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.

Other taxes

Subscription tax (taxe d’abonnement) 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.

UCIs are regarded as performing VAT-exempt activities and are not entitled to recover the input VAT incurred on their costs, except in specific cases. Management of UCIs is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, investment advice, fund accounting and administrative management of the assets of the UCI, where the place of taxation of these services is Luxembourg. Distribution of UCIs’ units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, which is the lowest rate within the EU. Supervision functions are even generally subject to 12% VAT.

UCIs are not required to register for VAT in Luxembourg unless they receive taxable services from abroad for which they have to self-account for Luxembourg VAT.

Treaty status

For the FCP form there is no access to the double tax treaty network. SICAVs and SICAFs should have access to Luxembourg double tax treaties with 36 countries. For all of the legal forms, there is no access to the EU Parent–Subsidiary Directive.

Regulation

UCIs fall under the supervision of the Luxembourg financial sector regulator, the Commission de Surveillance du Secteur Financier (CSSF), which plays a key role by (i) authorising the vehicle and by (ii) supervising the ongoing operations of the structure.

Requirements for authorisation

- The authorisation process focuses strongly on the constituting documents and offering documents.
- 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.
- Investment manager must be subject to CSSF prudential supervision, or established in a cooperative country. The investment management function shall not be delegated to the depositary.
- A depositary bank and a central administration service provider, supervised by the CSSF, are required.
- One or more independent property values are required.
- An approved statutory auditor (réviseur d’entreprise agréé) must audit the annual accounts of the fund.

Investment restrictions

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.

Minimum capital requirements

The minimum asset base of a UCI is EUR 1.25m. 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.

Pros

- 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.
- Low tax leakage and scope for tax optimisation of carried interests.

Cons

- Requirement to use a depositary bank.

Luxembourg
SIF Regime – FCP, SICAV, SICAF

Background

In February 2007, the Luxembourg parliament adopted a law (the "SIF Law"), to replace the 1991 Law on UCIs dedicated to institutional investors, so 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. A draft law n° 6318 amending the current SIF regime is expected to be adopted before the end of the year 2011.

Legal form

A SIF is in essence a special regulatory regime for non-retail funds. The SIF regime is available for FCPs *(Fonds Commun de Placement)* with a management company; for SICAVs *(Société d'Investissement à Capital Variable)* and for SICAFs *(Société d'Investissement à Capital Fixe).* Both the SICAV and the SICAF may choose from a number of legal forms – the limited liability company *(Société à responsabilité limitée – "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 *(Société coopérative organisée sous forme de société anonyme* – "SCSA").

Tax treatment at entity level

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.

Treatment of investors

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.

Withholding tax

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.

Other taxes

Subscription tax *(taxe d'abonnement)* at a rate of 0.01% yearly is levied on the net asset value at the end of each quarter. There is no transcription tax or net wealth tax.

SIFs are regarded as performing VAT-exempt activities and are not entitled to recover the input VAT incurred on their costs, except in specific cases. Management of SIFs is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, investment advice, fund accounting and administrative management of the assets of the SIF, where the place of taxation of these services is Luxembourg. Placement of SIFs' units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, which is the lowest rate within the EU. Supervision functions are even generally subject to 12% VAT.

SIFs are not required to register for VAT in Luxembourg unless they receive taxable services from abroad for which they have to self-account for Luxembourg VAT.

Treaty status

For the FCP form, there is no access to the double tax treaty network. SICAVs and SICAFs should have access to Luxembourg double tax treaties with 36 countries. For all of the legal forms, there is no access to the EU Parent–Subsidiary Directive.

Regulation

The regulatory authority is the CSSF *(Commission de Surveillance du Secteur Financier)*.

Requirements for authorisation

- 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. Prior CCSF approval will be required as from the entry into force of Bill 6318.
- The promoter is not subject to regulatory approval; investment managers are not subject to CSSF scrutiny; and a depository bank, while required in Luxembourg, has no oversight responsibilities. However, under the new SIF regime, the CSSF will review and authorise the constitutional, offering documents and approve the various intervening parties in the fund: approved statutory auditors, depositary, central administration, investment manager, statutory and effective managers of the SIF. UCITS equivalent rules will also apply to the delegation of tasks, notably that the portfolio management should only be delegated to "regulated" portfolio managers, or considered as acceptable by CSSF.
- 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).

Investment restrictions

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 "well-informed investors", i.e institutional, professional investors or high-net-worth individual investors who are investing at least EUR 125,000 and who can provide a bank confirmation of suitable experience, or confirmed in writing that s/he adheres to the status of well-informed investor.

Minimum capital requirements

The minimum asset base of a SIF is EUR 1.25m. This amount has to be reached within the 12 months following SIF authorisation. 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.

Pros

- The SIF is highly flexible and uses the well-known Luxembourg fund types (FCP, SICAV).
- Use of the SCA legal form allows fund managers to exercise strong influence.
- Low tax leakage and scope for tax optimisation of carried interest.
- The level of regulatory supervision is low, and authorisation can be granted often in a four-to six-week time frame.

Cons

- Requirement to use a depositary, although the duties of the depositary are less severe than for UCIs.
- Subscription tax expense.

Luxembourg
SICAR

Background

The SICAR law of 15 June 2004 introduced the SICAR (*Société d'Investissement en Capital à Risque*) 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.

Legal form

A SICAR is an investment company in risk capital for private equity and venture capital funds. A SICAR can be set up under the legal form of a partnership, or of a corporation. Various legal forms are available:

- A public limited company (SA).
- A limited liability company (Sàrl).
- A cooperative in the form of a public limited company (SCSA) (seldom used) Partnership limited by shares (SCA).
- Partnership limited by shares (SCA).
- A limited partnership (*Société en Commandite Simple* – "SCS") (seldom used).

Tax status

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 28.80% for 2011.

Treatment of investors

Investors in an SCS-type SICAR are deemed to receive their income pro rata to their participations in the investors in the fund SICARs in other legal forms; the tax treatment depends on the rules applicable in the country of their residence.

Withholding tax

Distributions (dividends, or interest) 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.

Other taxes

A SICAR is not subject to annual subscription tax. There is no transcription tax or net wealth tax.

SICARs are regarded as performing VAT-exempt activities and are not entitled to recover the input VAT incurred on their costs, except in specific cases. Management of SICARs is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, investment advice, fund accounting and administrative management of the assets of the SICAR, where the place of taxation of these services is Luxembourg. Placement of SICARs' units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, which is the lowest rate within the EU. Supervision functions are even generally subject to 12% VAT.

SICARs are not required to register for VAT in Luxembourg unless they receive taxable services from abroad, for which they have to self-account for Luxembourg VAT.

Treaty status

SICARs having the form of SA, Sàrl, SCA, or 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 partnerships, and SCS-type SICARs are not differentiated.

Regulation

A SICAR is subject to a light degree of regulation by the CSSF *(Commission de Surveillance du Secteur Financier)*.

Requirements for authorisation

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.

A depositary bank must be appointed and a central administration service provider, supervised by the CSSF is generally required. However, in comparison with publicly distributed UCIs, the depositary bank has a lightened scope of responsibilities.

An approved statutory auditor must audit the annual accounts of the fund.

Investment restrictions

SICARs are, by definition, exclusively dedicated to investments in risk capital. As a result, 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).

Minimum capital requirements

The subscribed share capital must be not less than EUR 1m, 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.

Pros

- The SICAR is a flexible, tax-efficient and tailored lightly regulated fund.
- Compared to publicly distributed UCIs, SICARs are subject to "lighter" regulation by the CSSF.

Cons

- 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).
- Only available for "opportunistic" real estate funds.
- 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.

Luxembourg
Securitisation Vehicle

Background

The Luxembourg Securitisation law of 22 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.

Legal form

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).

Tax status

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 28.80% for 2011.

Tax treatment at entity level

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.

Treatment of investors

The tax treatment of investors depends on the rules applicable in their country of residence.

Withholding tax

Distributions (dividends or interest) 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.

Other taxes

No annual subscription tax, no net wealth tax, no transcription tax are levied on a Securitisation vehicle.Securitisation vehicles are regarded as performing VAT-exempt activities and are not entitled to recover the input VAT incurred on their costs, except in specific cases. Management of securitisation vehicles is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, investment advice, fund accounting and administrative management of the assets of the securitisation vehicle, where the place of taxation of these services is Luxembourg. Placement of Securitisation vehicles' units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, which is the lowest rate within the EU. Supervision functions are even generally subject to 12% VAT.

Securitisation vehicles are not required to register for VAT in Luxembourg unless they receive taxable services from abroad, for which they have to self-account for Luxembourg VAT.

Treaty status

Generally the Securitisation 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.

Regulation

A Securitisation vehicle is only necessarily subject to CSSF supervision if it issues securities to the public on a continuous basis.

Requirements for authorisation

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.

Investment restrictions

Investment in the SPV is possible for all types of investors. There are no investment restrictions or risk diversification requirements for the vehicle.

Minimum capital requirements

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.

Pros

- The SPV is a tax-efficient and highly flexible fund vehicle.

Cons

- Not suitable for direct investments in real estate.

The Netherlands

- Transparent Funds
- Corporate Funds with Fiscale beleggingsinstelling (FBI) status
- Corporate Funds with Vrijgestelde beleggingsinstelling (VBI) Status
- Taxable Corporations Funds
- Co-operatives

Contacts

Bart Kruijssen
+31 88 792 6037
Bart.kruijssen@nl.pwc.com

Martin N. van der Zwan
+31 20 5686954
martin.van.der.zwan@nl.pwc.com

The Netherlands
Transparent Funds

Legal form

A *Fonds voor Gemene Rekening* (FGR) is a Dutch fund for joint account. A *Commanditaire Vennootschap* (CV) is a Dutch limited partnership.

Tax status

An FGR or CV is transparent for Dutch tax purposes if any admission of new unit-holders or partners to the FGR or CV and transfer (legal or economic) of units or limited partnership interests is subject to the consent of all unitholders and partners ("unanimous consent rule/ UC rule". The consent should be requested from the unit-holders or partners in writing. In case a unit-holder or partner does not object against the request within one month after this request (calculated as from the day after the unit-holders or partners have been requested for their consent), the unit-holder or partner is deemed to have provided his consent. For an FGR, transparency can also be achieved if its statutes provide that units can only be transferred by means of redemption 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.

Tax treatment at entity level

A tax-transparent fund is not itself subject to taxation on dividends received, capital gains realised, or other income earned.

Treatment of investors

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).

Withholding tax

No withholding tax is levied on distributions and interest payments made by the tax-transparent fund.

Treaty status

From a Dutch perspective the fund has no access to treaty benefits and no access to EU Directives. Treaty benefits may apply to investors in the fund in relation to investments held by the fund (i.e. look-through approach). Some Competent Authority Agreements have been concluded, such as with Canada, the UK, Denmark and the US, which make this approach explicit.

Filing obligations

No tax filing obligations apply.

Regulation

Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the Autoriteit Financiele Markten. Exceptions and exemptions can apply in specific circumstances.

Investment restrictions

None.

Minimum level of investment

None.

Pros

- A transparent fund is not subject to tax at the fund level.
- There is no dividend withholding tax on earnings distributed by the fund.
- The fund itself has low costs of establishment, and can be implemented relatively quickly.

Cons

- The fund vehicle has, as such, no access to treaty benefits and EU Directives, although some Competent Authority Agreements have been concluded.

The Netherlands
Corporate Funds with Fiscale beleggingsinstelling (FBI) status

Legal form

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.

Tax status

Under the special FBI regime, income is subject to Dutch corporate income tax at a rate of 0%, provided the relevant conditions are met (e.g. with respect to the shareholders, its activities, its leverage, and 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).

Tax treatment at entity level

Dividends received, capital gains and other income are subject to corporate income tax at a rate of 0% (i.e. not exempt).

Treatment of investors

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.

Withholding tax

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.

Treaty status

The vehicle is entitled to treaty benefits. However, it generally has no access to EU Directives.

Filing obligations

The FBI is required to file an annual corporate income tax return as well as dividend withholding tax returns for each distribution.

Regulation

FBIs are in principle subject to regulation. Exemptions are possible if certain criteria are met. The regulatory authority is the *Autoriteit Financiele Markten*.

Investment restrictions

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.

Minimum level of investment

None.

Pros

- A 0% tax rate applies at the level of the fund.
- The fund has access to treaty benefits.
- The 0% tax rate is not limited to real estate income.

Cons

- Strict requirements need to be met on a continuous basis

The Netherlands
Corporate Funds with Vrijgestelde beleggingsinstelling (VBI) Status

Legal form

Certain specific Dutch and foreign entities are eligible to claim the VBI regime, as long as these entities meet a set of ongoing requirements.

Tax status

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.

Tax treatment at entity level

Dividends received, capital gains and other income earned are not subject to tax.

Treatment of investors

The income of the VBI is not directly allocated to the investors.

Withholding tax

Distributions by a VBI are not subject to withholding tax.

Treaty status

The fund itself has no access to treaty benefits, and has no access to EU Directives.

Filing obligations

A VBI does not have any tax return fling obligations.

Regulation

VBIs are in principle subject to regulation. Exemptions are possible if certain criteria are met. The regulatory authority is the *Autoriteit Financiele Markten*.

Investment restrictions

VBI vehicles can only invest in financial instruments. A VBI cannot therefore invest directly in real estate. Indirect investments in real estate are allowed unless the real estate is located in the Netherlands and the investment is via a transparent vehicle. The investment activities must, furthermore, exclusively comprise of a portfolio investment holding.

Minimum level of investment

None.

Pros

- There is no taxation at the level of the VBI and no withholding tax on distributions made by the VBI.
- Although there is a requirement that two or more investors invest in the vehicle (collective investors test), there are no other specific investor restrictions.

Cons

- The fund has no access to treaty benefits and EU Directives.
- The fund may only invest in financial instruments, and not directly in real estate.

The Netherlands
Taxable Corporations Funds

Legal form

A *Naamloze Vennootschap* (NV) is a public limited company, and a *Besloten Vennootschap* (BV) is a limited company.

Tax status

NVs and BVs are not transparent. Income is subject to Dutch corporate income tax at the general rate of 25%. The first EUR 200,000 of income is subject to a lower rate of 20% (2011 rates).

Tax treatment at entity level

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.

Treatment of investors

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.

Withholding tax

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.

Treaty status

The vehicle is generally entitled to treaty benefits and to the benefits of EU Directives.

Filing obligations

NVs and BVs are required to file an annual corporate income tax return, as well as dividend withholding tax returns for each distribution.

Regulation

Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the Autoriteit Financiele Markten. Exceptions and exemptions can apply in specific circumstances.

Investment restrictions

None.

Minimum level of investment

None.

Pros

- There are no investor restrictions.
- There is access to treaty benefits and EU Directives.

Cons

- 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.

The Netherlands
Co-operatives

Legal form

A *Coöperatie* (COOP), in essence, is a corporation.

Tax status

The COOP is non-transparent, and its income is subject to Dutch corporate income tax at the general rate of 25%. The first EUR 200,000 of income is subject to a lower rate of 20% (2011 rates).

Tax treatment at entity level

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.

Treatment of investors

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.

Withholding tax

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. However, on Budget Day 2011, a proposal for a change in this legislation has been sent to Parliament. It is proposed to subject distributions by COOPs to dividend withholding tax in very specific abuse situations.

Treaty status

Similar to NVs and BVs, the COOP is entitled to treaty benefits and to certain benefits of the EU Directives.

Filing obligations

A COOP is required to file an annual corporate income tax return.

Regulation

Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the Autoriteit Financiele Markten. Exceptions and exemptions can apply in specific circumstances.

Investment restrictions

None.

Minimum level of investment

None.

Pros

- Distributions are generally not subjected to dividend withholding tax (note the Budget Day proposal).
- The civil law rules for COOPs are similar to the flexible rules applicable to partnerships.
- There are no investor restrictions, except that a COOP requires at least two members on formation.

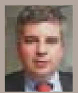
Cons

- 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.
- Income that is not covered by the participation exemption is in principle taxable.

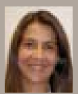
Portugal

- ***Fundo de Investimento Imobiliário***
- ***Sociedades de Investimento Imobiliärio***

Contacts



Jorge Figueiredo
+351 213 599 618
jorge.figueiredo@pt.pwc.com



Anabela Mendes
+351 213 599 618
anabela.mendes@pt.pwc.com

Portugal
Fundo de Investimento Imobiliário

Background

The *Fundo de Investimento Imobiliário* (FII) is a common real estate investment vehicle in Portugal. It has been used by both the banking industry as well as by investors.

Legal form

An FII is a separate and autonomous pool of assets that is jointly owned by its unitholders.

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 *(sociedade anónima)* with effective head office in Portugal, having as its primary object the managing of one or more FII. Depositary bank assures investors the fulfilment of the fund rules as well as the management of the units in the fund and respective calculations and payments. Fund securities are entrusted to the depositary.

Tax status

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.

Tax treatment at entity level

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. Annual property tax is also not deductible.

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).

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 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.

Other residual income is taxed at 25%.

Treatment of investors

None.

Withholding tax

The treatment of investors depends on the tax status of the investors (i.e. non-resident investors or resident investors, individuals or other entities).

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.

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.

Other taxes

Open-end and publicly offered closed-end FIIs are fully exempt from property transfer tax (IMT) and from the annual property tax (IMI).

However, semi-closed-end FIIs 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.

The general IMT rate levied on offices, retail and other commercial property is 6.5%.

IMI rates vary, depending on the municipality where the property is located. As a 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%.

Treaty status

An FII has access to treaty benefits but not to EU Directives.

Filing obligations

Periodical financial reports are sent by the management company to the CMVM (Comissão do Mercado de Valores Mobiliários), the Portuguese Securities' Market Commission.

Regulation

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.

Requirements for authorisation

Authorisation of the FII is granted by the CMVM, and upon the request of the management company.

Portugal
Fundo de Investimento Imobiliário (continued)

Investment restrictions

There are several investment restrictions for FIIs, imposed by risk diversification rules. Eligible assets are real estate, real estate rights *in rem*, and 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.

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 25%. 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.

Minimum level of investment

None.

Pros

- Privately placed closed-end FIIs have a flexible portfolio composition and leveraging rules.
- A favourable property taxes regime for open-end and publicly offered closed-end FIIs.

Cons

- The FII needs a Portuguese management company.
- There is taxation of rental income; depreciation interest expenses and IMI are not tax-deductible.
- Semi-closed-end and privately placed closed-end funds are fully subject to property taxes (IMT and IMI).

Portugal
Sociedades de Investimento Imobiliärio

Background

The *Sociedades de Investimento Imobiliário* (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.

Legal form

SIIMOs are collective investment schemes adopting the legal form of a joint stock company *(sociedade anónima)*, which 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. The depositary bank assures investors of the fulfilment of the SIIMO rules. Securities held by SIIMOs are entrusted to the depositary.

Tax status

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.

Tax treatment at entity level

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%.

Treatment of investors

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.

Withholding tax

None.

Other taxes

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 is 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 a 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%.

Treaty status

An SIIMO has access to treaty benefits, but not to EU Directives.

Filing obligations

Periodical financial reports are sent by the management company to the CMVM (Comissão do Mercado de Valores Mobiliários), the Portuguese Securities' Market Commission.

Regulation

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.

Requirements for authorisation

The authorisation of the SIIMO is given by the CMVM.

Investment restrictions

These matters are ruled by the same rules that apply for FIIs. In principle, SICAVI follow the same regime of the open-ended FIIs and the SICAFI of the closed–end, unless otherwise ruled.

Minimum level of investment

At incorporation, the minimum capital required for SIIMO is EUR 375,000. On an ongoing basis, SIIMO should have a minimum NAV of EUR 5m.

Pros

- SIIMO can be internally managed (not requiring a management company), which can be an advantage in certain situations.
- SICAFI may have a flexible portfolio composition and leveraging rules.
- A favourable property taxes regime for SICAVI.

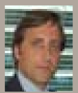
Cons

- There is taxation of rental income; depreciation and interest expenses are not tax-deductible for both SICAVI and SICAFI.
- SICAFI are subject to property taxes (IMT and IMI).

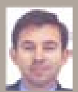
Spain

- ***Fondo de Inversión Inmobiliaria***
- ***Sociedad de Inversión Inmobiliaria***

Contacts



Antonio Sánchez
+34 91 568 56 15
antonio.sanchez.recio@es.landwellglobal.com



José L. Lucas
+34 91 568 56 07
jose_luis.lucas.chinchilla@es.landwellglobal.com

Spain
Fondo de Inversión Inmobiliaria

Legal form

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 SGIIC. The SGIIC is a regulated Spanish public limited company (S.A.) with effective head office in Spain. Assets are entrusted to a depository bank.

Tax status

The fund is considered a taxpayer for corporate income tax purposes.

Tax treatment at entity level

Income is taxed at 1%, subject to several requirements. Excess of withholding tax borne is refundable.

Other tax benefits may be applicable.

Treatment of investors

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.

Withholding tax

Capital gains are subject to 19% withholding, tax but this may be reduced by double tax treaties.

Treaty status

From a Spanish tax perspective, treaty access should be granted to the fund.

Filing obligations

The FII is obliged to file an annual corporate income tax return as well as withholding tax returns.

Regulation

The fund is subject to CNMV *(Comisión Nacional del Mercado de Valores)* regulatory supervision.

Requirements for authorisation

Prior regulatory approval by the CNMV is necessary for the SGIIC in order to set up the fund.

Investment restrictions

The fund 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.

Minimum level of investment

Minimum investment of EUR 9m. There is no minimum legal requirement on the investment amount for the investors, unless otherwise provided in the prospectus.

Pros

- Income taxable at 1% at fund level vs. 30% standard corporate income tax rate.
- Taxation of investors due only upon transfer or redemption of units.
- The fund should be entitled to double tax treaties.

Cons

- Subject to supervision authorities as a regulated collective investment institution.
- Need for a regulated Spanish management company.
- Minimum of 100 investors.
- Restriction on dividend distribution to be eligible for the 1% corporate income tax rate.

Spain
Sociedad de Inversión Inmobiliaria

Legal form

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.

Tax status

The SII is considered a taxpayer for corporate income tax purposes.

Tax treatment at entity level

Income is taxed at 1%, subject to several requirements. Excess of withholding tax borne is refundable.

Other tax benefits may be applicable.

Treatment of investors

Dividends and capital gains are taxable at the level of investors, depending on their tax status.

Withholding tax

Dividends and capital gains are subject to 19% withholding tax, but this may be reduced by double tax treaties and EU Directives.

Treaty status

The vehicle is entitled to double tax treaty benefits and has access to EU Directives.

Filing obligations

The SII is obliged to file an annual corporate income tax return as well as withholding tax returns.

Regulation

The SII is subject to CNMV *(Comisión Nacional del Mercado de Valores)* regulatory supervision.

Requirements for authorisation

Prior regulatory approval by the CNMV is necessary.

Investment restrictions

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.

Minimum level of investment

Minimum share capital of EUR 9m. There is no minimum legal requirement on the investment amount for the investors, unless otherwise provided in the prospectus.

Pros

- Income taxable at 1% at SII level vs. 30% standard corporate income tax rate.
- There is access to double tax treaties and EU Directives.

Cons

- Subject to supervision authorities as a regulated collective investment institution.
- Minimum of 100 shareholders.
- Restriction on dividends distribution to be eligible for the 1% corporate income tax rate.

Switzerland

▶ ***Swiss Collective Investment Schemes***

Contacts

Martin Büeler
41 58 792 44 00
martin.bueeler@ch.pwc.com

Benjamin De Zordi
+41 58 792 4317
benjamin.de.zordi@ch.pwc.com

Switzerland
Swiss Collective Investment Schemes

Background

The legislation regarding collective investments (Collective Investment Schemes Act, *"Bundesgesetz über die kollektiven Kapitalanlagen"*) came into force on 1 January 2007. In addition, the Swiss Federal Tax Administration published 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.

Legal form

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)).

Tax status

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 that are treated as opaque for the income derived from the real estate investment.

Tax treatment at entity level

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).

Treatment of investors

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 that 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).

Withholding tax

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.

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).

Exceptions to the above filing requirements for withholding tax purposes can apply to funds when following the "affidavit" procedure (a requirement is that income is at least 80% foreign-sourced).

Other taxes

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.

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.

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.

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.

Treaty status

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.

Filing obligations

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.

Regulation

The regulatory authority for the collective investment scheme and the manager is the *Eidgenössische Finanzmarktaufsicht* (FINMA). Regarding 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.

Requirements for authorisation

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.

Switzerland
Swiss Collective Investment Schemes (continued)

Investment restrictions

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.

Minimum level of investment

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).

Pros

- The collective investment scheme may have a simplified approval procedure if access is limited to qualified investors.

Cons

- 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.

United Kingdom

- *Limited Partnership*
- *Property Authorised Investment Fund*
- *Unauthorised Unit Trust*

Contacts


Richard Williams
+44 20 7213 5363
richard.j.williams@uk.pwc.com


Neal Diplock
+44 20 7804 3577
neal.diplock@uk.pwc.com

United Kingdom
Limited Partnership

Legal form

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.

Tax status

The LP should generally be transparent for UK direct tax purposes.

Tax treatment at entity level

There is no tax levied at the level of the LP.

Treatment of investors

Investors are typically 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).

Withholding tax

Withholding tax is not levied on distributions made by the LP, although income or gains, e.g. dividends and interest income, -received by the LP may suffer withholding tax, depending on the underlying territory making the payment.

Other taxes

Stamp duty land tax may be payable in respect of changes in partnership interests in the LP where underlying UK real estate is held. Other stamp taxes may also be payable in certain circumstances.

The LP is not liable to capital duty.

Treaty status

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.

Filing obligations

The LP is required to submit an annual partnership return if requested to do so by Her Majesty's Revenue & 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.

Regulation

The LP is not per se under any regulatory supervision or regulatory authority, although the general partner or operator could be subject to such regulation.

Requirements for authorisation

None.

Investment restrictions

None

Minimum level of investment

None.

Pros

- A simple, flexible structure, which is well understood in the real estate industry as an investment fund vehicle.
- Not necessarily subject to regulatory supervision.
- Tax transparency gives non-UK investors the opportunity to benefit from lower tax rates available for non-resident landlords and pays no UK capital gains tax.
- The structure easily accommodates "carry" arrangements for the management team.

Cons

- An LP cannot be listed without prior incorporation.
- The legal form may be less suited to open-end funds.

United Kingdom
Property Authorised Investment Fund

Legal form

A Property Authorised Investment Fund (PAIF) is a Property Investment Fund, structured as an open-ended investment company (OEIC).

Tax status

The PAIF is opaque for UK corporate income tax purposes. However, tax exemptions are available for qualifying activities.

Tax treatment at entity level

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.

Treatment of investors

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.

Withholding tax

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.

Treaty status

In principle, the PAIF has access to the UK treaties, as well as to EU Directives.

Filing obligations

The fund submits a UK corporate income tax return.

Regulation

The PAIF is regulated by the UK Financial Services Authority.

Requirements for authorisation

The OEIC needs to fulfil the following conditions:

- Property investment business conditions.
- Genuine diversity of ownership conditions.
- A corporate ownership condition.
- Loan creditor conditions (where relevant).
- A balance of business condition and, if relevant, an additional condition for property AIFs that are qualified investor schemes.

Investment restrictions

Maximum thresholds may apply to individual investments made by the PAIF.

Minimum level of investment

None.

Pros

- The PAIF is a regulated, onshore vehicle for UK investments, which can be exempt from UK tax.
- There is no entry charge for the vehicle to enter the regime.

Cons

- The PAIF is a new vehicle, and has not been widely used.
- The vehicle is fairly heavily regulated, with a number of restrictions (e.g. gearing only up to 10% of net assets).

United Kingdom
Unauthorised Unit Trust

Legal form

An unauthorised unit trust (UUT) is any UK resident unit trust that 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.

Tax status

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.

Tax treatment at entity level

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.

Where investment in the UUT is only made available to investors who are exempt from UK capital gains tax, any capital gains that accrue to the UUT will not be chargeable to UK capital gains tax. In other cases capital gains will be taxed.

Treatment of investors

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.

Withholding tax

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.

Other taxes

The transfer of units is subject to stamp taxes at a rate of 0.5%.

Treaty status

Access to treaty benefits depends on the treaty concerned. However, a UUT has no access to EU Directives.

Filing obligations

The UUT has to submit an annual tax return.

Regulation

The UUT is not under any regulatory supervision, or regulatory authority.

Requirements for authorisation

None.

Investment restrictions

None.

Minimum level of investment

None.

Pros

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.

Cons

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.

There is uncertainty as to how UUTs will operate and be treated from a tax perspective in the future, following the release of a consultation document by HMRC on 30 June 2011.

pwc.com