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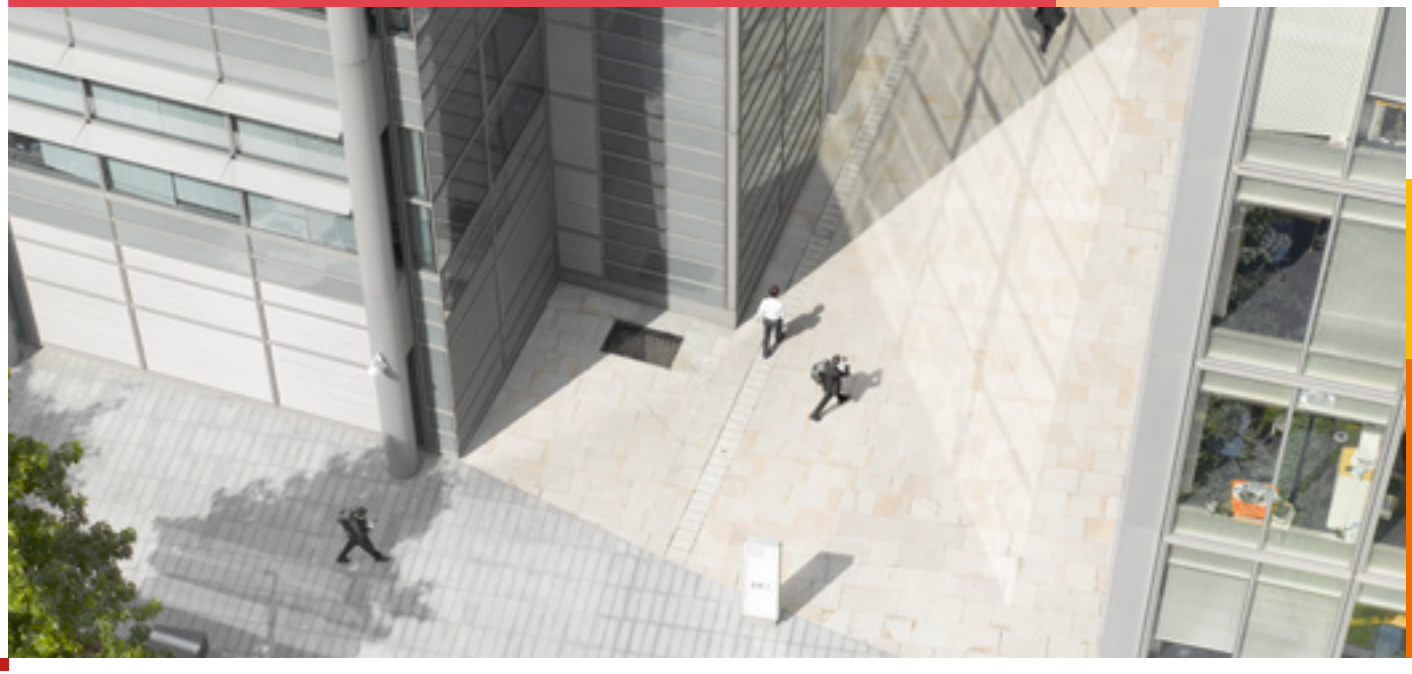
Choosing an investment vehicle
European Real Estate Fund Regimes

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

October 2013



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Introduction

2013 has probably been the most important year for the Alternative Investment Funds Industry yet. The AIFM Directive entered into force on 22 July 2013, and many European legislators have implemented the required national laws in time. In addition, numerous so-called Level II and Level III pieces of legislation and guidelines have been issued. Legislators had to consider tax matters and changes to fund and investor taxation as well.

The wave of new legislation absorbs a lot of capacity and resources from both an Investor's point of view and an Alternative Investment Fund Managers' point of view. This booklet aims to give an overview of the current legislation for real estate funds in the most important territories to help you understand the intricacies of the new AIFMD-compliant regimes and which one of the available fund vehicles is right for you. Of course, the brochure can't summarise all the related EU guidelines and other regulations, which would take hundreds of pages, but Fund Managers and Investors will have to change their approach and look not only at national rules, but at EU rules and guidelines as well. At the same time, the new passports for professional investor funds provide new options. Managers must consider where to apply for authorisation to obtain the licence, paying close attention to legal aspects, tax aspects, and available business infrastructure and personal resources. They'll consider merging their current platforms into different platforms to create synergies and save costs. Not surprisingly, once the markets have familiarised themselves with the regulations we expect hubs to emerge and it'll be interesting to see whether these will be the same as before the AIFM Directive. 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.

Uwe Stoschek
Partner,
Global Real Estate Tax Leader,
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
- Alternative Investment Fund Manager Directive

Contacts

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

Elisabeth Ludwig
+43 1 501 88 37 24
elisabeth.ludwig@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.

Austria
Alternative Investment Fund Manager Directive

The European Union passed a directive concerning EU fund manager which manage alternative investment funds. This directive was implemented by the Austrian government in the Alternative Investment Fund Manager Act (AIFMA) which passed in July 2013 the Austrian Parliament. AIFMA covers alternative investment structures which are not regulated by the UCITS Directive (Undertakings for collective Investment in Transferable Securities).

The Austrian AIFMA stipulates that investment structures which:
(i) collect money from investors,
(ii) invest the fund according to a defined investment strategy,
(iii) are not used to generate active income, and
(iv) do not require an approval according to the UCITS Directive
qualify as Alternative Investment Fund (AIF).

Under that qualification an AIF would comprise:
- *Immobilien-Sondervermögen* (Real Estate Investment Fund) and *Immobilien-Spezialsondervermögen*,
- Alternative Investment Fund in Real Estate,
- Real Estate stock companies (AG), limited companies (GmbH) and closed-end real estate funds (GmbH & Co KG)

as AIF.

These investments shall taxwise be treated as Real Estate Investment Funds. As a result of this new regulation an investment in e.g. an Austrian closed-end real estate fund might be treated as a Real Estate Investment Fund for tax purposes under the Real Estate Investment Funds Act. The consequences of this treatment would be inter alia a special determination of income including a taxation of unrealised revaluation gains.

The Real Estate Investment Funds Act however foresees certain exemptions for the application of the taxation as a Real Estate Investment Fund.

A national investment vehicle should not be taxed as a Real Estate Investment Fund if:

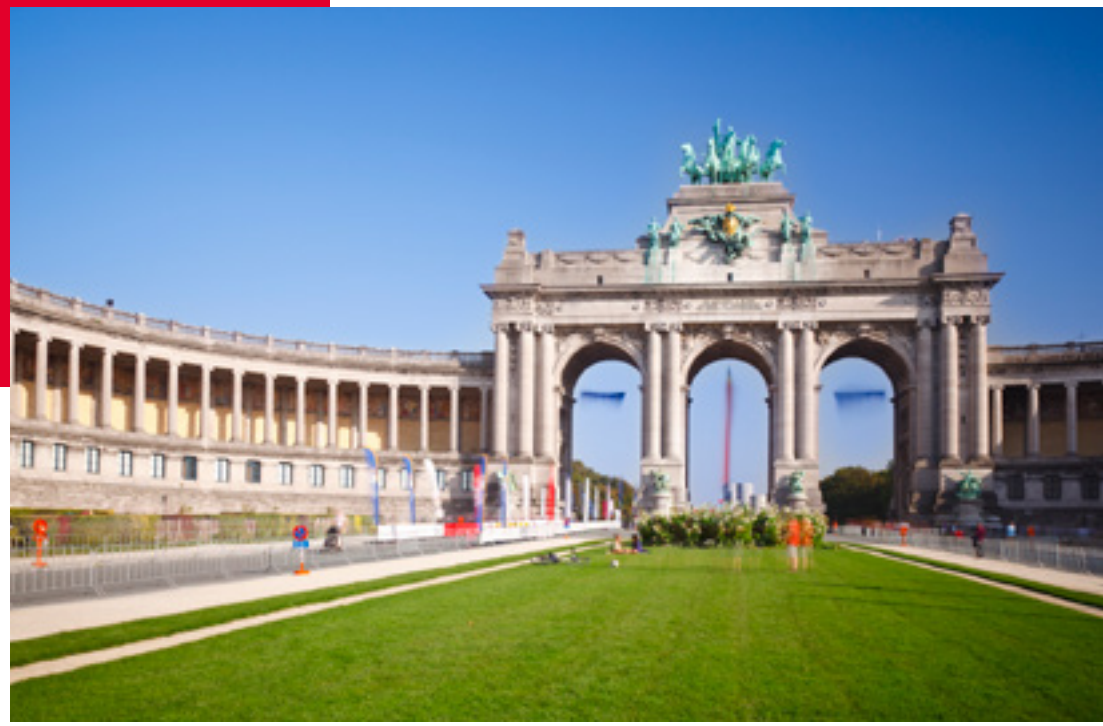
- the capital invested is used to generate active income, then this structure would generally not be seen as an AIF, or
- the AIF meets the criteria under § 48 (5) AIFMA to be seen as an AIF in Real Estate (AIF in Immobilien) and the investment entity is subject to taxation according to § 7 (3) Austrian Corporate Income Tax Act (CITA).

An international investment vehicle should not be taxed as a Real Estate Investment Fund if:

- the capital invested is used to generate active income, then this structure would generally not be seen as an AIF, or
- the AIF meets the criteria under § 48 (5) AIFMA to be seen as AIF in Real Estate and the investment entity is comparable with an Austrian entity which would be subject to taxation according to § 7 (3) CITA, or
- the real estate investment is not qualified as an AIF and has no risk spreading (e.g. less than 10 properties), or
- the real estate investment fund is not qualified as an AIF, has however sufficient risk spreading but the investment entity is subject to taxation comparable to the Austrian CIT in the foreign country.

Belgium

- ***BREC – Belgian Real Estate Certificate***
- ***Private Privak/Pricaf Privée***



Contacts

Maarten Tas
+32 2 710 7402
maarten.tas@pwc.be

Nicolas Stoffels
+32 2 710 9343
nicolas.stoffels@pwc.be

Belgium
BREC – Belgian Real Estate Certificate

Background

Belgian Real Estate Certificates (BRECs) are transferable securities incorporating a debt. BRECs, which may or may not be listed, can be acquired by subscription and are transferable without particular formalities. BRECs give their owners the right to earn a variable interest (real estate income – not fixed) and a share in the potential capital gain resulting from the realisation of the real estate. Consequently, an increased rental income due to e.g. indexation will result in higher proceeds. The holder legally has no title over the real estate, but economically, he receives part of the rental income in proportion to his share in the investment.

Legal form

Traditionally BRECs are structured in two different ways:

- The company holding the real estate and the company issuing the BRECs form a silent partnership. This is a transparent entity without legal personality.
- The company holding the real estate issues the BRECs.

There are public and private BRECs.

Tax treatment at entity level

For tax purposes income received relating to BRECs is considered as interest (not explicitly mentioned in Belgian tax law) – BRECs are hence not treated as shares though they are subject to similar risks (no certainty about revenues).

The tax base of the certificated company is almost reduced to zero as the issuing company can in principle deduct the distribution in excess of the redemption of principal from its corporate income tax base.

An important condition for the deductibility is the at arm's length character of the distribution (which is deemed to be met in case of a publically issued BREC).

Treatment of investors

The tax treatment of investors depends on the rules applicable in their country of residence. Some jurisdictions may not treat income received relating to the BREC as interest.

Investor as a legal entity subject to Belgian corporate income tax:
All income received relating to BRECs is taxable as profit at the normal corporate income tax rate of 33.99%.

Investor as an individual resident in Belgium:
The withholding tax is considered a final tax. Capital gains realised from the BRECs sale realised outside the taxpayer's professional activity is in principle not taxable unless they are not considered as "normal transactions in the management of private assets."

Withholding tax

In such a structure, the certificate holders are subject to a withholding tax of 25 % on the interest component (as from 1 January 2013). Part of the annual coupon qualifies as redemption of principal, and is thus exempt from withholding tax.

Others taxes

n/a

Treaty status

n/a

Regulation

Publically issued BRECs fall under the supervision of the Belgian financial sector regulator, the Financial Services and Markets Authority (FSMA). Pending the Belgian implementation of AIFMD, it is not yet fully clear whether BRECs can benefit from the "securitisation vehicle" exception.

Requirements for authorisation

n/a

Investment restrictions

No legal investment restrictions.

Minimum level of investment

n/a

Pros

- Virtually no tax leakage at the level of the company issuing the BREC. May qualify in certain countries as equity.

Cons

- Risk exposure is generally concentrated on a single property or on a limited number of properties.

Belgium
Private Privak/Pricaf Privée

Background

The Law of 3 August 2012 (formally the law of 20 July 2004) and the Royal Decree of 23 May 2007 provide for the regulatory framework for the *Private Privak/Pricaf Privée*, a closed-ended special purpose vehicle for venture capital. The fund should invest in financial instruments of non listed Belgian or foreign companies. The fund is self-liquidating after maximum 12 years. It is not allowed for the *Private Privak/Pricaf Privée* to directly invest in real estate (only in real estate companies) and it has an obligation to diversify. This fund vehicle benefits from an (indirect) tax transparent regime for both domestic and foreign investors.

Legal form

The *Private Privak/Pricaf Privée* can have the legal form of a NV/SA (*Naamloze Vennootschap/Société Anonyme*), a Comm.VA/SCA (*Commanditaire Vennootschap op Aandelen/Société en Commandite par Actions*) or a Comm.V./SCS (*Gewone Commanditaire Vennootschap/Société en Commandite Simple*) all of which are legal entities according to Belgian law.

The option for the legal form of the Comm.V./SCS makes it possible in a lot of countries where the investors are established to have a tax transparent treatment; however, investors preferring a non-tax transparent treatment in their home country (e.g. for the application of the participation exemption) can opt for a NV/SA or a Comm.VA/SCA.

Tax treatment at entity level

The taxable base of the *Private Privak/Pricaf Privée* for corporate income tax purposes is limited to the disallowed expenses and the abnormal or gratuitous advantages received. This means that the effective tax burden will be very limited provided that the legal conditions for qualification as a *Private Privak/Pricaf Privée* are respected.

As from tax year 2014, withholding tax on income received by the fund will no longer be offset or refunded against the corporate income tax due. The new legislation will not lead to a higher tax burden in case a withholding tax exemption can be applied.

Treatment of investors

Dividends received by shareholders subject to Belgian corporate income tax are taxable as profit at the normal tax rate of 33.99%. However if certain conditions are met, the Belgian dividends received deduction regime could be applied. Capital gains realised on the disposal of shares in *Private Privak/Pricaf Privée* held by corporate investors are fully taxable at the normal tax rate of 33.99% unless the subject-to-tax condition for the participation exemption is met. In this case the capital gain is taxed at the rate of 25.75% if the one year holding period is not reached. For large companies (and not for SMEs) capital gains on shares are subject to a 0.412% tax if the one year holding period is met (carried forward tax losses (and other tax assets) and capital losses on shares cannot be offset against this 0.412% taxation).

For individual persons resident in Belgium, the withholding tax is considered a final tax. Capital Gains realised by a Belgian private individual from the disposal of shares in *Private Privak/Pricaf Privée* are in principle not subject to tax so long as the gain is realised within the boundaries of a normal management of private assets.

Withholding tax

In principle the dividends distributed by the fund are subject to a withholding tax of 25 % (as from 1 January 2013). However any distribution made by the fund is exempt from withholding tax to the extent that the distributions stem from capital gains realised on the investments (shares) of the fund. As a result the fund is not subject to any withholding taxes upon the distribution of liquidation proceeds.

In case the dividends distributed by the fund are received by a foreign company, a withholding tax exemption applies on the part stemming from dividends distributed by a foreign company.

Others taxes

Unlike other investment companies, *Private Privak/Pricaf Privée* is not subject to the Belgian annual tax on its net asset value.

Treaty status

The *Private Privak/Pricaf Privée* is subject to corporate income tax and is therefore in principle entitled to the double tax treaties concluded by Belgium.

Regulation

Prior to the start of its activities, the *Private Privak/Pricaf Privée* has to apply for a registration with the tax authorities. The tax authorities will notify the Belgian financial sector regulator, the Financial Services and Markets Authority (FSMA). The fund is only subject to a light degree of regulation from the tax authorities and the FSMA.

Requirements for authorisation

- A minimum of six shareholders is required.
- Only open for professional investors (minimum investment criteria).

Investment restrictions

- In principle, *Private Privak/Pricaf Privée* is not allowed to take a controlling participation in other companies.
- The fund is self-liquidating after maximum 12 years.
- Restrictions on the transferability of shares in a *Private Privak/Pricaf Privée*
- Exclusively investments in financial instruments issued by unlisted companies
- The fund has an obligation to diversify.

Minimum level of investment

n/a

Pros

- An (indirect) tax transparent tax regime for both domestic and foreign investors.

Cons

- Not allowed to directly invest in real estate.
- Withholding tax on income received by the fund can no longer be offset/refunded against corporate income tax (only relevant to the extent no withholding tax exemption applies).

Channel Islands (Jersey and Guernsey)

- *Limited Partnership*
- *Channel Islands Listed UK Real Estate Investment Trust (REIT)*
- *Jersey Property Unit Trusts (JPUTS) and Guernsey Property Unit Trusts (GPUTS)*

Contacts

Lisa McClure
+44 1534 838315
lisa.mcclure@je.pwc.com

Wendy Dorman
+44 1534 838233
wendy.dorman@je.pwc.com

David Waldron
+44 1481 752081
david.x.waldron@gg.pwc.com

Channel Islands (Jersey and Guernsey)
Limited Partnership

Background

The main real estate holding structures used in the Channel Islands are companies, limited partnerships and unit trusts. These are predominantly used as part of holding structures for UK real estate. Listings on the Channel Islands Stock Exchange can be used for UK REIT structures and this is considered in more detail below, as are unit trusts and limited partnerships. Jersey and Guernsey corporate entities are also popular for holding UK real estate as they do not suffer withholding tax or local tax in Jersey/Guernsey provided there are no Jersey/Guernsey residents involved. Other possible holding vehicles include private trusts and limited liability partnerships.

Please note the commentary below is high level. Specific tax advice should be taken for each situation. If considering investing in UK residential property particular regard should be given to stamp duty.

On the regulatory side the Alternative Investment Fund Managers Directive (AIFMD) continues to cause waves of consternation across the industry in Europe and further afield. It will affect any alternative asset manager; wherever in the world it is based, seeking to raise institutional capital in Europe. While EU AIFMs will be subject to strict additional ongoing compliance and operational requirements, non EU AIFMs (including Jersey and Guernsey managers), who wish to market to Europe, will only be subject to the transparency provisions of AIFMD.

Where continued access to Europe is to be secured through private placement Non EU managers' immediate focus will need to be on the transparency demands of the Directive and on the substance requirements of the AIFM(s) to avoid them being deemed a "letter box entity".

Both Jersey and Guernsey have the relevant cooperation agreements in place with EU Member States to allow them to access their markets going forward.

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. The islands offer different types of LP to meet different needs.

Tax status

An LP will be regarded as transparent for Jersey/Guernsey direct tax purposes.

Tax treatment at entity level

There is no tax levied at the level of the LP on income and gains.

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 not subject to Jersey/Guernsey tax on their share of non-local source income of the LP (or on local bank deposit interest).

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.

Others taxes

Generally none.

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.

Filing obligations

Depending on the jurisdiction (Jersey or Guernsey) the LP may have some filing obligations with the Registrar. There are different categories of LP in Jersey.

There are generally no tax filing obligations in Jersey or Guernsey for a foreign owned LP.

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. Regulation can apply depending on the type of LP and the number and type of investor. Provided the general partner is not a "letter box entity" under AIFMD, it can be the AIFM and continue to market to Europe via national private placement regimes until 2018 subject to compliance with the transparency demands of the Directive. This represents a much lower regulatory burden than that which EU managers are faced with.

Requirements for authorisation

Minimal subject to registration fees.

Investment restrictions

None.

Pros

- A simple, flexible structure, which is well understood in the real estate industry as an investment fund vehicle.
- No tax at level of LP and no transfer taxes.
- Not necessarily subject to regulatory supervision.

Cons

- The transparent status of the partnership can be a disadvantage in some cases.

Channel Islands (Jersey and Guernsey)
Channel Islands Listed UK Real Estate Investment Trust (REIT)

Legal form

The legislation does not specifically state what the legal form of a REIT should be apart from specifying some conditions (see below). In the UK, a REIT is generally a group (or single company) carrying on a property rental business which meets certain tests and has elected for entry to the REIT regime.

Tax status

The parent company of a REIT must be a UK resident company, not dual resident and cannot be an open-ended investment company (OEIC). Although a REIT must be UK tax resident it does not have to be incorporated in the UK. Hence a Jersey/Guernsey company which is managed and controlled in the UK may be a REIT as the Channel Islands Stock Exchange (CISX) is recognised as an approved exchange for UK REITs.

Tax treatment at entity level

A UK REIT benefits from an exemption from a charge to UK corporation tax on both rental income and gains relating to its property rental business. The REIT must distribute a minimum of 90% of tax exempt income from investment properties used in a qualifying property rental business.

Treatment of investors

Investors in the REIT are then chargeable to tax (subject to their tax status) on the rental income and gains which are distributed to them by the REIT as a property income distribution (PID).

Withholding tax

Withholding tax is levied at a rate of 20% on a PID. Note that no withholding tax is applied where the recipient is a UK tax resident company, UK charity, UK pension fund or other prescribed body.

Treaty status

In principle, the REIT has access to the UK treaties. Relief under a treaty in respect of a dividend must be claimed by the recipient.

Filing obligations

The fund submits a UK corporate income tax return. A Jersey/Guernsey incorporated REIT will not be subject to local Jersey/Guernsey taxes.

Regulation

A Jersey/Guernsey incorporated REIT that is administered locally will be regulated by the Jersey/Guernsey Financial Services Commission. If caught under AIFMD, CI managers' immediate focus will be on the transparency demands of the Directive but unlike their EU equivalents will not be subject to full compliance.

Requirements for authorisation

The REIT needs to fulfil the following conditions:

- solely resident in the UK for tax purposes,
- not an OEIC,
- listed on a recognised stock exchange,
- a REIT's shares must be widely held, which broadly means it cannot be controlled by five or fewer participators,
- no more than one class of ordinary share capital,
- cannot be financed by loans where returns are dependent on the REITs results/asset values or pays excessive interest or pays an excessive premium on redemption,
- the REIT must have a property rental business, and
- at least 75% of profits and 75% of the total value of assets must relate to the property rental business.

Investment restrictions

No single property can exceed 40% of the market value of all properties and the property rental business must involve at least three properties. No corporate shareholder should own 10% or more of the shares of the company.

Minimum level of investment

None but subject to some exceptions. For example, there are different categories of regulatory classification for Jersey funds and in some cases the category is determined by the level of investment made by the investor.

Pros

- CISX listed REITs can potentially offer tax efficient investment structures.
- The CISX is a flexible and cost effective alternative to a full LSE listing.
- A Jersey/Guernsey administered REIT can benefit from the flexibility of the local regulatory regime.
- There is no longer an entry charge for a vehicle to enter the REIT regime.
- REITs can invest in joint venture groups as well as single entity joint ventures subject to detailed requirements.

Cons

- The REIT has to distribute 90% of the income profits of the qualifying property rental business within 12 months of the year end, through its PID, unless it has insufficient reserves.
- The REIT must have a profit financing ratio where the profits are at least 1.25 the finance costs. A tax charge is levied on the REIT where there is excess interest.

Channel Islands (Jersey and Guernsey)
Jersey Property Unit Trusts (JPUTS) and Guernsey Property Unit Trusts (GPUTS)

Legal form

A unit trust is not a legal entity. Legal ownership of the trust assets is vested in a trustee, who holds them in trust for the benefit of holders of units in the trust in accordance with the terms of the trust instrument. The unit trust will generally be constituted by means of a trust instrument made between the trustees or between the trustees and an independent manager.

Tax treatment at entity level

A Jersey/Guernsey unit trust held by non-local unit holders will not be subject to tax in Jersey/Guernsey.

UK tax status

Provided the unit trust is structured appropriately, any income from the unit trust is directly attributed to the unit holders i.e. it will be transparent for UK income tax purposes. Unit holders are allocated their share of income and expenses. For UK capital gains tax purposes the unit trust will be treated as opaque. Provided the JPUT/GPUT is managed and controlled in Jersey/Guernsey and the trustee is based offshore, when any UK real estate is sold the trustee will be exempt from UK capital gains tax.

Treatment of investors

Units are generally considered to be non-UK situs assets for UK inheritance tax purposes and the sale of units can be made free of UK stamp duty land tax (SDLT).

For income tax/corporation tax purposes investors subject to UK tax will generally be taxed on their share of income less allowable expenses, and will be subject to capital gains tax/corporation tax on the disposal of their units.

Withholding tax

There is no Jersey/Guernsey withholding tax on distributions to non-local investors.

Treaty status

Access to treaty benefits depends on the treaty concerned.

Filing obligations

No/minimal annual compliance obligations. UK NRL filings will generally be at investor level.

Regulation

The level of regulation will usually be determined by the regulatory classification applied for and whether the structure is caught by AIFMD by virtue of marketing to or management from the EU.

Requirements for authorisation

Apart from the drafting of the unit trust instrument and other associated documentation, letters of application are required to the respective authorities.

Investment restrictions

None.

Minimum level of investment

None.

Pros

- No limit on gearing.
- No portfolio restrictions.
- Can be established and operated as tax neutral vehicles.
- Generally no restriction on distributions.

Cons

- Seeding relief, which permitted the transfer of properties in exchange for units in a JPUT to take place free of SDLT and other tax charges, has been abolished.

Czech Republic

- ***Speciální Fond Nemovitostí***
- ***Fond Kvalifikovanych Investorů***

Contacts

Viera Kucerova
+420 251 151 255
viera.kucerova@cz.pwc.com

Lucia Cechova
+420 251 152 535
lucia.cechova@cz.pwc.com

Czech Republic
Speciální Fond Nemovitostí (Special Real Estate Fund)

Background

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

There is a new Act No. 240/2013 Coll., on Investment Companies and Investment Funds (ICIF) effective from 19 August 2013, transposing the AIFM Directive to the Czech legislation which introduces new possibilities for the SFNs (see below).

Following to the changes of Investment Funds' treatment under the ICIF and re-codification of the Civil Law, there is a matching amendment to the Czech Income Taxes Act effective as of 1 January 2014.

The proposed amendment preserves favorable taxation of Investment Funds established under the ICIF (decreased CIT rate of 5% in comparison with standard rate of 19%, etc.).

The amendment newly abolishes taxation of dividends paid from the given Investment Funds to individuals and corporate bodies from Czech Republic, other EU states, Norway, Iceland and/or Switzerland. The amendment further extends the holding period for the individual's tax exemption of the sale/redemption of units in SFN to 3 years (see further).

Please note, that there is a high level of uncertainty whether the amendment of the Czech Act on Income Taxes will come into force and what will be the final tax treatment of the SFNs.

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).

Contemplated changes
The new legislation effective as of 3 July 2013 newly includes among the legal forms of the SFN also a joint-stock company with variable registered capital (SICAV).

Tax status

The SFN is defined as the taxpayer liable to corporate income tax and needs to be registered by its respective Tax Authority. It is not tax-transparent for Czech income tax purposes. The corporate income tax rate applicable for the SFN qualifying for an Investment Fund under the ICIF is currently 5% (compared with the 19% standard corporate income tax rate). Corporate income tax liabilities of SFNs are settled by the fund's administrator company. The tax paid is settled from the assets of the fund from which the corporate income tax liability arose.

Contemplated changes
Collection of corporate income tax of an SFN in the form of SICAV as of 1 January 2014 will be similar to other corporate entities, i.e. SFN will file a corporate income tax return in which the tax liability is declared.

Tax treatment at entity level

There is no special tax levied on capital gains in the Czech Republic.

Rental income and any capital gain from the sale of real estate is also reflected in the income of the fund and taxed through the corporate tax return at 5% CIT.

Generally, tax losses realised by the SFN in previous taxable periods can reduce the corporate income tax base in the subsequent five taxable periods. Any loss from the sale of plots of land is not tax-deductible.

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.

Contemplated changes
SFN established in a legal form of SICAV shall be eligible to benefits of the EU Parent- Subsidiary Directive concerning dividends and same exemption is applicable in case of capital gains. This is not the case of SFN in a legal form of open-ended funds.

For the contemplated changes in dividend treatment see our comments in background.

Treatment of investors

Investor as a legal entity:
Income from redemption/sale of units in SFN is taxed via the corporate income tax return as a part of the profit of the particular entity.

Dividends received from an SFN are generally subject to 15% final withholding tax (in case of non-residents it may be decreased by the applicable double tax treaty).

Contemplated changes
In case of corporate investors of SFN in a form of SICAV, income from redemption/sale of units in SFN and dividend income may be tax exempt under the conditions of the EU Parent Subsidiary Directive.

For the contemplated changes in dividend treatment see our comments in background.

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 (in case of holding up to 5%) or 5 years (in other cases). If the units are sold within six months/5 years 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 the individual's business assets the exemption is generally not available and losses and profits are compensated.

Czech Republic
Speciální Fond Nemovitostí (continued)

Dividend income of individual investors is generally subject to a final 15% withholding tax (in case of non-residents it may be decreased by the applicable double tax treaty).

Contemplated changes
According to the prepared amendment to the Czech Income Taxes Act effective as of 1 January 2014, the redemption of units (buy-backs of units) in an SFN will be treated as a sale of units (sale of securities) and as such it is generally exempt from income taxation if sold more than 3 years after acquisition. If the units are sold within 3 years from 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.

For the contemplated changes in dividend treatment see our comments in background.

Withholding tax

Standard withholding tax rate for dividends is 15%, unless reduced by the applicable double tax treaty.

Contemplated changes
SFN established in a legal form of SICAV shall qualify for the EU Parent-Subsidiary directive. Thus, dividends received by a corporate parent company shall be exempt from Czech withholding tax under the condition that the parent company holds at least 10% shares for at least 12 months.

For the contemplated changes in dividend treatment see our comments in background.

Treaty status

As SFN in the legal form of open-ended fund and SICAV is treated as a tax resident and should be able to access treaty benefits.

Filing obligations

With effect from 2011, each open-ended fund became itself liable to file corporate income tax returns. This reflected the change that open-ended funds became Czech tax payers as of 2011. The asset management company of the SFN is obliged to file tax returns on behalf of the SFN.

Contemplated changes
SFN in the form of SICAV files a corporate income tax return for each taxable period itself.

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.

Contemplated changes
The authorised depository could be also a stock-exchange broker with custody permission.

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 (5% CIT comparing to standard 19% CIT).
- Access to the EU Parent-Subsidiary Directive for SFN in a legal form of SICAV.
- Sale/redemption of units in SFN is tax free for individual investors after 6 months holding period (according to the prepared legislation after 3 years).
- Access to Double Tax Treaty benefits.

Cons

- No access to UCIT Directives.
- Rather intense regulation (investment policy is regulated by CNB, minimum investment requirements).
- Based on the current legislation and legal status of the SFN, there is no possibility to tax depreciate assets of real estate property in the possession of the fund, or to create tax-deductible reserves for repairs (according to the prepared legislation it may be possible for SICAVs).
- Emission of bonds is prohibited for SFN.

Czech Republic
Fond Kvalifikovanych Investorů (Fund of Qualified Investors)

Background

A *Fond Kvalifikovanych Investoru* (FKI) is a fund of qualified investors which is not covered by the UCITS.

There is a new Act No. 240/2013 Coll., on Investment Companies and Investment Funds (ICIF) effective from 19 August 2013, transposing the AIFM Directive to the Czech legislation which introduces new possibilities for the FKIs (see below).

Following to changes of Investment Funds' treatment under the new ICIF and re-codification of the Civil Law, there is a matching amendment to the Czech Income Taxes Act effective as of 1 January 2014.

The proposed amendment preserves favorable taxation of Investment Funds established under the ICIF (decreased CIT rate of 5% in comparison with standard rate of 19%, etc.).

The amendment newly abolishes taxation of dividends paid from the given Investment Funds to individuals and corporate bodies from Czech Republic or other EU state or Norway, Iceland, Switzerland. The amendment further prolongs the holding period for the individual's tax exemption of the sale/redemption of units in FKI to 3 years (see further).

Please note, that there is a high level of uncertainty whether the amendment of the Czech Act on Income Taxes will come into force and what will be the final tax treatment of the FKIs.

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 or trust, in which case it has to be managed by an asset management company.

Contemplated changes
In addition to a joint-stock company and open or close-end unit fund FKI can be established in a legal form of a limited liability company, a joint-stock company with variable registered capital (SICAV), societas europae (SE), a cooperative, a limited partnership or a trust fund.

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). Corporate income tax compliance of an FKI in the form of an investment fund is similar to other corporate entities, i.e. FKI itself files a corporate income tax return in which the tax liability is declared. Registration and corporate income tax compliance of the FKI in the form of a unit fund is similar to that of SFN in the form of open-ended fund (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 in case of investment fund having a form of a joint-stock company. Moreover, exemptions are also possible for dividends received by FKI, or capital gains paid to FKI (in the given form of a joint-stock company) by a company that is a resident in a double tax treaty country; has a similar legal form to a Czech joint-stock company, limited liability company or cooperative; and such FKI holds at least a 10% share for the period of at least 12 months in that company, and the company is subject to corporate income tax not lower than 12%.

Contemplated changes
According to the prepared amendment FKI established in a legal form of limited-liability company, SE and cooperative and joint-stock company shall be eligible to benefits of the EU Parent- Subsidiary Directive concerning dividends. Same exemption is applicable in case of capital gains. This is not the case of FKI established in a legal from of a unit fund.

For the contemplated changes in dividend treatment see our comments in background.

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 from FKI 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 a joint-stock company.

Contemplated changes
According to the amendment, income from redemption/sale of units in FKI and dividend income may be tax-exempt under the conditions of the EU Parent Subsidiary Directive also in case of corporate investors of FKI in the legal form of limited-liability company, SICAV, SE and cooperative.

Income from redemption/sale of shares in FKI is taxed via the corporate income tax return as a part of the profit of the particular entity. Such income can be exempt if the entity held at least 10% share in the FKI (in the prescribed form) for at least 12 months.

For the contemplated changes in dividend treatment see our comments in background.

The Czech Republic
Fond Kvalifikovanych Investorů (continued)

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 (in case of non-residents it may be decreased by applicable double tax treaty).

Contemplated changes
No special tax on capital gains is levied. For Czech tax purposes the redemption of units (buy-backs of units) in an FKI is treated as a sale of units (sale of securities) and as such will be generally exempt from income taxation if sold more than 3 years after acquisition unless FKIs has the legal form of cooperations, limited liability companies and partnerships where the holding period is prolonged to 5 years. If the units are sold within 3 years (5 years) from 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.

For the contemplated changes in dividend treatment see our comments in background.

Withholding tax

Applicable at the rate of 15% for dividends, unless reduced by the applicable double tax treaty.

Contemplated changes
FKI established also in a legal form of a joint-stock company, limited-liability company, SE and cooperative shall qualify for the EU Parent-Subsidiary directive. Thus, dividends received by a corporate parent company shall be exempt from Czech withholding tax under the condition that the parent company holds at least 10% shares for at least 12 months.

For the contemplated changes in dividend treatment see our comments in background.

Treaty status

FKI has access to treaty benefits regardless of its legal form as it is treated as a tax resident.

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 a SFN and is rather declaratory. The function of the CNB is rather to supervise, since FKI does not have a large-scale informational duty.

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 this 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

No legal requirements. For investors that are "un-qualified", e.g. from general public, the minimum investment is EUR 125,000.

Pros

- Lower tax rate than other corporate entities.
- Not very extensive regulation.
- Possibility of in kind contribution.
- Possibility to change the FKI in the form of the investment fund to joint stock company after 6 years of its activity.
- Access to benefits of EU Parent-Subsidiary Directive (for FKIs in the legal form of joint-stock company, limited liability company, cooperative).
- Access to Double Tax Treaty benefits.
- Sale/redemption of units in SFN is tax free for individual investors after 6 months/5 years holding period (according to the prepared legislation after 3/5 years).
- Emission of bonds by FKI is not prohibited.

Cons

- No access to UCITs Directives.
- Investor restrictions –"well informed investors" (not primarily intended for general public).

France

- ***FPI***
- ***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
FPI

Background

The *Fonds de Placement Immobilier* (FPI) is one of the two categories of *Organisme de Placement Collectif en Immobilier* (OPCI). Its main purpose is the acquisition or construction of properties (directly or through entities that are not subject to corporate tax) for renting.

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

Legal form

A FPI is, in essence, a pool of assets with no separate legal personality. It is subject to distribution requirements: at least 85% of rental income and of capital gains must be distributed to investors.

A FPI 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 at the level of the FPI.

Treatment of investors

Unitholders are 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 (at progressive rates from 0% up to 45% and increased, in certain cases, by an additional 3 to 4% surcharge) and 15.5% social surcharges when they receive distributions of French source rental income from FPIs.

Capital gains realised (reduced by an allowance for each year of holding after the fifth year) on the disposal of French properties (or shares in French pass-through entities) realised by FPIs are subject to a 19% withholding tax and 15.5% social surcharges when they are distributed to unitholders who are French tax resident individuals or individuals residing in the EU, Norway and Iceland. By application of the allowance for holding, the capital gains realised are fully exempt from the 19% withholding tax after 22 years of holding and from the 15.5% social surcharges after 30 years of holding. The rate of the 19% withholding tax is increased to 33.33% for individuals who are not residing in France, in the EU, Norway and Iceland. The same tax regime than described above applies regarding the disposal of units in FPIs by 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, FPI have no access to double tax treaties or EU Directive benefits.

Regulation

A FPI is a regulated entity.

Requirement for authorisation

Both the FPI and the management company require the prior approval from the French Market Authority and are under the supervision of that 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 at least a 10% liquid assets ratio may apply.

Minimum level of investment

No minimum capital requirement when the FPI is set up. A minimum net equity requirement must be fulfilled 3 years after the setting-up of the FPI. This minimum net equity requirement varies depending on the nature of the FPI. It amounts to EUR 500,000 for an FPI restricted to qualified investors.

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 only one FPI has been set up.

France
SPPICAV

Background

The *Société de Placement à Prépondérance Immobilière* (SPPICAV) is the other category of OPCI. Its main purpose is the acquisition or the construction of properties (directly or indirectly, i.e. through interposed companies) for renting.

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

Legal form

A SPPICAV is 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 from subsidiaries, which benefit from the SIIC corporate income tax exemption regime 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 fully exempt from French corporate income tax.

Tax treatment at entity level

A SPPICAV is a company within the scope of French corporate income tax but which is fully exempt from the payment of that tax provided that it complies, among other requirements, with its distribution requirements.

Treatment of investors

Income distributed by SPPICAVs qualifies as dividends.

For French resident individual investors, dividends are subject to a 21% withholding tax. They are then subject to personal income tax at progressive rates of 0%, escalating to 45% (increased, in certain cases, by an additional 3 to 4% surcharge), increased by 15.5% social taxes (out of which 5.1% is deductible for the personal income tax computation). The 21% withholding tax can be used against the personal income tax liability.

Capital gains realised by French resident individual investors on the disposal of SPPICAV shares are subject to personal income tax at progressive rates of 0%, escalating to 45% (increased, in certain cases, by an additional 3 to 4% surcharge), increased by 15.5% social taxes (out of which 5.1% is deductible for the personal income tax computation). A tax allowance is available on the capital gain realised if the shares have been held for a certain period of time.

French corporate resident investors are subject to corporate income tax at the standard rate of 33.33% (or 34.43% if the 3.3% social surcharge applies, or 35% if the exceptional 5% surcharge applies or 36.1% if both surcharges apply).

Withholding tax

Distributions of dividends by a SPPICAV are subject to a withholding tax at the rate of (a) 15% if the shareholder is a non-profit organisation established in an EU country, in Norway or Iceland or if the shareholder is a regulated UCIT (fulfilling certain conditions) established in the EU or in a country that has signed a double tax treaty with France containing an administrative clause; (b) 21% if paid to an individual domiciled in an EU country, in Norway, Iceland or Liechtenstein; (c) 55% if the dividend is paid in a non-tax cooperative country; and (d) 30% in all the other cases.

Capital gains recognised on the disposal of shares in an SPPICAV are subject to the 33.33% French withholding tax if the seller owns, directly or indirectly, 10% or more 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 (for instance, with the US and the UK) provide for specific rates of withholding tax on dividends paid by SPPICAVs. However, there is no access to EU Directives.

Filing obligations

A SPPICAV must file an annual tax return.

Regulation

A SPPICAV is a regulated entity.

Requirement for authorisation

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 at least 10% of liquid assets ratio may apply.

Minimum level of investment

No minimum capital requirement when the SPPICAV is set up. A minimum net equity requirement must be fulfilled 3 years after the setting-up of the SPPICAV. This minimum net equity requirement varies depending on the nature of the SPPICAV. It amounts to EUR 500,000 for an SPPICAV restricted to qualified investors.

Pros

- Dividend nature of income distributed by SPPICAVs.
- No taxation at the SPPICAV level.
- 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

- ***Immobilien-Sondervermögen (Open-End Retail Fund)***
- ***Spezial-Sondervermögen (Open-End Specialised Fund)***
- ***Investment-KG (Closed-End Retail Fund)***
- ***Spezial-Investment-KG (Closed-End Specialised 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
Immobilien-Sondervermögen (Open-End Retail Fund)

Background

Due to the implementation of the EU Directive on Alternative Investment Fund Managers (AIFM Directive), the former German Investment Act was replaced by the German Capital Investment Act, the *Kapitalanlagegesetzbuch* (KAGB), which is applicable to UCITS as well as alternative investment funds (AIFs). The tax law (*Investmentsteuergesetz*) governing the taxation of the fund vehicle itself as well as taxation at investor level is currently under review by the German legislator. Taxation at fund level and investor level might therefore change in near future.

Legal form

German open-end funds investing in real estate may only be set up as a so-called *Sondervermögen*. Such a contractual form of fund has no legal personality and has to be managed by a German management company (*Kapitalverwaltungsgesellschaft*, or KVG), which is either a stock corporation (AG), a German limited liability company (GmbH) or a German limited partnership (GmbH & Co. KG). One KVG may manage several funds. An *Immobilien-Sondervermögen* set up as a retail fund is accessible to all types of 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 should be granted to the fund. From the point of view of the treaty partner, there may be access either for the fund itself, the KVG, or the investors as the beneficial owners of the fund's income. The fund has no access to EU Directives developed for corporations.

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 retail 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 retail funds and the fund managers (KVG) 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 KVG in order to manage the fund. For the fund itself, approval of the investment conditions by BaFin 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, share holdings in real estate companies, cash, securities and REIT interests. Quotas apply. Debt financing is generally limited to 30% of the fair market value of the properties held by the fund.

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 regular (at least once in a 12 months period) redemptions at NAV.
- The fund is tax-exempt.
- There are no tax filing requirements for non-resident investors in Germany.

Cons

- *Immobilien-Sondervermögen* 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. The fund has no access to EU Directives.
- Redemption requests have to satisfy a 24 months minimum holding period as well as a 12 months notice period.

Germany
Spezial-Sondervermögen (Open-End Specialised Fund)

Background

Due to the implementation of the EU Directive on Alternative Investment Fund Managers (AIFM Directive) the former German Investment Act was replaced by the German Capital Investment Act the *Kapitalanlagegesetzbuch* (KAGB) which is applicable to UCITS as well as alternative investment funds (AIFs). The tax law (*Investmentsteuergesetz*) governing the taxation of the fund vehicle itself as well as taxation at investor level is currently under review by the German legislator. Taxation at fund level and investor level might therefore change in near future.

Legal form

German open-end funds investing in real estate may only be set up as a so called *Sondervermögen*. Such contractual form of fund has no legal personality and has to be managed by a German management company (*Kapitalverwaltungsgesellschaft*, or KVG), which is either a stock corporation (AG), a German limited liability company (GmbH) or a German limited partnership (GmbH & Co. KG). One KVG may manage several funds. An *Immobilien-Sondervermögen* set up as a specialised fund is accessible to professional and semi-professional investors only.

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's 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 KVG, or the investors as the beneficial owners of the fund's income. The fund has no access to EU Directives.

Filing obligations

There is no obligation to publish special fund reporting, provided, however, that German tax bases necessary for the investors' income determination in accordance with the German Investment Tax Act is made available to investors and the Federal Central Tax Office. 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 KVG in order to manage the fund. For setting up the fund itself, however, no approval is required. The investment conditions and material changes thereto have to be submitted to the BaFin.

Investment restrictions

With the consent of investors the specialised fund can deviate from most restrictions as long as certain requirements regarding eligible assets and investment quotas are observed, including a debt financing not exceeding 50% of the fair market value of the properties held by the fund.

Minimum level of investment

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

Pros

- The *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

- 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.

Germany
Investment-KG (Closed-End Retail Fund)

Background

German closed-end real estate funds are most commonly set up as a German limited liability partnership (KG). In the past these were largely non-regulated vehicles. Due to the implementation of the EU Directive on Alternative Investment Fund Managers (AIFM Directive) such vehicles as well as the managers of German closed-end funds are now subject to regulation under the German Capital Investment Act (*Kapitalanlagegesetzbuch* - KAGB).

Legal form

The KAGB provides for closed-end funds to be set up as *Investmentaktiengesellschaft* (investment stock corporation with fixed capital – Investment AG) as well as the more commonly used *geschlossene Investmentkommanditgesellschaft* (limited partnership – Investment-KG). Under German commercial law, the GmbH & Co. KG is a special form of limited partnership. The general partner is not a natural person but usually a limited liability company (GmbH). Investors may only participate in the fund as limited partners, therefore the liability for the fund's obligations is limited to the investors' capital contributions. An Investment-KG set up as a retail fund is accessible to all types of investors.

Tax status

The tax treatment for German income tax purposes is depending on the legal form of the investment vehicle and in accordance with the general tax rules. The Investment-KG as a partnership is transparent for German income tax purposes, i.e. income has to be determined separately and uniformly at the partnership level and is allocated to the partners being subject to tax depending on their individual tax status. 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 KG. 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 KG.

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 – its partners the investors can benefit from double tax treaties as the beneficial owners of KG's income. The KG itself has no access to the EU Directives developed for corporations.

Filing obligations

The Investment-KG has to submit 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 Investment-KG (determined based on the Investment-KG's tax return).

Regulation

The Investment-KG as well as the managers of such German closed-end fund fall within the scope of regulation by KAGB. The purpose of the Investment-KG has to be set forth in the partnership agreement and must be limited to collective investment and management of capital in accordance with a previously defined investment conditions for the benefit of the investors.

Requirements for authorisation

The fund's investment conditions as well as any changes thereto are subject to BaFin's prior approval, which shall usually be given within four weeks provided the documents meet the legal requirements.

Investment restrictions

A retail Investment-KG may invest in property (e.g. real estate including farmland and forests/woodland), financial assets as well as participations in other funds and companies whether or not traded on a stock exchange. Debt Financing is limited to 60% of the value of the fund on market terms and only if so set forth in the investment conditions.

Minimum level of investment

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

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.
- Under certain conditions, 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 for the KG to double tax treaties and EU Directives.

Germany
Spezial-Investment-KG (Closed-End Specialised Fund)

Background

German closed-end real estate funds are most commonly set up as a German limited liability partnership (KG). In the past these were largely non-regulated vehicles. Due to the implementation of the EU Directive on Alternative Investment Fund Managers (AIFM Directive) such vehicles as well as the managers of German closed-end funds are now subject to regulation under the German Capital Investment Act (*Kapitalanlagegesetzbuch* - KAGB).

Legal form

The KAGB provides for closed-end funds to be set up as Investmentaktiengesellschaft (investment stock corporation with fixed capital – Investment AG) as well as the more commonly used geschlossene Investmentkommanditgesellschaft (limited partnership – Investment-KG). Under German commercial law, the GmbH & Co. KG is a special form of limited partnership. The general partner is not a natural person but usually a limited liability company (GmbH). Investors may only participate in the fund as limited partners, therefore the liability for the fund's obligations is limited to the investors' capital contributions. A Spezial-Investment-KG is accessible to professional and semi-professional investors only.

Tax status

The tax treatment for German income tax purposes is depending on the legal form of the investment vehicle and in accordance with the general tax rules. The Spezial-Investment-KG as a partnership is transparent for German income tax purposes, i.e. income has to be determined separately and uniformly at the partnership level and is allocated to the partners being subject to tax depending on their individual tax status. 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 KG. 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 KG.

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 – its partners the investors can benefit from double tax treaties as the beneficial owners of KG's income. The KG has no access to the EU Directives developed for corporations.

Filing obligations

The KG has to submit 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 Spezial-Investment-KG as well as the managers of such German closed-end fund fall within the scope of regulation by KAGB. The purpose of the Spezial-Investment-KG has to be set forth in the partnership agreement and must be limited to collective investment and management of capital in accordance with a previously defined investment conditions for the benefit of the investors.

Requirements for authorisation

Prior to a placement the fund's investment conditions have to be submitted to the German BaFin as well as any material changes thereto.

Investment restrictions

A Spezial-Investment-KG may invest in property (e.g. real estate including farmland and forests/woodland), financial assets as well as participations in other funds and companies whether or not traded on a stock exchange. In general debt financing is not restricted, however upon request of BaFin the level of leverage has to be evidenced prudent on a case by case basis.

Minimum level of investment

The fund may invest in any kind of assets as long as its market value can be determined. The fund may invest in a single asset only.

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.
- A Spezial-Investment-KG provides for very flexible fund structures including single asset funds.

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 for the KG to double tax treaties and EU Directives.

Ireland

- Common Contractual Fund
- Variable 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. More recent enacted treaties contain a protocol stating that the CCF will not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits (e.g. Switzerland and Germany).

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 Central Bank of Ireland (CBI). 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

The Alternative Investment Fund Managers Directive has been transposed into Irish law and any Non-UCITS funds, including property funds, must be set up as an Alternative Investment Fund (AIF) under the Directive. Approval is a two-stage process involving the authorisation of the alternative investment fund manager (AIFM) and the completion of the relevant fund application. The fund manager must complete an "Application for Authorisation of an Alternative Investment Fund Manager" to the CBI, comprising various information and documentation. While the appropriate application for the fund (as a Retail Investor Alternative Investment Fund (RIAIF) or a Qualifying Investor Alternative Investment Fund (QIAIF) must also be completed. There are transitional arrangements with regard to the authorisation of AIFs for both EU and non-EU AIFMs.

Investment restrictions

A QIAIF 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 QIAIF. A 24-hour authorisation process applies for QIAIFs.

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.
- 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

- No treaty access under Ireland's treaties (although treaty access may be granted to investors on the basis that the CCF is regarded as tax transparent).

Ireland
Variable 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

In the case of Irish resident investors withholding tax is levied on both distributions, at a rate of 33%, and on gains from encashment, redemption, or transfer of shares, at 36%. 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. Similar exemptions apply to certain categories of Irish investors, including pension funds and charities.

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 CBI. The promoter of the fund is also subject to approval by the CBI. The board of directors of the fund must include at least two Irish residents.

Requirements for authorisation

The Alternative Investment Fund Managers Directive has been transposed into Irish law and any Non-UCITS funds, including property funds, must be set up as an Alternative Investment Fund (AIF) under the Directive. Approval is a two-stage process involving the authorisation of the alternative investment fund manager (AIFM) and the completion of the relevant fund application. The fund manager must complete an "Application for Authorisation of an Alternative Investment Fund Manager" to the CBI, comprising various information and documentation. While the appropriate application for the fund (as a Retail Investor Alternative Investment Fund (RIAIF) or a Qualifying Investor Alternative Investment Fund (QIAIF) must also be completed. There are transitional arrangements with regard to the authorisation of AIFs for both EU and non-EU AIFMs.

Investment restrictions

A Qualifying Investor Alternative Investment Fund (QIAIF) 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.

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.
- 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 may apply. 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 concluded and recommended 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

In the case of Irish resident investors withholding tax is levied on both distributions, at a rate of 33%, and on gains from encashment, redemption, or transfer of shares, at 36%.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 CBI. 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

The Alternative Investment Fund Managers Directive has been transposed into Irish law and any Non-UCITS funds, including property funds, must be set up as an Alternative Investment Fund (AIF) under the Directive. Approval is a two-stage process involving the authorisation of the alternative investment fund manager (AIFM) and the completion of the relevant fund application. The fund manager must complete an “Application for Authorisation of an Alternative Investment Fund Manager” to the CBI, comprising various information and documentation. While the appropriate application for the fund (as a Retail Investor Alternative Investment Fund (RIAIF) or a Qualifying Investor Alternative Investment Fund (QIAIF) must also be completed. There are transitional arrangements with regard to the authorisation of AIFs for both EU and non-EU AIFMs.

Investment restrictions

A Qualifying Investor Alternative Investment Fund (QIAIF) 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 QIAIF. A 24-hour authorisation process applies for QIAIFs.

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.
- The fund can be formed as a single fund, or as an umbrella fundwith 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 may apply. 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 concluded and recommended 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

The ILP is transparent for income tax purposes. Dividends received, capital gains realised and other income received are 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

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

Treaty status

The ILP is not able to access to treaty benefits under Ireland's tax treaties because of its tax transparency, although it may be regarded as tax-transparent in other jurisdictions, in which case the investors may be able to access treaty rates under their own tax treaties.

Filing obligations

Similar to the CCF, 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 ILP is subject to the regulatory supervision of the CBI. As it does not have 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

The Alternative Investment Fund Managers Directive has been transposed into Irish law and any Non-UCITS funds, including property funds, must be set up as an Alternative Investment Fund (AIF) under the Directive. Approval is a two-stage process involving the authorisation of the alternative investment fund manager (AIFM) and the completion of the relevant fund application. The fund manager must complete an "Application for Authorisation of an Alternative Investment Fund Manager" to the CBI, comprising various information and documentation. While the appropriate application for the fund (as a Retail Investor Alternative Investment Fund (RIAIF) or a Qualifying Investor Alternative Investment Fund (QIAIF) must also be completed. There are transitional arrangements with regard to the authorisation of AIFs for both EU and non-EU AIFMs.

Investment restrictions

A Qualifying Investor Alternative Investment Fund (QIAIF) 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 QIAIF. A 24-hour authorisation process applies for QIAIFs.

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.
- 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

- No treaty access under Ireland's treaties (although treaty access may be granted to investors on the basis that the ILP is regarded as tax transparent).

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, in principle without legal personality (i.e. closed-end regulated contractual fund), established and managed by a management company: the *Società di Gestione del Risparmio* (SGR). 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

Since 2012, REIF has been included among subjects liable to income tax, although exempt from the 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) at a rate of 20% (new sole rate applicable to financial income from 2012). REIF units are not subject to registration tax. For real estate properties held by the REIF, the municipal property tax (IMU, which replaced ICI from 2012) applies ordinarily with ordinary rate of 0.76% on the "cadastral value" of the properties (each Municipality can decrease or increase the ordinary rate by 0.3%: the rate can thus range between 0.46% and 1.06%). The "cadastral value" is obtained by multiplying the cadastral income by specific coefficients varying according to the nature of the property.

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).

Foreign institutional investors under letter f) include: foreign States, foreign public bodies and foreign subjects corresponding to the listed Italian entities which are subject to "prudential supervision". This last requirement is met if the execution of the foreign subject's activity requires prior authorisation and is subject to compulsory continuous controls according to the laws in force in the foreign State of residence. The execution of this prudential supervision must be certified by the home country's competent authority.

The SPVs under letter h) can be established in Italy or abroad, but limited to countries included in the White List. The control on such SPV can also be indirect (in this case, the percentage of interest must be properly adjusted - e.g. an indirect control on 60% of a Luxembourg SPV through 90% of a US corporation, equates to 54% actual control on the Lux SPV).

Italy
Real Estate Investment Fund (continued)

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;
- 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 was also provided. This substitute tax only applied 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 could have been 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) upon request and on behalf of the investor(s) in two equal instalments, on 16 December 2011 (or 16 January 2012 with surcharge of interest) and 16 June 2012, respectively (if the investor did not provide sufficient funds, the SGR could 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 constituted the taxable base for the substitute tax. Losses incurred upon sale, or disposal are 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 could 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 tax;
- Italian pension funds and Italian undertakings for the collective investment;
- foreign pension funds and foreign undertakings for the collective investment of savings (OICRs) 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.

Foreign pension funds and foreign OICRs are identified making reference to the home country legislation. In particular, the exemption applies to entities, regardless of their legal form, which pursue the same purposes of Italian pension funds and OICRs. Conversely, formal and not substantial similarity is not sufficient for entitlement to the exemption. The foreign fund, or the competent management entity, must be subject to "prudential supervision". The exemption does not apply in case of indirect investment; however, investment through fully owned SPVs is in principle not admitted.

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 can be 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 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.

In principle, capital gains derived from the disposal of REIF units are subject to 20% substitute tax (until the end of 2011 the tax rate was ordinarily at 12.5%), with the following exceptions: (i) gains realised in the context of a business activity, thus subject to business income taxation rules; (ii) gains realised by entities subject to special tax regimes (e.g., mutual and pension funds); (iii) gains realised by "non-institutional" investors subject to tax transparency and out of a business activity, which are exempt at 50.28% while the rest is included in the global taxable income and taxed ordinarily (this should not apply to non-residents). 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

Italy
Real Estate Investment Fund (continued)

and its residence country allows an effective exchange of tax information with Italy;

- for other cases, the application of treaties against double taxation may be claimed.

Treaty and EU Tax Directive status

Because included among subjects liable to income tax (since 2012), although tax-exempt, REIF should benefit from Treaties application (provided that the reciprocity condition with the relevant foreign Country is respected).

The lack of subjective and objective requirements does not give access to the EU Tax Directive.

Filing obligations

Withholding tax agent reporting obligations are generally fulfilled on behalf of the REIF by the management 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.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 require a minimum investment of EUR 500,000.

Investment restrictions

REIF's 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. Direct building development business is forbidden.

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.
- Exemptions for certain foreign "qualifying institutional" investors is available. Other foreign investors can benefit from DTTs reduction/ exemption.
- Facilitated liquidation until the end of 2011 of "non-institutional" REIFs which did not intend to apply the new tax transparency taxation method 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.
- REIF benefit from several tax reliefs in terms of indirect taxes.

Cons

- 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 was due by "non-institutional" investors holding more than 5% at same date (also foreigners).
- Unitholders cannot manage the REIF: this role is executed by the management company (SGR), which is (and has to be) independent from the investors.
- Due to the fact that the REIF is a regulated entity, it is subject to supervision by regulatory authorities (this implies higher operating costs).
- Real estate properties have to be evaluated twice each year on the basis of external appraisals.
- From 31 May 2010, less favourable tax treatment for REIF's profit distributions to foreign unit-holders different from certain institutional investors.

Luxembourg

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

Contacts

Alexandre Jaumotte
+352 49 48 48 3225
alexandre.jaumotte@lu.pwc.com

Antje Schumacher
+352 49 48 48 3070
antje.schumacher@lu.pwc.com

Luxembourg
Part II UCIs – FCP, SICAV, SICAF

Background

Real estate Undertakings for Collective Investments (Part II UCIs) under the so-called "Part II" of the law of 17 December 2010 offer a wide range of investment possibilities, such as direct investments 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 Commun 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 Alternative Investment Fund Manager (AIFM), according to the Luxembourg AIFM Law of 12 July 2013 (AIFM Law), or by a management company which appoints an AIFM.
- 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*). The SICAV has to be managed by an AIFM, according to the AIFM Law or has to get registered/authorised itself as AIFM.
- 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 different legal forms available (e.g. *Société Anonyme* - SA, *Société en Commandite par Actions* - SCA, *Société en Commandite simple* - SCS or *Société en Commandite Spéciale* - SCSp). Similar to the SICAV the SICAF has to be managed by an AIFM according to the AIFM Law, or has to get registered/authorised itself as AIFM.

Tax treatment at entity level

The Part II 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 net wealth tax. Part II UCIs are regarded as VAT taxable persons performing VAT-exempt activities and are in principle not entitled to recover the input VAT incurred on their costs, except in specific cases. Management of Part II UCIs is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, fund accounting and administrative management of the assets of the Part II UCI, where the place of taxation of these services is Luxembourg. Distribution of Part II UCIs' units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, the lowest rate within the EU. Supervision functions of the depositary bank are subject to 12% VAT. Part II 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 under the reverse-charge mechanism and/or if they carry out intra-Community acquisitions of goods in Luxembourg under certain conditions.

Management of AIFs is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, fund accounting and administrative management of the assets of the AIF, where the place of taxation of these services is Luxembourg. Placement of AIFs' units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, the lowest rate within the EU.

As the law introducing AIFs is recent, there are still uncertainties whether AIFs will be regarded as VAT taxable persons performing VAT-exempt activities and will therefore in principle not be entitled to recover the input VAT incurred on their costs. In that case, AIFs 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 under the reverse-charge mechanism and/or if they carry out intra-Community acquisitions of goods under certain conditions.

Treaty status

For the FCP form there is no access to the double tax treaty network. Corporate-type SICAVs and SICAFs should have access to Luxembourg double tax treaties with 37 countries. For all of the legal forms, there is no access to the EU Parent-Subsidiary Directive.

Regulation

All Part II UCIs are categorised as Alternative Investment Funds under the AIFM Law and therefore need to be managed by an AIFM.

Furthermore, 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.

Luxembourg
Part II UCIs – FCP, SICAV, SICAF (continued)

Requirements for authorisation

- The authorisation process focuses strongly on the constituting documents and offering documents.
- UCIs have to disclose in the prospectus their investment strategies, the policy on leverage, their risk profile and other characteristics of the fund.
- 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. Part II 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.
- An AIFM license is needed to manage UCIs.
- Since Part II UCIs are distributed to retail investors they face a stricter regulatory regime than SIFs (see below).

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. The SIF Law has been amended by the Law of 26 March 2012.

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, *Société en Commandite simple* - SCS or *Société en Commandite Spéciale* - SCSp).

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 net wealth tax.

SIFs are regarded as VAT taxable persons performing VAT-exempt activities and are in principle 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, the lowest rate within the EU. Supervision functions of the depositary bank are 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 under the reverse-charge mechanism and/or if they carry out intra-Community acquisitions of goods in Luxembourg under certain conditions.

Management of AIFs is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, fund accounting and administrative management of the assets of the AIF, where the place of taxation of these services is Luxembourg. Placement of AIFs' units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, the lowest rate within the EU.

As the law introducing AIFs is recent, there are still uncertainties whether AIFs will be regarded as VAT taxable persons performing VAT-exempt activities and will therefore in principle not be entitled to recover the input VAT incurred on their costs. In that case, AIFs 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 under the reverse-charge mechanism and/or if they carry out intra-Community acquisitions of goods under certain conditions.

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 37 countries. For all of the legal forms, there is no access to the EU Parent-Subsidiary Directive.

Regulation

The regulatory authority is the CSSF.

Requirements for authorisation

- Prior CSSF approval is be required since the entry into force of the Law of 26 March 2012 amending the SIF Law.
- SIFs governed by Part II of the SIF Law are qualified as AIFs under the AIFM law and must be managed by an authorised AIFM, either internally managed or by an externally appointed manager.
- SIFs that do not qualify as AIFs are not impacted by the AIFM Law and will remain subject, to a large extent, to requirements similar to those under the current SIF regimes.
- Under the new SIF regime, the CSSF reviews and authorises the constitutional, offering documents and approves the various intervening parties in the fund: approved statutory auditors, depositary, central administration, investment manager, statutory

Luxembourg
SIF Regime – FCP, SICAV, SICAF (continued)

and effective managers of the SIF. UCITS equivalent rules 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.

- Moreover, a SIF is required to implement an appropriate risk management system and an effective conflicts of interest policy.
- 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 or who can provide a bank confirmation of suitable experience, and confirmed in writing that he/she 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.

Cons

- Requirement to use a depositary, although the duties of the depositary in case of non-AIF SIFs are less severe than for SIF-AIFs.
- Subscription tax expense.
- An AIFM license may be required to manage the SIF.

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).
- A limited partnership (*Société en Commandite Simple - SCS*) (seldom used).
- A special limited partnership (*Société en Commandite Spéciale - SCSp*) (newly created).

Tax status

The limited partnership and special limited partnership are 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 29.22% for 2013.

Treatment of investors

Investors in both SCS and SCSp type SICAR are deemed to receive their income pro rata to their participations in the fund. For investors investing in SICARs in other legal forms, the tax treatment depends on the rules applicable in the country of their residence.

Withholding tax

Distributions 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 net wealth tax.

SICARs are regarded as VAT taxable persons performing VAT-exempt activities and are in principle 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 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, the lowest rate within the EU. Supervision functions of the depositary bank are 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 under the reverse-charge mechanism and/or if they carry out intra-Community acquisitions of in Luxembourg under certain conditions.

Management of AIFs is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, fund accounting and administrative management of the assets of the AIF, where the place of taxation of these services is Luxembourg. Placement of AIFs' units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, the lowest rate within the EU.

As the law introducing AIFs is recent, there are still uncertainties whether AIFs will be regarded as VAT taxable persons performing VAT-exempt activities and will therefore in principle not be entitled to recover the input VAT incurred on their costs. In that case, AIFs 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 under the reverse-charge mechanism and/or if they carry out intra-Community acquisitions of goods under certain conditions.

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 may challenge treaty access. There is no access to most tax treaties for partnerships, and SCS/SCSp-type SICARs are not differentiated.

Regulation

A SICAR is subject to a light degree of regulation by the CSSF.

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. SICARs governed by Part II of the SICAR Law

Luxembourg
SICAR (continued)

qualify as AIFs under the AIFM Law and must be managed by an authorised AIFM, either externally or internally. SICARs that do not qualify as AIFs under the AIFM Law are not impacted by the AIFM Law and will remain subject, to a large extent, to requirements similar to those under the current SICAR regimes.

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.
- The SICAR may fall under the AIFM Law and therefore may need an AIFM.

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 29.22% for 2013.

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 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, and no net wealth tax are levied on a Securitisation vehicle. Securitisation vehicles are regarded as VAT taxable persons performing VAT-exempt activities and are in principle 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, 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, the lowest rate within the EU. 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 under the reverse-charge mechanism and/or if they carry out intra-Community acquisitions of goods in Luxembourg under certain conditions.

Management of AIFs is VAT-exempt. The exemption covers main functions such as strategic management of portfolio, fund accounting and administrative management of the assets of the AIF, where the place of taxation of these services is Luxembourg. Placement of AIFs' units/share is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 15% VAT, the lowest rate within the EU.

As the law introducing AIFs is recent, there are still uncertainties whether AIFs will be regarded as VAT taxable persons performing VAT-exempt activities and will therefore in principle not be entitled to recover the input VAT incurred on their costs. In that case, AIFs 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 under the reverse-charge mechanism and/or if they carry out intra-Community acquisitions of goods under certain conditions.

Treaty status

Generally the Securitisation vehicle having corporate forms 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 may challenge 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.

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

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 4 weeks after this request (calculated 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 assets and income of the transparent FGR, or transparent CV are allocated to the investors, and retain their 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, Norway, Spain and the US, which make this approach explicit.

Filing obligations

No tax filing obligations apply at fund level.

Regulation

Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the *Autoriteit Financiële 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 distributions 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. Some Competent Authority Agreements have been concluded to confirm the look-through treatment for tax treaty purposes.

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 entities 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.

Corporate 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. This is the case if the substantial interest does not form part of the investor's business assets and the shares in the Dutch company are held with the main intention (or one of the main intentions) to avoid the levy of Dutch personal income tax or dividend withholding tax. If only dividend withholding tax is being avoided, then the rate at which corporate income tax is levied is reduced to 15%. 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 Financiële 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.

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 filing obligations.

Regulation

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

Investment restrictions

VBI vehicles can only invest in financial instruments. As such, a VBI cannot 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 portfolio investment holdings.

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.

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% (2013 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. This is the case if the substantial interest does not form part of the investor's business assets and the shares in the Dutch company are held with the main intention (or one of the main intentions) to avoid the levy of Dutch personal income tax or dividend withholding tax. If only dividend withholding tax is being avoided, then the rate at which corporate income tax is levied is reduced to 15%. 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 (unless in the latter case a filing exemption applies).

Regulation

Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the *Autoriteit Financiële 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.

Netherlands
Co-operatives

Legal form

A *Coöperatie* (COOP) is, in essence, 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% (2013 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. This is the case if the substantial interest does not form part of the investor's business assets and the shares in the Dutch company are held with the main intention (or one of the main intentions) to avoid the levy of Dutch personal income tax or dividend withholding tax. If only dividend withholding tax is being avoided, then the rate at which corporate income tax is levied is reduced to 15%. Tax treaties generally provide protection against such tax.

Withholding tax

No withholding tax is levied on interest. In principle, 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, distributions by COOPs are subject to dividend withholding tax in case the COOP holds shares with the main purpose of avoiding dividend tax or foreign tax, and the membership rights of the COOP are not part of the COOP member's business capital.

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 Financiële 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 exeptions in abuse situations mentioned above).
- 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 Imobiliário***

Contacts

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

Anabela Mendes
+351 213 599 625
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 25%. Further maintenance and repair expenses related to the property as well as annual property tax (IMI) are tax-deductible. Depreciation or the deduction of interest is not allowed.

Capital gains (net of capital losses) 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 28%.

The annual net capital gain arising on the sale of shares is subject to a 25% 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 28% 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 0.3% and 0.5%; rates for urban property appraised under the old rules vary from 0.5% and 0.8%.

FII is subject to annual stamp duty at a rate of 1% in the ownership of residential property with a tax registration value of at least 1 million.

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 close-ended 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 to be managed by a Portuguese company.
- There is taxation of rental income; depreciation and interest expenses 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 Imobiliário

Background

The *Sociedades de Investimento Imobiliário* (SIIMO) were introduced in June 2010. They are regulated investment vehicles for investing in real estate. Although the regime has been introduced for more than 3 years, the first Portuguese SIIMO has just been set-up in the beginning of 2013 meaning there is little information about their actual use and practical experience about them.

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. They 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 25%. Further maintenance and repair expenses related to the property as well as IMI are tax-deductible. Depreciation or the deduction of interest is not allowed.

Capital gains (net of capital losses) 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 28%.

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 28% 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 IMT and 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 0.3% and 0.5%; for urban real estate appraised under the old rules the rate varies from 0.5% and 0.8%.

Both SICAVI and SICAFI are subject to annual stamp duty at a rate of 1% in the ownership of residential property with a tax registration value of at least 1 million.

Treaty status

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.pwc.com

José L. Lucas
+34 91 568 56 07
jose_luis.lucas.chinchilla@es.pwc.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% (21% for the years 2012 and 2013) 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% (21% for the years 2012 and 2013) 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

Victor Meyer
+41 58 792 43 40
victor.meyer@ch.pwc.com

Noëlle Kunz
+41 58 792 45 05
noelle.kunz@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. There have been several amendments which came into force on 1 March 2013. 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.

Legal form

A real estate fund is a "collective investment scheme" and can appear in different forms. Real estate can be held directly or indirectly by a SICAV (investment companies with variable capital), a SICAF (investment companies with fixed capital), a contractual collective investment fund (FCP or "*vertraglicher Anlagefonds*") and a KGK (limited partnership for collective capital investments).

Currently, there are no SICAFs in Switzerland holding real estate. KGKs holding real estate investment are very rarely authorised by the Federal Financial Market Supervisory Authority (FINMA). Furthermore, Switzerland does not have a REIT regime. Hence, the subsequent comments are mainly based on the legal forms of SICAV and FCP.

Tax status

Collective investment schemes are generally considered transparent for tax purposes. The only exemptions are the SICAF (which is regarded as a taxable entity) and collective investment schemes (such as SICAV and FCP) holding direct real estate investments.

Tax treatment at entity level

Generally, FCPs and SICAVs are considered as transparent for tax purposes. 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 a preferential statutory income rate for direct federal taxes of 4.25% and in the most cantons of Switzerland to a preferential statutory income rate for cantonal and communal taxes (e.g. City of Zurich 9.16%). Both taxes are levied at the level of the collective investment scheme. Dividends and capital gains not related to Swiss real estate are disregarded at the level of the collective investment scheme but are taxed at the level of the investor. Furthermore, collective investment schemes that hold Swiss real estate directly are subject to annual capital taxes on cantonal level on the net taxable capital (e.g. City of Zurich 0.1718%).

In case of indirect Swiss real estate investment held by a special purpose vehicle (SPV) income is subject to ordinary statutory income taxation (8.5% direct federal taxes and cantonal and communal taxes, e.g. City of Zurich 18.32%) at the level of the SPV. Furthermore, the SPV is subject to annual capital taxes on cantonal level.

Depending on the canton where the real estate is located, capital gains realised by the sale of a real estate held by the fund directly or indirectly might be taxed differently, respectively at federal, cantonal and communal level. This means that, in certain cantons, capital gains realised on immovable property are subject to a special real estate gains tax regime instead of ordinary income tax. In general, a deduction is available, based on the period of ownership. A long-term ownership can reduce the tax to quite a low level. Where ownership has only been short-term, there is usually a speculation surcharge. The definition of short-term and long-term ownership varies from canton to canton. At federal level, capital gains realised upon the sale of a real estate are subject to income tax.

Should the fund sell the majority of the ownership rights held in a real estate company owning Swiss real estate, this sale usually qualifies as an economic change of ownership. At cantonal level, such economic change of ownership may be subject to real estate gains tax. However, in case of real estate gains tax, the Swiss tax authorities may be restricted in levying real estate gains tax under certain double tax treaties. At federal level, an economic change of ownership does not trigger income tax but the buyer inherits a latent tax burden.

Treatment of investors

If a FCP or a SICAV has direct real estate investment the income derived from real estate is attributable to the collective investment scheme for tax purposes. Hence there is no taxation of real estate income at the level of the Swiss resident investor.

In case of indirect holdings of real estate investments and/or other income other than real estate, Swiss resident individual investors are subject to income taxes on the ordinary income (dividend/interest) generated by the investment scheme. Capital gains are tax-exempt for individual investors with the exception of individual investors who hold shares of a collective investment scheme in their business assets. Swiss resident corporate investors are subject to income taxes on both the ordinary income and the capital gains generated by the investment vehicles. A participation exemption is not available for income derived from a FCP or a SICAV.

Withholding tax

The profit and capital gains of direct real estate investments of the SICAV and FCP are tax-exempt from Swiss withholding tax purposes at the level of the fund.

In case of income from indirect real estate investments and/or other income, distributions (dividend income and/or interest) 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 upon 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) which basically happens at the financial year end.

Exceptions to the above filing requirements for withholding taxes purposes can apply to funds when following the Affidavit procedure (a requirement is that the overall income of the Swiss fund is at least 80% foreign sourced).

Other taxes

The issuance and redemption of shares of Swiss collective investment funds with direct or indirect real estate investments is exempt from securities transfer tax.

Switzerland
Swiss Collective Investment Schemes (continued)

In the case of a purchase, sale or transfer of shares in a funds with direct or indirect real estate investments (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. The securities transfer tax is usually levied on the consideration and amounts to 0.15 percent for securities issued by a Swiss resident.

Most cantons levy a real estate transfer tax on the transfer of ownership in a property. A transfer of ownership is also given in the case of a purely economic transfer of immovable property such as the transfer of all or the majority of the shares in a Swiss real estate company. The real estate transfer tax is calculated on the purchase price and the rates vary between 0.5% and 3.5% depending on the canton where the real estate is located. Generally, the tax is borne by the buyer. In some cantons the tax is divided between the seller and the buyer.

Treaty status

Usually, the fund vehicle has 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. Switzerland has entered into several mutual agreements with its treaty partners which allow the fund reclaim foreign withholding tax for their Swiss investors. Fund vehicles have no access to EU Directive benefits.

Filing obligations

Funds are subject to withholding tax filing obligations. Additionally, collective investment schemes with direct holdings of Swiss 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 its management company or its asset manager is FINMA. In addition, various other rules, set by self-regulation bodies as e.g. the Swiss Funds & Asset Management Association (SFAMA since 1 July 2013; former Swiss Funds Association, SFA) may apply. Contrary to other fund types, real estate funds have to issue a simplified prospectus and not a Key Investor Information Document (KIID).

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 stipulated in the fund prospectus or fund contract.

Investment restrictions

Investment restrictions are stipulated in the CISA (Swiss Collective Investment Scheme Act), the related ordinances and the fund prospectus. Especially, neither the fund management company nor the custodian bank or its agents, nor closely connected natural and legal persons may acquire real estate assets from real estate funds or assign any such assets to them.

Minimum level of investment

CISA and/or regulatory authorities may require a diversification of risk, restrictions for certain types of real estate investments, etc.

Regulation involving Real Estate ("*Lex Koller*")

The federal law on the acquisition of real estate by foreigners ("*Lex Koller*") is aimed at restricting the acquisition of residential properties by foreigners in Switzerland. The acquisition of commercial properties, main residencies, shares in listed real estate companies and units in regularly traded real estate funds are not subject to the restrictions of *Lex Koller*. Any violation of the *Lex Koller* has civil and penal law consequences.

Restrictions on Secondary Homes

On 11 March 2012, the Swiss people backed an initiative that imposes a 20 per cent ceiling on the number of second homes in any community ("Lex Weber"). Since many of the popular resorts in the Alpine region of Switzerland have already used up this allowance, the new law will in fact heavily restrict the construction of new second homes in these areas. Building permits approved before 11 March 2012 remain valid but the new law revisions will apply to building applications lodged after that date. Recently judges from the federal court's first court of public law ruled and confirmed that the initiative accepted by the voters is sufficiently clear without waiting for legislation from parliament, which has yet to be approved.

United Kingdom

- Limited Partnership
- Tax Transparent Funds (TTFs)
- Property Authorised Investment Fund
- Unauthorised Unit Trust

Contacts

Rosalind Rowe
+44 20 7213 5455
rosalind.rowe@uk.pwc.com

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

Irfan Butt
+44 20 7212 8696
irfan.butt@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 on income and gains but other taxes (e.g. transfer taxes, VAT etc.) apply.

Treatment of investors

Investors are typically allocated the net income/losses and disposal proceeds of chargeable assets 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.

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
  - 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
Tax Transparent Funds (TTFs)

Legal form

Following a consultation process, 2013 saw the introduction of tax transparent funds in the UK. A TTF can take the form of either an authorised and regulated limited partnership vehicle (ALP) or a contractual co-ownership arrangement (CCA).

ALP
An ALP will essentially be the same as a regular limited partnership but with additional features such as ability of the limited partners to redeem their interests without remaining contingently liable for the partnership's debts, general partner not being liable for the debts of the partnership unless guilty of wrongdoing and disapplication of the rules relating to the publication of changes in the partnership in the official Gazette.

CCA
Under a CCA, investors will own the scheme property as co-owners (although it will be held for them by a depositary). The scheme documentation will regulate the arrangement as well as providing for the scheme property to be managed by an authorised fund manager. The regulations limit each investor's liability for the debts of the scheme to the value of that investor's units from time to time, and the assets and liabilities of each sub-fund in an umbrella structure will be protected.

Tax status

ALP
An ALP is treated as transparent for income and capital gains tax purposes.

CCA
A CCA is treated as tax transparent with respect to income arising to the fund but with respect to capital gains arising to the fund it is treated as opaque.

Tax treatment at entity level

ALP
No tax levied at the level of the vehicle on income and gains but other taxes (e.g. transfer taxes, VAT etc.) apply.

CCA
No tax levied at the level of the vehicle on income and gains but other taxes (e.g. transfer taxes, VAT etc.) apply.

Treatment of investors

Investors are typically allocated the net income/losses and capital gains/losses of the vehicle pro rata to their participation in the ALP. Investors are generally taxed in their home territory (depending on any applicable double tax treaty). As a consequence of the CCA being opaque for capital gains tax purposes, UK taxable investors in such schemes will be liable to tax on gains on disposal of their units, rather than being treated as owning a share in the underlying assets.

Withholding tax

No withholding tax is levied on distributions made by either vehicle. However, dividend and interest income 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 the interests in the vehicle where underlying UK real estate is held. Other stamp taxes may also be payable in certain circumstances.

Treaty status

Either vehicle 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 ALP is required to submit an annual partnership return if requested to do so by Her Majesty's Revenue & Customs (HMRC).

Where the ALP invests directly in UK real estate, non-UK-resident investors in the ALP would normally register under the non-resident landlord scheme and be required to file non-resident landlord returns with HMRC.

Investors in CCAs will be required to comply with their individual tax reporting requirements and accordingly, UK taxable investors will be required to include their taxable distributions from the scheme in their income tax returns.

Regulation

Both vehicles are subject to regulation by the Financial Conduct Authority.

Pros

- An effective structure for pooling sub funds into one large master fund to reduce administration costs rather than for any direct tax saving.
- Regulated vehicle may be more appealing for certain investor types or regimes which require the use of regulated vehicles, particularly US Asset Managers.
- Tax transparency gives non-UK investors the opportunity to benefit from:
  - lower tax rates available for non-resident landlords;
  - no UK capital gains tax; and
  - tax treaty relief is structured appropriately.
- The structure easily accommodates "carry" arrangements for the management team.

Cons

- Can be an administrative burden.
- New regime so some uncertainty about the international recognition of the vehicles.

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. A PAIF is exempt from capital gains tax but is required to distribute all its income. Its activities are also subject to all other taxes e.g. employment taxes, VAT and transfer taxes.

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). Distributions from other corporate should also be exempt from UK tax. While residual income (e.g. interest income) is subject to corporate tax, a corresponding deduction should be available when the income is distributed to investors. Consequently there is effectively no taxation at the level of the fund.

Treatment of investors

UK corporate investors may have to pay corporate taxes (currently 24% reducing to 22% in 2014) 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, 36.11% (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, UK corporate or UK charities. Separate reclaims of withholding tax where there is treaty relief can be made by recipients after the distributions are received but there is no upfront treaty rate reduction.

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 limitation on corporate ownership condition.
- Loan creditor conditions (where relevant).
- A balance of business condition and, if relevant, an additional limited borrowing 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 was introduced in 2008; after a slow start more PAIFS are coming to the market.
- The vehicle is fairly heavily regulated, with a number of restrictions (e.g. gearing only up to 10% of net assets unless it is designated for sophisticated investors when borrowings may be greater).

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.

It is of note that the taxation of UUTs is currently under consultation.

The second consultation document (published 24 May 2012) proposed a split in the tax treatment between exempt UUTs (UUTs whose investors consist only of entities that would be wholly exempt from capital gains tax or corporation tax on chargeable gains (other than be reason of residence)) and non-exempt UUTs (UUTs that have one or more investors that would not be wholly exempt from capital gains tax or corporation tax on chargeable gains). The earliest date for the changes to take effect is 6 April 2014, with a limited grandfathering period until 6 April 2015 for certain non-exempt UUTs.

The commentary below considers the tax treatment under current law.

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 (other than by reason of residence), 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 on deemed distributions of income from the trust. Certain exempt investors will be able to reclaim this 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 capital gains tax (other than by reason of residence), 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 in light of the ongoing consultation. However, the latest proposals do not appear to adversely impact the efficacy of the vehicle where it is marketed to investors who are exempt from UK capital gains tax (other than by reason of residence).

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