Choosing an investment vehicle

European Real Estate Fund Regimes

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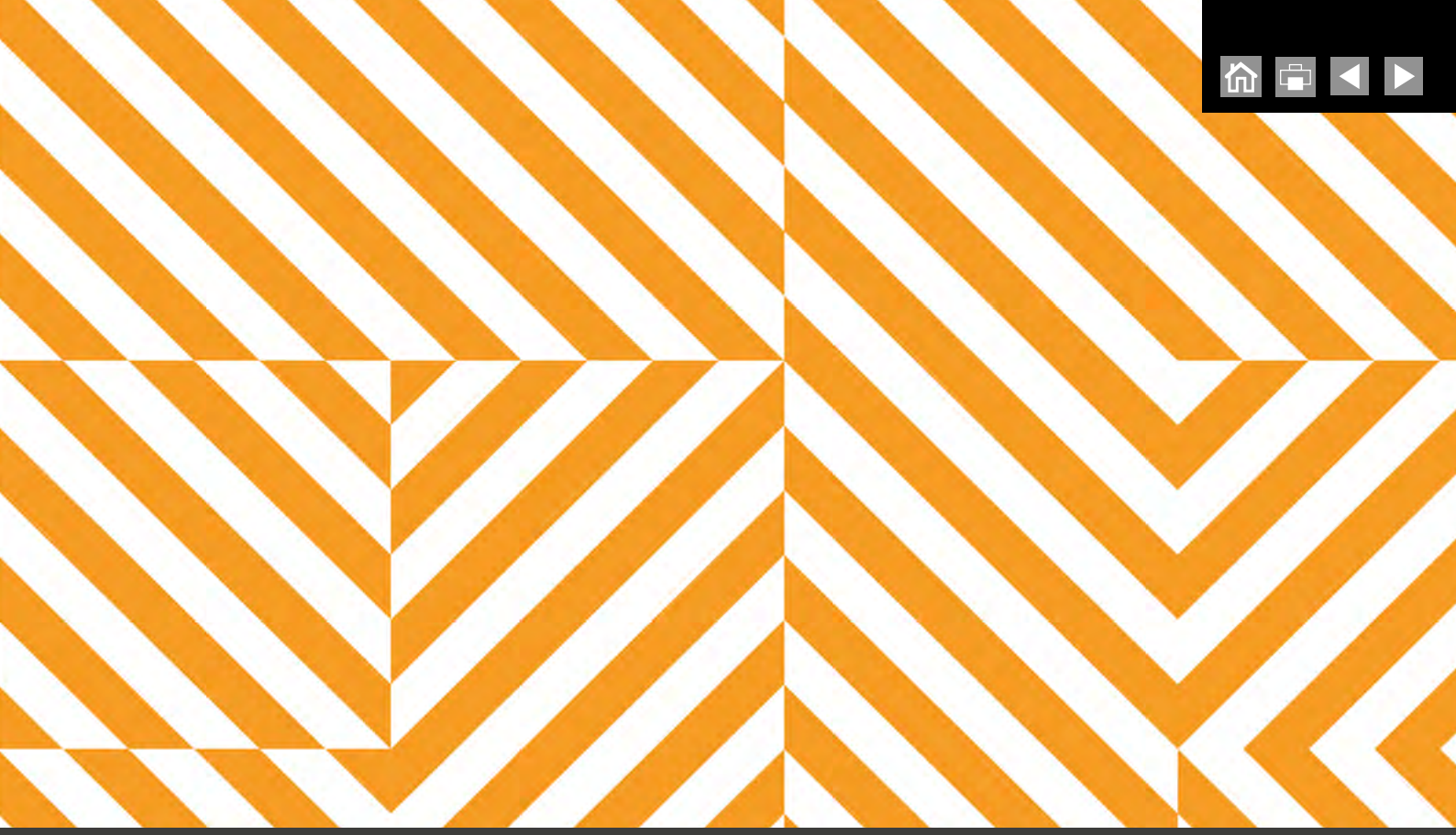

Introduction

This booklet aims to provide an overview of the most common European collective investment vehicles (CIVs) suitable for investment in real estate, including their legal form, as well as their regulatory and tax position

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AIFMD has forced fund managers and investors to change their approach and look not only at national rules, but also at EU rules and guidelines. At the same time, the passports for professional investor funds provide new options. Managers must consider where they apply for authorisation to obtain the licence, paying close attention to legal and tax aspects, as well as available business infrastructure and personal resources. While AIFMD clearly seeks to pave the way for a single market for real estate CIVs, differences and imperfections in tax regimes form a barrier for real estate funds investing on a pan-European basis.

Many countries offer attractive tax facilities, including tax exemptions, to their local real estate CIVs. In many countries, these tax facilities are not available to real estate CIVs investing from a different jurisdiction. Fund managers are actively challenging discriminatory treatment of real estate CIVs investing outside their home territory. The case law of both national courts and the ECJ is developing rapidly. These developments have caused countries to amend their tax regimes in order to be compliant with EU law while ensuring sustainable tax revenues. In addition to this, European directives and national implementation thereof have not made the tax position of CIVs and their investors any more transparent. Our country specialists mentioned in the booklet will be very happy to help you by providing further information on any of the fund vehicles described.

Austria

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

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Austria
GmbH & Co. KG

Background
Austrian closed-end real estate funds are typically set up as Austrian limited partnerships (KG). To date, such vehicles have generally not been 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 limited to their contributions.

Tax status
The fund vehicle is transparent for Austrian income tax purposes.

Tax treatment at entity level
Received dividends, capital gains and other received income are not subject to income tax at fund level.

Treatment of investors
For tax purposes, investors are basically deemed to receive their income from the KG pro rata to their participation, regardless of the fund's 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 investor's tax status and the nature of the received income.

However, the GmbH & Co KG could qualify as an Alternative Investment Fund (AIF) within the meaning of the Austrian Alternative Investment Fund Manager Act (AIFMA). In such a case, the tax regulations for real estate investment funds apply (please see comments on taxation for *Immobilien-Sondervermögen* or *Immobilien-Spezialsondervermögen* below).

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

Treaty status
The KG itself doesn't generally have access to treaty benefits; from an Austrian perspective, investors can benefit from double tax treaties as the beneficial owners of the fund's income.

Filing obligations
The KG must file an annual income tax return, whereby the profit will first be determined at KG level, before being allocated to the investors on the basis of their participation. Resident investors must file an Austrian tax return, and non-resident investors may also have to do so.

Regulation
The GmbH & Co. KG is not subject to regulatory investment supervision (non-regulated fund). However, if the KG qualifies as AIF within the meaning of the AIFMA, the *Finanzmarktaufsicht* (Financial Market Authority, FMA) is responsible for the regulatory supervision of the fund manager and/or the AIF.

Requirements for authorisation
If the GmbH & Co. KG does not qualify as AIF, there are no requirements for authorization. If the GmbH & Co. KG qualifies as AIF within the meaning of the AIFMA, a license under the Austrian Banking Act or the AIFMA is required.

Investment restrictions
Only when the GmbH & Co. KG qualifies as AIF within the meaning of the AIFMA, certain investment limitations apply, if participations in the AIF are distributed to retail investors.

Minimum level of investment
None.

Summary attributes
- Austrian closed-end funds in the form of a KG are well accepted among Austrian investors, especially for long-term investments focusing on only one or a few assets.
- The fund vehicle is tax-transparent and there is no withholding tax on income distributions.
- Value increases in the property are only taxed if the asset is actually the disposed of.
- More possibilities for investors to have an influence on the investment.
- The fund vehicle is not very flexible regarding the holding period of the investment.
- There is generally no direct access to double tax treaties.
- In case the GmbH & Co. KG qualifies as AIF within the meaning of the AIFMA, value increases in the property will generally be taxed, regardless of whether the asset is actually disposed of.

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 resulted from a long-lasting call by 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 tax at fund level.

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 investor's tax status and the nature of the received income. Special provisions may apply to non-resident investors. Furthermore, the respective double tax treaties should be considered.

Withholding tax

In principle, withholding tax is levied on both distributed and accumulated income. The income is determined at fund level and comprises income from the rent and lease of the real estate, the revaluation gains and 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 and thus be able to reduce 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 exemption method applies.

Treaty status

According to the Austrian Investment Fund Guidelines Austria issues certificates of residence to Austrian publicly offered real estate funds for the purpose of pursuing treaty entitlement.

The fund has no access to the EU Parent-Subsidiary Directive.

Filing obligations

Depending on the nature of the investors, there might be an obligation to file tax returns with the local authorities. The tax treatment for different investor types is published on my.oekb.at.

Regulation

The *Finanzmarktaufsicht* (Financial Market Authority, 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 must be published and provided to the FMA.

Investment restrictions

The fund is restricted to investing in certain eligible real estate assets, e.g. real estate properties or property rights. Acquiring other real estate funds, shares other than those in property companies, or other investments in securities, is forbidden. Specific quotas regarding the gearing and investment of the fund apply.

Minimum level of investment

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

Summary attributes

- The *Immobilien-Sondervermögen* is an investment vehicle for all types of investors.
- The fund itself is not subject to tax.
- The *Immobilien-Sondervermögen* is a comparably safe vehicle, due to capital market regulation.
- The fund must redeem the shares upon request of the investors.
- 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.
- Access to double tax treaties in some jurisdictions is unclear.
- Value increases in the property will generally be taxed, regardless of whether the asset is actually disposed of.

Austria
Immobilien-Spezialsondervermögen

Background
The Austrian *Immobilien-Spezialsondervermögen* is also governed by the regulations that apply to the Immobilien-Sondervermögen. However, it creates a regime for institutional investors and provides 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 tax at fund level.

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 investor's tax status and the nature of the received income. However, individuals cannot invest in *Immobilien-Spezialsondervermögen* and the number of institutional investors is limited. Special provisions may apply to non-resident investors. Furthermore, the respective double tax treaties must be considered.

Withholding tax
In principle, withholding tax is levied on both distributed and accumulated income. The income is determined at fund level and essentially comprises income from the rent and lease of the real estate, the revaluation gains and domestic and foreign dividends, interest and other specified capital income sources. Moreover, foreign investors who are 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 exemption method applies.

Treaty status
According to the Austrian Investment Fund Guidelines Austria issues certificates of residence to Austrian publicly offered real estate funds for the purpose of pursuing treaty entitlement.

The fund has no access to the EU Parent-Subsidiary Directive.

Filing obligations
Unlike the *Immobilien-Sondervermögen*, resident investors are generally required to file tax returns for income derived from the fund.

Regulation
The *Immobilien-Spezialsondervermögen* is not subject to direct supervision by the FMA.

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 the FMA with a prospectus or a 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 investing 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 must invest according to the principle of risk-spreading, as detailed in legislation (at least five property investments within four years).

Summary attributes
- The *Immobilien-Spezialsondervermögen* is not subject to direct supervision by the FMA.
- The fund does not have to issue a prospectus.
- The *Immobilien-Spezialsondervermögen* offers a flexible investment vehicle to institutional investors.
- Individuals are not eligible to invest.
- The *Immobilien-Spezialsondervermögen* generally represents a long-term investment.
- Access to double tax treaties in some jurisdictions is unclear.
- Value increases in the property will generally be taxed, regardless of whether the asset is actually disposed of.

Belgium

- **REIF – Real Estate Investment Fund**

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Belgium
REIF –Real Estate Investment Fund

Background

The Belgian real estate investment fund regime (usually referred to as the REIF or FIIS/GVBF) was introduced in the Belgian legal framework by the Programme Act of 3 August 2016. The latter created a new platform for real estate funds. The REIF is attractive and flexible from a regulatory and tax perspective.

The Royal Decree of 9 November 2016 implementing the REIF regime entered into force on 28 November 2017.

Tax treatment at entity level

Investment in Belgian assets

Latent capital gains and untaxed reserves (in case of conversion, (partial) merger or demerger) of Belgian assets entering into a REIF are taxed at the exit rate of 15%. Carried-forward tax assets can be offset against the exit tax (subject however to the so-called basket rule based on which available carried-forward tax assets can only be used for 100% against the first € 1m of taxable result and for 70% for the excess. The remaining 30% will be fully taxable).

Income relating to Belgian real estate (such as rental income and capital gains) is not taxed (i.e. the taxable basis of the REIF is limited to (i) disallowed expenses (such as regional office tax) and abnormal or gratuitous advantages received, taxed at the standard rate of 25%. A secret commission tax of 50%/100% is due on non-disclosed business income (disallowed expense for tax purposes since assessment year 2021).

The REIF is not subject to the 30% EBITDA interest limitation rule that was introduced in Belgian tax law and is applicable since assessment year 2020 (financial year starting as per 1st January 2019 at the earliest) (as any “net borrowing costs” disallowed under the 30% EBITDA rule are specifically excluded from the limited taxable basis of the REIF).

Investment in non-Belgian assets

No exit tax applies for non-Belgian assets entering into a REIF, and there is no taxation on foreign rental income, capital gains on assets and shares, dividends and interest income. Generally speaking, non-Belgian assets follow the local tax regime.

Treatment of investors

Belgian investors

Dividends received by a Belgian investor are in principle subject to Belgian WHT at the standard rate of 30% and this WHT is creditable and refundable in the hands of the investor. An exemption of WHT is however foreseen in case the qualifying Belgian investor has a participation of at least 10% in the REIF for an uninterrupted period of at least one year.

To determine whether the dividends received from the REIF will constitute taxable income in the hands of Belgian investors, it is required that the REIF makes a break-down of the dividends between the part stemming from Belgium and from abroad. Indeed, in the hands of Belgian investors, dividends received from the REIF are in principle subject to the standard Belgian corporate income tax of 25%. The Belgian participation exemption regime can (subject to quantitative conditions applying (exceptions apply)) however be applicable in case the dividends are stemming from income generated from real estate located in an European Member State other than Belgium or with whom Belgium has concluded a double tax treaty including an exchange of information clause and (ii) have been subject to the Belgian (non-resident) corporate income tax or a similar non-Belgian tax (which does not deviate from the standard corporate income tax regime).

Upon a sale of the shares in the FIIS, any capital gains arising are taxed at the standard rate of 25% to the extent the income from the shares cannot benefit from the Belgian participation exemption regime (see above). As a result, the taxation will occur on a pro rata basis.

Non-Belgian investors

For dividends distributed by the REIF of which the income stems from Belgian real estate, a dividend WHT of 30% applies. This rate could however be reduced or exempt based on a double tax treaty as the REIF has in principle access to double tax treaties.

For income stemming from foreign real estate, no Belgian WHT is applicable on dividends distributed by the REIF.

Finally, a WHT exemption is available for dividends distributed by the REIF to foreign pension funds (under conditions).

Upon a sale of the shares of the FIIS, in principle no Belgian capital gain taxation should arise.

Other taxes

The REIF is subject to the Belgian annual tax of 0.01% on its net asset value to the extent that the shares are held by Belgian investors. There is an exemption in place for foreign investors.

Treaty status

The REIF is subject to corporate income tax (albeit on a limited taxable basis) and should therefore in principle be entitled to have access to the double tax treaties concluded by Belgium.

Regulation

The REIF benefits from a flexible regulatory regime, which can be summarised as follows:

- available for any institutional or corporate Belgian or foreign investors;
- no need of plurality of investors (sole shareholder structure available);
- no risk diversification requirements;
- no limitation on the use of leverage;
- distribution obligation of 80% of adjusted net income;
- limited lifetime of maximum 10 years (with however possibility to extend by periods of maximum 5 years each);
- minimum assets required EUR 10m to be reached within 2 years after registration of the REIF.

Belgium
REIF – Real Estate Investment Fund

(continued)

To opt for the REIF status, a REIF will normally need to qualify as alternative investment fund (AIF) pursuant to the AIFM Directive and the Belgian law implementing the AIFM Directive into Belgian legislation. The REIF status may also be opted for in case a sole investor holds all the shares of the REIF. Other exemptions are also provided for in the Belgian law (such as a JV).

In any event, the REIF is not subject to a prior regulatory approval procedure nor to any ongoing supervision by the FSMA. Only a light and straightforward registration with the Belgian Ministry of Finance is required, which means the REIF can be established and operational in a time of approximately 30 days, without high setting-up costs. Once operational, an annual compliance questionnaire needs to be completed by the REIF, and an annual reporting needs to be filed by its manager.

Investment restrictions

In general, a REIF can invest in real estate. For the purposes of the REIF, the scope of real estate is however broad: the definition of real estate includes amongst others real estate assets, shares in real estate companies or Belgian or foreign REITs, real estate certificates, rights under real estate leasing, shares in other REIF or in foreign real estate investment funds concessions.

The REIF may not hold Belgian real estate indirectly (i.e. via subsidiaries). Indirect investments through subsidiaries are allowed only temporarily; a REIF acquiring Belgian real estate indirectly will benefit from a 24-month period to proceed to a restructuring.

In addition, the REIF is not allowed to act as a real estate developer (i.e. sale of the real estate within 5 years after construction).

Filing obligations

The REIF is in principle subject to the same filing obligations as a normally taxed Belgian company (i.e. yearly filing of a Belgian corporate income tax return, filing of WHT returns upon interest payments and dividend distributions, etc.)

Please note however that in case the REIF invests in Belgian and foreign real estate, it should add to its yearly report a breakdown of its income according to its nature/source, as a different tax treatment is applicable in this respect.

Furthermore, as the REIF is subject to the IFRS accounting regulations, a yearly valuation of the real estate assets should be included in the yearly report.

An annual NAT return needs to be filed prior to 31 March wherein they will report their net amounts outstanding in Belgium as per 31 December of the previous year. A nihil NAT return should be filed in case REIF is held by foreign investors.

Summary attributes

- Real estate income (including leasing income, capital gains and dividends from real estate companies) is not subject to Belgian corporate tax at fund level.
- Double Tax treaty Access.
- Limited regulatory restrictions.
- No withholding tax on dividend stemming from foreign real estate and paid to international (non-Belgian) investors.
- Withholding tax exemption for dividends distributed to qualifying pension funds.
- No cash trap (IFRS accounting (fair value) – no depreciation).
- Step-up in value.
- Distribution obligation of 80% of adjusted net income.
- Entry tax of 15% upon entry of the Belgian real estate into REIF regime.

Czech Republic

- **Collective investment fund investing in real estate**
- **Fond kvalifikovanych investorů (fund of qualified investors)**

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Czech Republic
Collective investment fund investing in real estate

Background

The AIFM Directive was implemented into Czech legislation through the Law on Investment Companies and Investment Funds ("ICIF") (Act No. 240/2013 Coll.), which became effective on 19 August 2013.

This new Act specifies a special kind of investment fund defined as a collective investment fund investing in real estate ("real estate CIF ").

Following the changes to the treatment of investment funds under the ICIF and the re-codification of the Civil Law, there is a matching amendment to the Czech Income Taxes Act ("ITA"), which became effective on 1 January 2015.

According to this amendment, the reduced 5% corporate income tax rate (in comparison with the standard rate of 19%) may only apply to funds that qualify as so-called "basic investment funds" for tax purposes.

Newly, based on the last Amendment of ITA effective from January 2019, a basic investment fund is:

a. an investment fund under the ICIF whose shares or participation certificates are accepted for trading on the European regulated market, if

   i. no corporate taxpayer /or related persons together (expect certain state institutions) does not have share on registered capital of such a fund of 10% or more, and

   ii. does not provide business under the Act on Trade Licencing.

b. an open-ended mutual fund under the ICIF;

c. an investment fund or sub-fund of a joint-stock company with variable registered capital under ICIF that invests more than 90% of the value of its property in certain specific financial assets, not including real estate, in accordance with its statutes. Therefore, this category is not applicable to a real estate CIF; or

d. a foreign investment fund comparable to a fund stated in a) through

e. if

1. its home State under ICIF is an EU Member State or a State of the European Economic Area,

2. it proves that it is managed under a licence comparable to a licence to manage an investment fund that is issued by the Czech National Bank, and the manager is subject to supervision comparable to supervision by the Czech National Bank,

3. it has statutes or a document comparable to statutes from which it can be ascertained that it is a foreign fund comparable to a fund stated in a) through c), and

4. it proves that under the law of its home State, its income is not attributed to other persons, even in part.

Legal form

A real estate CIF may be established as (i) a joint-stock company with variable registered capital (SICAV) or (ii) an open-end unit fund.

Tax status

A real estate CIF (established in the form of either a SICAV or an open-end unit fund) is considered to be a taxpayer liable to corporate income tax and must be registered with its respective tax authority.

The corporate income tax rate applicable to real estate CIFs is generally 19%. If a real estate CIF qualifies as a basic investment fund (see conditions in "Background" above), the reduced 5% corporate income tax rate will apply.

The tax is calculated from the Czech accounting profit amended for tax purposes.

Corporate income tax is collected in a similar way to other corporate entities, i.e. the real estate CIF files 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 gains from the sale of real estate are reflected in the income of the real estate CIF and taxed through the corporate tax return at a rate of 19%/5% (see "Tax status" above).

Generally, tax losses realised by the real estate CIF in previous taxable periods can reduce the corporate income tax base in the subsequent five taxable periods. From 2020, tax losses may also be carried back for two years. The maximum amount of the loss that can be carried back is CZK 30 million.

Losses realised from the sale of plots of land have been tax- deductible since 2014.

Dividends received from abroad are included in a separate corporate income tax base of the real estate CIF, which is subject to a 15% corporate income tax rate. Tax paid abroad may be credited against the Czech corporate income tax liability in accordance with the relevant double taxation treaty.

Dividends received from the Czech Republic are generally subject to a 15% final withholding tax and are not included in the separate tax base.

Benefits of the EU Parent-Subsidiary Directive

i. Real estate CIF in the legal form of a SICAV

Real estate CIFs established in the legal form of a SICAV (the legal form of a joint-stock company) are eligible for the benefits of the EU Parent-Subsidiary Directive concerning dividends, and the same exemption applies to capital gains.

ii. Real estate CIF in the legal form of an open-ended fund

Real estate CIFs established in the legal form of an open-ended fund are not eligible for the benefits of the EU Parent-Subsidiary Directive.

Treatment of investors

Investor as a legal entity

Income from the redemption/sale of units in a real estate CIF is taxed via the corporate income tax return as a part of the profit of the particular entity (at a rate of 19% unless the applicable double tax treaty states otherwise).

Dividends received from real estate CIFs are generally subject to 35%/15% final withholding tax (see "Withholding tax" below).

For corporate investors of a real estate CIF that has the form of a SICAV, income from the redemption/sale of units in the real estate CIF and dividend income may be tax-exempt under the conditions of the EU Parent-Subsidiary Directive.

Czech Republic

Collective investment fund investing in real estate

(continued)

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 a real estate CIF is treated as a sale of units (sale of securities). If sold in the period and the units were not included in individual's business property:

a. More than 3 years after acquisition, it is generally exempt from income tax. Starting from the 2015 tax period, the tax authorities must be notified if this tax-exempt income exceeds CZK 5 million. The tax authorities must be notified if this tax-exempt income exceeds CZK 5 million.

b. Within 3 years of acquisition, the total capital gains are exempt from income tax if the overall gross income from the sale of units and other securities did not exceed CZK 100,000 in the taxable period.

Otherwise, it is included in the taxpayer's general tax base and is taxed at a 15%, resp. 23% (for any taxable income above CZK 1,701,168 threshold) personal income tax rate. 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.

Withholding tax

15% withholding tax applies for tax residents of EU or EEA Member States and residents of states with which the Czech Republic has an enforceable double tax treaty or tax information agreement, unless this rate is reduced by the applicable double tax treaty.

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

Treaty status

i. Real estate CIF in the legal form of a SICAV

A real estate CIF in the legal form of a SICAV is treated as a tax resident and should be able to access treaty benefits.

ii. Real estate CIF in the legal form of an open-ended fund

A real estate CIF in the legal form of an open-ended fund is considered a tax resident for Czech tax purposes. However, access to treaty benefits must be verified by consulting the relevant double tax treaty.

Filing obligations

i. Real estate CIF in the legal form of a SICAV

A real estate CIF in the form of a SICAV files a corporate income tax return itself for each taxable period.

ii. Real estate CIF in the legal form of an open-ended fund

Each open-ended fund is liable for filing a corporate income tax return. This reflects the change whereby open- ended funds became Czech taxpayers in 2011. The real estate CIF's asset management company must file tax returns on behalf of the real estate CIF.

Regulation

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

Requirements for authorisation

A real estate CIF must have an authorised depository. The authorised depository may be a bank with its seat in the Czech Republic, a foreign bank with a branch in the Czech Republic, or a stock-exchange broker with custody authorisation.

Further, a board of experts must be established. Among other things, the board of experts sets the value of real estate property in the real estate CIF's possession and its stakes in real estate companies.

Investment restrictions

A real estate CIF 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. In the first three years of the functioning of the real estate CIF, the value invested into one real estate asset must not exceed 60% of the value of the fund; in future years it cannot exceed 20% of the value of the fund.

Minimum level of investment

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

Summary attributes

- No investor restrictions (intended for investment by the general public).
- If it meets the conditions for a basic investment fund, it may benefit from the lower corporate income tax rate than standard corporate entities (5% corporate income tax compared to the standard rate of 19%).
- Real estate CIFs established in a legal form of SICAV have access to the EU Parent-Subsidiary Directive.
- The sale/redemption of units in a real estate CIF is tax-free for individual investors after a 3-year holding period or if capital gains do not exceed CZK 100,000 for one taxable period.
- Access to double tax treaty benefits (with some limitations for real estate CIFs established as open-ended funds).
- Rather intense regulation (investment policy is regulated by the CNB, minimum investment requirements).
- The issue of bonds is permitted only under specific conditions.

Czech Republic

Fond kvalifikovanych investorů (fund of qualified investors)

Background

A *fond kvalifikovaných investoru* (FKI) is a fund of qualified investors and is not covered by the UCITS Directive.

Following the changes to the treatment of investment funds under the Law on Investment Companies and Investment Funds (ICIF) and the re-codification of the Civil Law, a matching amendment to the Czech Income Taxes Act became effective on 1 January 2015 which define so-called basic investment funds which are entitled to reduced 5% corporate income tax rate (in comparison with the standard rate of 19%).

According to the last amendment of ITA effective from January 2019, a basic investment fund is:

a. an investment fund under the ICIF whose shares or participation certificates are accepted for trading on the European regulated market, if

   i. no corporate taxpayer /or related persons together (expect certain state institutions) does not have share on registered capital of such a fund of 10% or more, and

   ii. does not provide business under the Act on Trade Licencing.

b. an open-ended mutual fund under ICIF;

c. an investment fund or sub-fund of a joint-stock company with variable registered capital under ICIF that invests more than 90% of the value of its property in certain specific financial assets, not including real estate, in accordance with its statutes. Therefore, this category is not applicable to an FKI that invests in real estate.

d. a foreign investment fund comparable to a fund stated in a) through

e. if

1. its home State under ICIF is an EU Member State or a State of the European Economic Area,
2. it proves that it is managed under a licence comparable to a licence to manage an investment fund that is issued by the Czech National Bank, and the manager is subject to supervision comparable to supervision by the Czech National Bank,
3. it has statutes or a document comparable to statutes from which it can be ascertained that it is a foreign fund comparable to a fund stated in a) through c), and
4. it proves that under the law of its home State, its income is not attributed to other persons, even in part.

Legal form

An FKI may be established in the following legal forms:

i. a limited partnership;

ii. a limited liability company;

iii. a joint-stock company or a joint-stock company with variable registered capital (SICAV);

iv. a cooperative,

v. a *Societas Europaea* (SE),

vi. an open-end or closed-end unit fund; or

vii. a trust.

If established as an open-end or closed-end unit fund or trust, it is not a legal entity per se; it is a pool of assets with its own tax identification number that must be managed by an investment company (asset management company).

Tax status

Nevertheless, an FKI's legal form is considered to be a taxpayer liable to corporate income tax, and it must be registered with its respective tax authority.

The corporate income tax rate applicable for an FKI is generally 19%. If an FKI qualifies as a basic investment fund (see the conditions in "Background" above), the lower 5% corporate income tax rate will apply.

The tax is calculated from the Czech accounting profit amended for tax purposes.

The collection of corporate income tax is similar to other corporate entities, i.e. the FKI itself files 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.

Any capital gain/loss or revaluation differences is reflected in the FKI's income and taxed through the corporate tax return at the 19%/5% corporate income tax rate (see "Tax status" above).

Generally, tax losses realised by the FKI in previous taxable periods can reduce the corporate income tax base in the subsequent five taxable periods. From 2020, tax losses may also be carried back for two years. The maximum amount of the loss that can be carried back is CZK 30 million.

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. Tax paid abroad may be credited against the Czech corporate income tax liability in accordance with the relevant double taxation treaty.

Dividends received from the Czech Republic are generally subject to 15% final withholding tax and are not included in the separate tax base.

Benefits of the EU Parent-Subsidiary Directive

i. FKI in the legal form of a limited liability company, joint-stock company, SICAV, cooperative or SE

If the FKI is established in any of these legal forms, it is eligible for the benefits of the EU Parent-Subsidiary Directive regarding dividends, and this exemption also applies to capital gains.

ii. FKI in the legal form of a limited partnership, open-ended or close-ended fund or trust

If the FKI is established in any of these legal forms, it is not eligible for the benefits of the EU Parent-Subsidiary Directive.

Treatment of investors

Investor as a legal entity

Income from the redemption/sale of units in an FKI is taxed via the corporate income tax return as a part of the profit of the particular entity.

Dividends received from an FKI are generally subject to 35%/15% final withholding tax (see "Withholding tax" section below).

The tax-exemption based on the EU Parent-Subsidiary Directive is applicable for the dividends and capital gains paid by FKIs in the legal form of a limited liability company, joint-stock company, SICAV, cooperative or SE.

Czech Republic

Fond kvalifikovanych investorů (fund of qualified investors)

(continued)

If the corporate investors of a FKI are in the legal form of a limited liability company, joint-stock company, SICAV, cooperative or SE, income from the redemption/sale of units in a real estate CIF and dividend income may be tax-exempt under the conditions of the EU Parent-Subsidiary Directive.

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 FKI is treated as a sale of units (sale of securities). If sold in the period and the units were not included in individual's business property:

a. More than 3 years after acquisition, it is generally exempt from income tax unless the FKI has the legal form of a cooperation, limited liability company or partnership, in which case the holding period is extended to 5 years. The tax authorities must be notified if this tax-exempt income exceeds CZK 5 million.

b. Within 3 years (5 years) of acquisition, the total capital gains are exempt from income tax if the overall gross income from the sale of units and other securities does not exceed CZK 100,000 in the taxable period. Otherwise, the total capital gains are included in the taxpayer's general tax base and are taxed at a 15% resp. 23% (for any taxable income above CZK 1,701,168 threshold) personal income tax rate. 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.

Withholding tax

The standard withholding tax rate for dividends is 35%. 15% withholding tax applies for tax residents of EU or EEA Member States and residents of states with which the Czech Republic has an enforceable double tax treaty or tax information agreement, unless reduced further by the applicable double tax treaty.

An FKI established in a legal form of a limited liability company, joint-stock company, SICAV, cooperative or SE may qualify for the EU Parent-Subsidiary Directive. Thus, dividends received by a corporate parent company are exempt from Czech withholding tax under the condition that the parent company holds at least 10% of the shares for at least 12 months.

Treaty status

An FKI should generally have access to treaty benefits, regardless of its legal form, as it is treated as a tax resident.

However, the access available to FKIs that have the legal form of open-ended or closed-ended funds or trusts must be verified by consulting the relevant double tax treaty.

Filing obligations

i. FKI in the legal form of a limited liability company, joint-stock company, SICAV, cooperative, SE or limited partnership

An FKI in the above-mentioned legal forms must itself file a corporate income tax return for each taxable period (with a specific regime for limited partnerships).

ii. FKI in the legal form of an open-ended or close-ended fund or trust

The asset management company of an FKI in any of these legal forms must file tax returns on behalf of the FKI.

Regulation

The regulatory body is the Czech National Bank (CNB). Regulation is not as extensive as for real estate CIFs. The function of the CNB is rather to supervise, since FKIs do not have extensive reporting requirements.

Requirements for authorisation

An FKI must have an authorised depository, which checks whether the 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 banks, etc., or other qualified investors (such legal entities or individuals must confirm in writing that they have experience with securities trading). There should be at least two qualified investors within the FQI to comply with condition of plurality of investors. Further restrictions and limitations (types of investment, etc.) are set by the fund itself in its statute. Many FKIs currently invest in real estate.

The value invested in one real estate asset may not exceed 35% of the value of the fund. This limit does not apply in the first 3 years after the FKI is established for FKIs that invest more than 49% of their funds in real estate or in first 12 months in case of other FKIs. The limit can be entirely waived if sufficient funds are contributed to the FKI in proportion to the number of investors.

Minimum level of investment

The minimum investment is EUR 125,000.

Summary attributes

- If it meets the conditions for a basic investment fund, the FKI might benefit from a lower corporate income tax rate than standard corporate entities (5% corporate income tax compared to the standard rate of 19%).
- Not very extensive regulation.
- Possibility of in-kind contribution.
- Possibility to change the FKI's form from an investment fund to a joint-stock company after 6 years of activity.
- Access to the EU Parent-Subsidiary Directive for KFIs established in certain legal forms.
- Access to double tax treaty benefits (with some limitations for KFIs established as open-ended funds/close-ended funds or trusts).
- The sale/redemption of units/shares is tax-free for individual investors
- after a 3 or 5-year holding period (depending on the legal form).
- The issue of bonds by an FKI is not prohibited.
- No access to UCITS Directives.
- Investor restrictions – "well-informed investors" (not really intended for the general public).

Denmark

- **Kommanditselskab (limited partnership)**

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Denmark
Kommanditselskab (limited partnership)

Background

Danish limited partnerships (LPs) are not typically used for direct collective investments (>10 investors) in Danish real estate. Due to tax transparency, the Danish partnership has some disadvantages when there is a significant number of investors buying and selling their partnership interest on an ongoing basis.

Instead, a Luxembourg HoldCo or similar is often used as the investment vehicle, investing 100% directly into the Danish LP. The LP is attractive due to the tax transparency, as no withholding tax should be levied on income distributions. In case the investors benefit from a withholding tax exemption or where no need to repatriate profits by way of dividend distributions, Danish limited liability property companies are often set up.

Legal form

The legal form of the LP is, in most cases, a Danish kommanditselskab (K/S). The general partner (unlimited liability) is typically a limited liability company and investors are typically limited partners.

The general unlimited partner will usually not have any ownership in the K/S, but will only be liable for the K/S.

The assets of the K/S are owned by the owners of the K/S and not by the K/S itself.

Tax status

The K/S is considered transparent for Danish tax purposes. Note that there is an anti-avoidance rule in Denmark stating that if shareholders with 50% or more of the capital, the voting rights or economic rights are resident in a state that considers the K/S a separate taxable entity, the K/S would also be considered a separate taxable entity for Danish tax purposes.

This also applies if shareholders with 50% or more of the capital, the voting rights or economic rights are resident in a state that has not concluded a double tax treaty with Denmark according to which withholding tax on dividends are reduced or eliminated, and if the state is not an EU Member State.

Tax treatment at entity level

Dividends received, interest, rental income, capital gains, etc. are not subject to Danish income tax at K/S level.

Treatment of investors

For Danish tax purposes, investors are, as a general rule, deemed to receive their income from the K/S pro rata to their participation, regardless of the actual distribution policy. The income allocation to each investor can (to some extent) be agreed otherwise, i.e. “room” for freedom of contract.

As a result, the taxation of the K/S’ income should be triggered at the level of each investor, depending on the investor’s tax status and the nature of the income received.

An investment in Danish real estate involves limited tax liability to Denmark, which means that each investor must file a Danish tax return based on their share of the result from the real estate investment in Denmark. If the K/S receives capital gains from selling real estate, the investor will be taxed on the gains in Denmark (due to the limited tax liability).

Interest expenses allocated to Danish real estate are, as a rule, fully deductible, but Danish tax legislation includes up to three rules limiting interest deductibility.

Foreign investors investing in a Danish K/S may be considered to have a permanent establishment in Denmark. This depends on a case-by-case analysis.

Withholding tax

There is as a general rule no withholding tax on the distribution of profits, since these are not treated as dividends, but repatriation of profits.

Please note that according to the special Danish anti avoidance rule stated above, Danish K/S companies can be considered and taxed as Danish limited liability company/public limited liability company, if the Danish K/S company is not considered as tax transparent entities, but instead as an opaque according to foreign tax law.

If the Danish K/S company is considered as an opaque from a foreign tax perspective any repatriation of profit to will be treated as a dividend distributions and may be subject to withholding tax.

The withholding tax on dividends being distributed by a tax transparent entity requalified according to the above rule is either 0%, or27% (levied at source by may be reduced by reclaim according to a double tax treaty etc.) depending on the tax status of the receiver.

For foreign companies owning shares in Danish companies several court cases are pending regarding beneficial ownership and thus whether Denmark can withhold dividend tax even if the recipient is aa EU company owning at least 10% of the share capital.

Treaty status

The K/S itself does generally not have access to treaty benefits; however, the investors may be eligible for treaty status from a Danish tax perspective.

Denmark has a broad tax treaty network in order to eliminate double taxation, and grants relief for foreign tax paid in the form of a credit against the Danish tax. Most of the treaties are based on the OECD model treaty providing relief from double taxation. Those treaties will be applicable for the investors in the K/S.

Furthermore, Denmark is a party to the Nordic tax treaty along with Finland, Sweden, Faroe Islands, Iceland and Norway.

Filing obligations

No corporate tax or withholding tax filing obligations for the K/S. Both Danish and non-Danish investors must file a Danish tax return.

The K/S shall keep accounts and report its annual report digitally.

Regulation

A Danish K/S can be a regulated alternative investment fund (AIF), but this is determined on a case-by-case basis. Typically, if the K/S’ main objectives are investing in, financing, developing, selling and buying real estate, it should be considered an AIF. The main legislation governing AIFs in Denmark is the Danish Alternative Investment Fund Managers Act, which regulates AIF managers.

Requirements for authorisation

Regulatory

A K/S described above must be registered with the Danish Business Authority. The K/S must also file annual financial statements with the Danish Business Authority.

In addition, if the K/S is an AIF, it must either be managed by an AIF manager or be a self-managing AIF.

AIF managers and self-managing AIFs must be licensed or registered with the Danish Financial Supervisory Authority. As regards Danish AIF managers, depending on the volume of assets under management, licensing or registration is a prerequisite for managing AIFs.

Denmark
Kommanditselskab (limited partnership)

(continued)

For EU AIF managers licensed by competent authorities within the EU/ EEA that intend to manage Danish AIFs in Denmark, no licensing or registration is required with the Danish Financial Supervisory Authority, provided that the AIF managers are authorised to manage the particular type of AIF. If this is the case, EU AIFMs can start managing AIFs as soon as they receive a notification from their competent authorities stating that information has been forwarded to the Danish Financial Supervisory Authority for either direct managing or managing through a branch.

Tax

No corporate income tax return requirements apply for the K/S but they do apply for investors. The K/S may have to register for VAT and payroll tax, but this should be evaluated on a case-by-case basis.

Summary attributes

- The K/S vehicle is tax-transparent and there is no withholding tax on income distributions. The investors may be able to depreciate the assets for Danish tax purposes.
- Increases in the value of the property will in principle only be taxed if the asset is actually disposed of.
- For civil law purposes, the K/S exists as a separate entity, but the Danish Corporate Act does not apply to a Danish K/S (however, it is possible to form a Danish partnership as a P/S (partnerselskab), which is regulated by the Danish Corporate Act). This means that, among other things, the provisions of the Corporate Act governing dividends and extraordinary dividends do not apply. Instead, there should be “room” for freedom of contract in the articles of association on how distributions to investors should be regulated.
- A K/S with multiple investors is not very flexible during the holding period if investors want to buy or sell shares in the K/S. When an investor acquires an ideal share of the K/S, the fair market value of each underlying investment should be computed, as the fair market value should be considered the acquisition price of the share in the K/S for this investor. When new investors join the fund, the existing investors would, as a starting point, be considered to have partly realised (i.e. partly sold) their K/S shares.
- In addition, the investors should be taxed on each individual investment under the K/S, since it is a limited partnership (look- through entity). This could be burdensome. The investor should be considered to hold an ideal share of each underlying investment in the K/S based on their ownership of the K/S. In order to file Danish tax returns, the K/S reports information to its shareholders about: (1) the income that has been received; (2) the expenses incurred; (3) the amount of withholding tax payable; and (4) whether any real estate has been acquired or disposed of.
- A sale of the K/S will trigger Danish capital gains taxation.

Estonia

- **Common fund**
- **Public limited company**
- **Limited partnership fund**

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Estonia
Common fund[1]

Background
The version of the Estonian Investment Funds Act (IFA) which was in force before 10 January 2017 provided that a real estate fund (REF) would be a fund which units or shares are redeemed or repurchased at the request of unit- or shareholders not earlier than one month after submission of a respective claim, and the assets of which shall be invested according to the fund rules or the articles of association (a) at least 60% in real estate or (b) at least 80% in real estate and securities related to real estate.

Legal form
The current version of the Estonian Investment Funds Act ("**IFA**") does not provide a separate legal definition for a real estate fund ("**REF**"). It is, however, still possible to establish or found REFs under the Estonian law, but the law does not stipulate pre-defined parameters with regard to the investment policy of REFs as the shaping of such policy is effectively left to be defined by REF fund managers.

Estonian common funds are not legal persons per se, but they are rather a pool of assets established for collective investment purposes and managed by a regulated management company (fund manager). More specifically, the common fund is established from the monies collected through the issue of units or other assets, as well as assets acquired through the investment of such monies, and which is owned jointly by the unitholders.

Only a management company has the right to dispose of and possess assets of a common fund. A management company must enter into transactions with regard to assets of a common fund in its own name and for the account of all the unitholders collectively.

Tax status
An Estonian-resident common fund is deemed to be a taxpayer for Estonian real estate-related income.

Tax treatment at entity level
An Estonian-resident common fund is liable to pay 20% Estonian corporate income tax in respect of the following types of income:

- capital gains from the sale of Estonian real estate or real rights or claims related to Estonian real estate, capital gains from the sale of shares in an Estonian real estate-rich company, investment fund or asset pool in which the fund holds at least 10% of the shares;
- rental income; and
- interest derived in relation to at least a 10% shareholding in a real estate-rich company, investment fund or asset pool.

Treatment of investors
As a general rule, investors (both resident and non-resident) should not be liable to taxation in respect of income derived from the common fund that has been subject to tax at the fund level.

Capital gains from the sale or redemption of shares in a real estate-rich fund are subject to 20% Estonian corporate income tax.

Withholding tax
An Estonian-resident common fund is not obliged to withhold tax.

Treaty status
As a general rule, common funds do not have access to treaty benefits.

Filing obligations
In respect of taxable income on which tax has not been withheld, the fund manager must file a tax return within one month of receiving such income.

Regulation
A REF must, as a general rule, have a fund manager. The fund manager must diversify the REF's assets according to the principles of risk-spreading and diversification.

The regulatory authority exercising supervision over Estonian REFs and fund managers is the Estonian Financial Supervision Authority ("**FSA**").

Requirements for authorisation
If the common fund is established pursuant to the IFA, then the approval of the FSA is required prior to setting up a common fund. Before registering the units of a common fund, the required documents (e.g. the fund rules, the relevant depositary contract, etc.) must be submitted to the FSA and their compliance with the applicable legislation must be verified prior to registering the common fund and its units.

Foreign entities operating in Estonia are subject to the same regulatory regime as local entities.

Investment restrictions
The assets of a REF are comprised of securities, other things, rights and obligations, including real estate acquired for the account of the REF but in the name of the fund manager or the REF. REFs may invest in real estate, as well as in real estate companies and securities related to real estate.

When real estate is acquired for the account of a REF, a notation must be made in the Estonian land register or, as appropriate, in a similar register of a foreign state on restriction of disposal of the assets which includes the name of the fund for the account of which the assets were acquired.

Where a REF is a public fund founded or established in Estonia, the assets of such REF may be invested only in real estate which is located in the states which have an effective and reliable registration system for real estate which proves the right of ownership.

Minimum level of investment
Estonian legislation does not specify a minimum level of investment in a REF. However, some investment funds have set a minimum level of investment in their fund rules or founding charters, which should be considered prior to investing.

Investor restrictions
It is not permitted to redeem, at the request of a unitholder or shareholder, the units or shares of a fund from the assets of which at least 60% are invested in real estate pursuant to the fund rules or articles of association, or at least 80% in real estate and securities relating to real estate, securities that are not traded on a regulated market or other non-liquid assets, earlier than six months after submission of the respective request of the unitholder or shareholder.

The Investor Compensation Scheme Directive is implemented into Estonian law, and therefore investments are protected up to 20,000 euro per investor in any one investment institution.

Estonia
Common fund

(continued)

Investors' rights and obligations are regulated by the relevant founding charters (articles of association, partnership agreement, fund rules) and to some extent by the relevant provisions of the IFA.

Summary attributes

- Common funds are fairly widespread and common in Estonia.
- Common funds are easily accessible to Estonian and foreign investors.
- No minimum level of investment is set in the current legislation.
- The regulations regarding Estonian and foreign investors are the same
- Establishing a common fund is generally a slow and time-consuming process.
- Unless a common fund is open-ended, it has no obligation to redeem any units at the request of an investor. The units are generally redeemed when the fund is dissolved.

Estonia
Public limited company

Background

The version of the Estonian Investment Funds Act (IFA) which was in force before 10 January 2017 provided that a real estate fund (REF) would be a fund which units or shares are redeemed or repurchased at the request of unit- or shareholders not earlier than one month after submission of a respective claim, and the assets of which shall be invested according to the fund rules or the articles of association (a) at least 60% in real estate or (b) at least 80% in real estate and securities related to real estate.

Legal form

A REF founded as a public limited company ("**PLC**") is a legal person according to the IFA. REFs founded as PLCs can only act (i.e. enter into transactions regarding investments) through a regulated management company.

In order to start its activities, a REF founded as a PLC must enter into a management contract with a management company whereby the REF undertakes to transfer its assets to the disposal of the management company and the management company undertakes to invest the REF's assets through a depositary according to the relevant fund rules in order to generate income.

Tax status

REFs founded as PLCs are deemed to be regular corporate taxpayers without any special rules. This means the general principles of the Estonian corporate income tax system apply, according to which all earned income is tax-exempt until it is distributed to shareholders.

REFs founded as PLCs do not pay any corporate tax on accrued profits. Formal and deemed-profit distributions are subject to 20% Estonian corporate income tax.

From 2018, the corporate income tax rate on regular dividends was reduced from 20% to 14% on regular profit distributions. According to this new rule, the profit distributions in the amount below or equal to the average taxed profit distributions made during the three preceding years, will be taxed with a rate of 14% (the tax rate on the net amount being 14/86 instead of the regular 20/80).

Tax treatment at entity level

REFs founded as PLCs are subject to the same tax regulations as other public limited companies.

Treatment of investors

Investors are not shareholders in the management company and accordingly they have no voting rights over the management of the fund.

If a company's dividend payment is subject to corporate income tax at the full rate of 20/80, then no WHT applies regardless of the recipient. However, if the paying company is able to make use of the reduced tax rate of 14%, then dividends paid on account of profit subject to 14% CIT to individual shareholders (either resident or non-resident individuals) must have 7% WHT withheld.

Currently there are nine treaties that provide for a lower dividend WHT than 7% (5% with Bulgaria, Israel and Macedonia; 0% with Mexico, Georgia, Cyprus, Jersey, Island of Man and United Arab Emirates).

Capital gains from the sale of shares in Estonian REFs founded as PLCs are subject to 20% Estonian tax if the shareholder holds more than 10% of the shares in such REF.

In the same manner, liquidation proceeds or proceeds from the redemption of shares are subject to tax to the extent that they exceed the acquisition cost for the underlying share.

Withholding tax

REFs founded as PLCs are in principle obliged to withhold tax. However, dividends taxed at 20% and interest payable to non-residents are not subject to Estonian withholding tax under domestic legislation.

Treaty status

REFs founded as PLCs have access to treaty benefits.

Filing obligations

The fund manager must submit a quarterly report that shows the profits realised in the given period.

Tax period is a calendar month and a tax return for taxable payments made in a calendar month must be submitted by the 10th date of the following month.

Regulation

A REF must, as a general rule, have a fund manager. The fund manager must diversify the REF's assets according to the principles of risk-spreading and diversification.

The regulatory authority exercising supervision over Estonian REFs and fund managers is the Estonian FSA.

Requirements for authorisation

If the fund is established pursuant to the IFA and takes the form of a PLC, it must generally be approved by the FSA before it can be recorded in the Commercial Register. The necessary documents include, but are not limited to, a relevant application, memorandum of association or foundation resolution, articles of association, depositary contract.

Foreign entities operating in Estonia are subject to the same regulatory regime as local entities.

An existing PLC can be transformed into an investment fund if all shareholders are in favour of the respectful amendment to the articles of association. However, existing REFs founded as PLCS cannot be transformed into regular PLCs whose main activity is not investing in real estate or securities.

Investment restrictions

The assets of a REF are comprised of securities, other things, rights and obligations, including real estate acquired for the account of the REF but in the name of the fund manager or the REF. REFs may invest in real estate, as well as in real estate companies and securities related to real estate.

When real estate is acquired for the account of a REF, a notation must be made in the Estonian land register or, as appropriate, in a similar register of a foreign state on restriction of disposal of the assets which includes the name of the fund for the account of which the assets were acquired.

Where a REF is a public fund founded or established in Estonia, the assets of such REF may be invested only in real estate which is located in the states which have an effective and reliable registration system for real estate which proves the right of ownership.

Estonia
Public limited company

(continued)

Minimum level of investment

Estonian legislation does not specify a minimum level of investment in a REF. However, some investment funds have set a minimum level of investment in their fund rules or founding charters, which should be considered prior to investing.

Investor restrictions

It is not permitted to redeem, at the request of a unitholder or shareholder, the units or shares of a fund from the assets of which at least 60% are invested in real estate pursuant to the fund rules or articles of association, or at least 80% in real estate and securities relating to real estate, securities that are not traded on a regulated market or other non-liquid assets, earlier than six months after submission of the respective request of the unitholder or shareholder.

The Investor Compensation Scheme Directive is implemented into Estonian law, and therefore investments are protected up to 20,000 euro per investor in any one investment institution.

Investors' rights and obligations are regulated by the relevant founding charters (articles of association, partnership agreement, fund rules) and to some extent by the relevant provisions of the IFA.

Summary attributes

- The most successful REFs founded as PLCs in Estonia obtain their investments through individual retirement account payments, thus creating a stable income for the investment vehicle.
- REFs founded as PLCs are easily accessible for Estonian and foreign investors.
- No minimum level of investment is set in the current legislation.
- The regime whereby REFs are founded as PLCs is not widespread in Estonia. REFs are generally established as common funds.
- Establishing a fund is time-consuming and costly.
- The profit yielded from investing must be declared to the FSA.
- Unless the fund is open-ended, it has no obligation to redeem any shares at the request of an investor. The shares are generally repossessed when the fund is dissolved.

Estonia
Limited partnership fund

Background

The version of the Estonian Investment Funds Act (IFA) which was in force before 10 January 2017 provided that a real estate fund (REF) would be

a fund which units or shares are redeemed or repurchased at the request of unit- or shareholders not earlier than one month after submission of a

respective claim, and the assets of which shall be invested according to the fund rules or the articles of association (a) at least 60% in real estate or (b) at least 80% in real estate and securities related to real estate.

Legal form

A REF founded as a limited partnership (a "**limited partnership fund**") is a legal person according to the IFA. In a limited partnership fund, at least one of the persons (general partner) is liable for the obligations of the limited partnership fund with all of the general partner's assets and at least one of the persons (limited partner) is liable for the obligations of the limited partnership fund to the extent of the limited partner's contribution (investment).

Units of a limited partnership fund may not be publicly offered.

A limited partnership fund may manage its own assets. If a limited partnership fund does not manage its own assets, it shall enter into a management contract with a regulated fund manager. Entry into and termination of the management contract shall be decided by the managing general partners of the limited partnership fund by at least a two-thirds majority of the votes.

The fund manager may, generally, represent the limited partnership fund in all transactions within the competence granted to the fund manager by the management contract.

Tax status

An Estonian-resident limited partnership fund is not a taxpayer for any Estonian real estate related income.

Tax treatment at entity level

An Estonian-resident limited partnership fund is transparent for tax purposes meaning all income flows through without triggering taxation and instead investors are liable to tax.

Treatment of investors

Investors are subject to tax depending on their status.

Non-resident investors are liable to Estonian corporate income tax at 20% on Estonian real-estate related income according to their share in the limited partnership fund. The following types of Estonian real estate related income triggers taxation:

- capital gains from the sale of Estonian real estate or real rights or claims related to Estonian real estate, capital gains from the sale of shares in an Estonian real estate-rich company, investment fund or asset pool in which the fund holds at least 10% of the shares;
- rental income; and
- interest derived in relation to at least a 10% shareholding in a real estate-rich company, investment fund or asset pool.

Liquidation proceeds or proceeds from the redemption of units are subject to tax to the extent that they exceed the acquisition cost for the underlying unit.

Withholding tax

Limited partnership funds are not obliged to withhold tax.

Treaty status

Limited partnership funds have no access to treaty benefits.

Filing obligations

The fund manager must submit a quarterly report that shows the profits realised in the given period.

Limited partnership fund is obligated to submit the tax return INF 17 about income remitted to its investors and its investors´ tax residency status by 1 February of the following year.

Regulation

A REF must, as a general rule, have a fund manager. The fund manager must diversify the REF's assets according to the principles of risk-spreading and diversification.

The regulatory authority exercising supervision over Estonian REFs and fund managers is the Estonian FSA.

Requirements for authorisation

Only a fund manager which has received an activity licence pursuant to the IFA or which has been issued an activity licence of a UCITS or alternative fund manager in another EEA Member State may act as a limited partnership fund manager or a general partner of a limited partnership fund which manages its own assets or which has registered its operation with the FSA.

A confirmation of the FSA must be appended to the application for entry of a limited partnership fund in the commercial register that an activity license for the management of a fund has been issued to at least one general partner of the limited partnership fund or appointed fund manager of a limited partnership fund or it has registered its activities with the FSA in accordance with the provisions of the IFA.

An operating limited partnership may not be transformed into a limited partnership fund. A limited partnership fund may not be transformed into a company of a different type or into a limited partnership which is not a fund.

Investment restrictions

The assets of a REF are comprised of securities, other things, rights and obligations, including real estate acquired for the account of the REF but in the name of the fund manager or the REF. REFs may invest in real estate, as well as in real estate companies and securities related to real estate.

When real estate is acquired for the account of a REF, a notation must be made in the Estonian land register or, as appropriate, in a similar register of a foreign state on restriction of disposal of the assets which includes the name of the fund for the account of which the assets were acquired.

Minimum level of investment

Estonian legislation does not specify a minimum level of investment in a REF. However, some investment funds have set a minimum level of investment in their fund rules or founding charters, which should be considered prior to investing.

Estonia
Limited partnership fund

(continued)

Investor restrictions

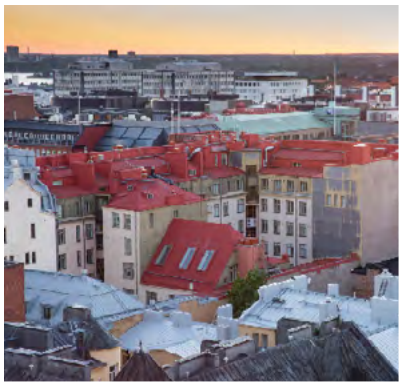
It is not permitted to redeem, at the request of a unitholder or shareholder, the units or shares of a fund from the assets of which at least 60% are invested in real estate pursuant to the fund rules or articles of association, or at least 80% in real estate and securities relating to real estate, securities that are not traded on a regulated market or other non-liquid assets, earlier than six months after submission of the respective request of the unitholder or shareholder.

The Investor Compensation Scheme Directive is implemented into Estonian law, and therefore investments are protected up to 20,000 euro per investor in any one investment institution.

Investors' rights and obligations are regulated by the relevant founding charters (articles of association, partnership agreement, fund rules) and to some extent by the relevant provisions of the IFA.

Summary attributes

- A limited partnership fund is a flexible and tax-transparent investment vehicle for private equity and venture capital investments.
- Limited partnership funds are easily accessible for Estonian and foreign investors.
- No minimum level of investment is set in the current legislation.
- The regime whereby REFs are founded as limited partnership funds is not yet widespread in Estonia. REFs are generally established as common funds.
- Unless the fund is open-ended, it has no obligation to redeem any units at the request of an investor. The units are generally redeemed when the fund is dissolved.



Finland

- **Limited partnership**
- **Special investment fund**

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Finland
Limited partnership

Background
Finnish close-ended real estate funds are typically set up as Finnish limited partnerships (*kommandiittiyhtiö*).

Legal form
The Finnish limited partnership is established by registering with the Finnish Trade Register. A written partnership agreement must be concluded prior to the registration. The limited partnership has a separate legal personality. The limited partnership must have at least one general partner with unlimited liability and at least one limited partner with limited liability up to the amount of commitment. The general partner is usually set up as a Finnish limited liability company (*osakeyhtiö*).

Tax status
A limited partnership is tax transparent for the purposes of Finnish law and is, therefore, not subject to corporate income tax in Finland.

Tax treatment at entity level
The partnership's net income is not subject to tax at the level of the partnership. Instead, its net income (after carry-forward losses are deducted) is allocated to be taxed as its partners' income.

Treatment of investors
The limited partnership's net income for Finnish tax purposes will be determined in accordance with Finnish tax laws, and the income will be allocated to the partners in proportion to their shares in the limited partnership's income. The net income allocated to a particular partner ("**allocated income**") is considered taxable income for Finnish tax purposes for the partner in that tax year regardless of whether funds have been actually distributed. Actual distributions of funds are therefore not subject to additional taxation. Losses are not allocated to the partners, but are instead carried forward at the level of the limited partnership.

Allocated income is fully taxable income for Finnish resident partners. Subject to certain exceptions, if the allocable share of income includes dividends, the partners are entitled to deduct an amount from their pro rata share of the taxable net income, which corresponds to the tax exempt part of the dividend calculated as if the partner had received the dividend directly instead of via the limited partnership. However, the tax treatment depends on the partner's tax status.

As such, an investment in a Finnish limited partnership should create a permanent establishment for the non-resident partner in Finland, which would mean that the partner would essentially be taxed in Finland on its pro rata share of income (the corporate income tax rate is currently 20%). However, subject to certain preconditions, a non-Finnish limited partner should not be taxed in Finland other than on income, which would have been taxed in Finland if received directly (and not via the partnership) by the non-resident limited partner.

Withholding tax
No withholding tax is levied on income distributed to a Finnish resident partner, and it may not be levied on distribution of income to non-resident partners. The partner must file an annual income tax return in Finland, including the allocated income, and pay Finnish tax on the allocated income.

However, provided that certain preconditions are met, the limited partnership must withhold Finnish tax on certain types of income distributed to a non-resident partner (including dividends, among other things) if such income is included in the non-resident partner's allocated income.

Treaty status
The Finnish limited partnership generally has no access to treaty benefits. However, from the Finnish tax perspective, the limited partners can benefit from double tax treaties. The Finnish limited partnership does not have access to the EU Directives.

Filing obligations
A Finnish limited partnership must submit a tax return annually. It must also file periodic and annual withholding tax returns on amounts withheld from its partners, if applicable.

Resident partners are, and non-resident partners may be (if the above mentioned preconditions are not met), required to file a Finnish tax return including the allocated income (see above).

Regulation
Limited partnerships investing in real estates are most likely categorised as Alternative Investment Funds under the Finnish Act on Alternative Investment Fund Managers (162/2014; *laki vaihtoehtorahastojen hoitajista*) ("**the AIFM-Act**"). The Finnish Real Estate Fund Act (1173/1997; *kiinteistörahastolaki*) may also be applicable in certain special cases. In short, any activity of offering fund units in a real estate fund to public shall be covered by the Real Estate Fund Act. Furthermore, limited partnerships are subject to the Partnerships Act (29.4.1988/389; *laki avoimesta yhtiöstä ja kommandiittiyhtiöstä*).

Requirement for authorisation
If a limited partnership is categorised as an AIF, it must be managed by an AIFM. AIFMs require either a registration or an authorisation, depending on the AuM of the AIF. The registration shall be applied from the Finnish Financial Supervisory Authority ("**the Finnish FSA**"). If a limited partnership is managed by an authorised AIFM, assets shall be entrusted with a depositary (säilytysyhteisö).

Investment restrictions
In principle, limited partnerships may invest in any kind of assets, as stipulated in the fund documentation/rules.

Minimum level of investment
None. However, usually limited partnerships are marketed more to professional and high net worth individuals rather than to retail clients and the minimum subscription is usually 100.000 euros. The minimum subscription may be also lower but it is subject to the FIN-FSA's consideration.

Finland
Limited partnership

(continued)

Summary attributes

- Finnish limited partnerships are widespread and well accepted among Finnish investors.
- A recent amendment to the Partnerships Act allows the partners to agree in the partnership agreement that the term of the partnership may exceed ten years, provided that the general partner is not a natural person.
- The vehicle is tax-transparent.
- Contractual freedom on most elements of the limited partnership, including profit share allocation between partners and flexible fund structure.
- Finnish limited partnerships may be unknown to some international investors.
- Unsuitable for certain non-resident investors.
- The limited partnership generally has no access to double tax treaties or EU Directives.

Finland
Special investment fund

Background

The significance of the Special Investment Fund (*erikoissijoitusrahasto*, "**Fund**") regime has increased significantly. There are currently over twenty operational Funds dedicated to real estate investments. One difficulty related thereto is their mandatory nature as open-ended investment vehicles, i.e. they have to be open for subscriptions and redemptions certain times in a year, usually four times for subscriptions and two times for redemptions.

Legal form

As a Fund is not a separate legal entity, it needs a separate management company to act on its behalf. The Fund's management company must be established as a limited liability company or a European company (*eurooppayhtiö*) and it is also subject to the supervision of the Finnish FSA. The Fund's assets shall be entrusted with a depositary (*säilytysyhteisö*).

Tax status

From a Finnish tax perspective, Funds are considered separate tax subjects that are entirely exempt from income tax based on a special provision.

In relation to tax exemption of special investment funds it is required that the fund is open-ended and has at least 30 unitholders.

In the event that the fund is not open-ended or does not have at least 30 investors, the tax exemption is still available for special investment funds provided that (i) the fund distributes to its unit-holders at least 75% of its annual profits excluding the unrealised value appreciation of its investments, (ii) the fund's capital is at least €2m and (iii) the unit-holders are professional investors or comparable high net worth individuals. Special investment funds investing directly or indirectly mainly in real estate always need to meet requirement (i) above.

Tax treatment at entity level

There is no Finnish corporate income tax at Fund level if requirements of legislation are met. However, Funds are liable to pay e.g. real estate tax and transfer tax.

Treatment of investors

Generally, profit distributions received from a Fund and capital gains arising from the redemption of units by a resident unitholder are fully taxable income. The tax treatment of a unitholder depends on its tax status.

As a starting point, non-resident unitholders are subject to Finnish tax on profit distributions but are not subject to tax on capital gains. However, tax treaties often provide protection against Finnish tax on profit distributions to unitholders.

Withholding tax

A management company must withhold a tax prepayment (ennakonpidätys) on profit distributions paid to resident individual unitholders. No tax prepayment is withheld on profit distributions paid to resident corporate unitholders.

As a starting point, the management company must withhold tax at source on profit distributions made to non-resident unitholders. However, tax treaties often provide protection against Finnish tax on profit distributions.

Treaty status

According to the domestic interpretation, the Funds have treaty access.

The Fund is not covered by the relevant EU Directives.

Filing obligations

A Fund's management company is responsible for reporting client holdings to the Finnish tax authorities and for making withholding tax prepayments (*ennakonpidätys*) on distributions, if applicable (management companies must submit e.g. periodic and annual tax returns on the tax withheld).

Regulation

Funds investing in real estate are categorised as alternative investment funds under the AIFM-Act (162/2014; *laki vaihtoehtorahastojen hoitajista*). Furthermore, such Funds are also subject to the Finnish Act on Investment Funds (48/1999; *sijoitusrahastolaki*) and might also partially be subject to the Real Estate Fund Act (1173/1997; *kiinteistörahastolaki*). Management companies of Funds are supervised by the Finnish FSA.

The general requirement is minimum of 30 unitholders. However, when there are less than 30 unitholders in a special investment fund, they shall all be either professional investors or assimilated high net worth individuals.

Requirement for authorisation

Management companies of Funds require an authorisation or a registration, depending on the AuM, from the Finnish FSA. A Fund's rules must be drafted in accordance with the Act on Investment Funds and the AIFM Act, and they shall be submitted to the Finnish FSA for information purposes.

Investment restrictions

The management company must diversify the risks related to a Fund's investment activity if the Fund units are offered to retail investors. Such Funds may deviate from investment restrictions laid out in the Act on Investment Funds, but its rules must contain information regarding to what extent it derogates from the restrictions. A Fund might also, to a certain extent, be obliged to follow the investment restrictions laid out in the Real Estate Fund Act, according to which it must e.g. invest in real estate situated in the EEA and invest in certain financial assets.

In principle, the debt financing is limited to a maximum of 50% of the value of the Fund, but the Fund may take additional debt in certain special cases.

Minimum level of investment

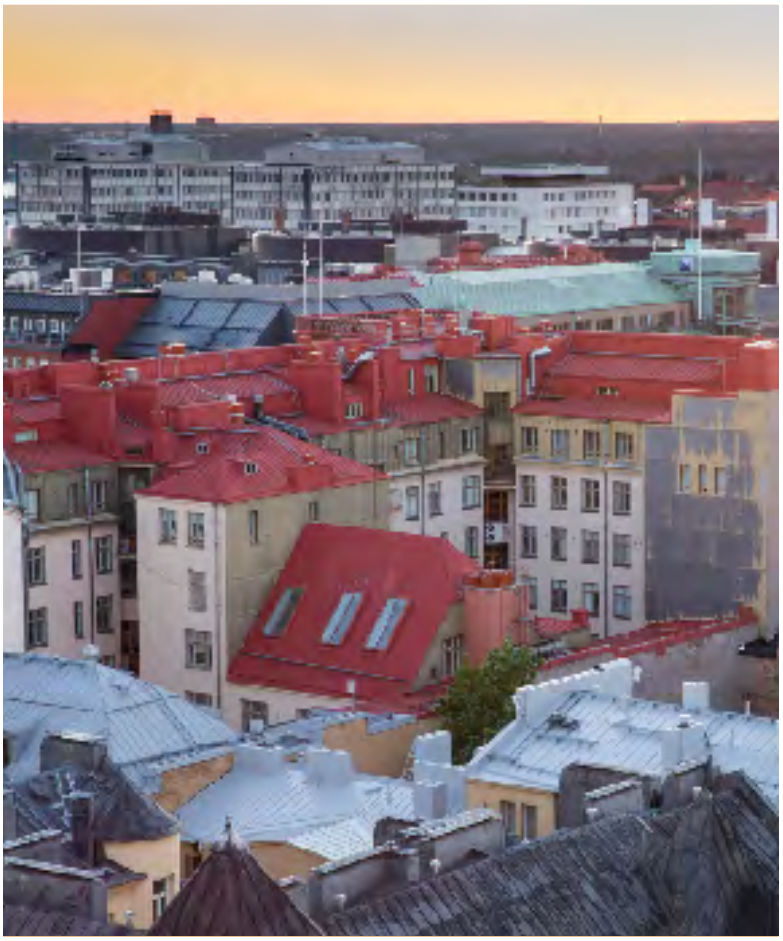
In general, the assets of an investment fund (minimum capital) must not be less than two million euros and an investment fund must have at least 30 unitholders. However, a Fund investing mainly in real estate and real-estate securities needs only ten unitholders if, in accordance with its rules, each unitholder subscribes to units in the amount of at least one million euros. Other special investment funds shall in general have at least ten unitholders. However, if according to the Fund's rules each unitholder shall subscribe to units in the amount of at least 500 000 euros and the assets of such fund shall be at least two million euros, it is possible to have less than ten unitholders. It is also possible to have only one investor in a special investment fund, if such investor has made an investment of minimum two million euros.

Finland
Special investment fund

(continued)

Summary attributes

- The Fund is exempt from income tax.
- Suitable also for many non-resident investors.
- Mandatory nature as open-ended investment vehicle. The Fund has certain liquidity requirements (ESMA's Guidelines on liquidity stress testing on UCITS and AIFs). Due to the open-ended nature, valuation of the Fund has to be performed always when the Fund is open.
- 75% of the profits of a given financial year (less unrealised capital gains and losses) must be distributed.
- Less room for contractual freedom in comparison to the Finnish limited partnerships.



France

- **Fonds de placement immobilier (FPI)**
- **Société de placement à prépondérance immobilière (SPPICAV)**

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France
Fonds de placement immobilier (FPI)

Background

The *fonds de placement immobilier* (FPI) is one of the two categories of organisme de placement collectif immobilier (OPCI). Its main purpose is to acquire or construct properties (directly or through entities that are not subject to corporate tax) for rent.

An FPI is a regulated investment vehicle and its implementation requires the prior approval of the French Financial Markets Regulator.

Legal form

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

An FPI is managed by a French or (under certain conditions) EU regulated management company.

Tax status

There is no French corporate income tax at 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 FPI level.

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 (rental income, capital gains upon disposal of real estate, interest, dividends) and source (French or non-French) for the purpose of assessing the income tax payable by unitholders.

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 French and 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 17.2% social surcharges (out of which 6.8% is deductible from the personal income tax basis) when they receive distributions of French source rental income from FPIs.

Capital gains (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 19% withholding tax and 17.2% social surcharges when they are distributed to unitholders who are French and non-French tax-resident individuals. 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 17.2% social surcharges after 30 years of holding. The same tax regime applies for the disposal of units in FPIs by individuals.

Non-French corporate unitholders are subject to French corporate income tax at a rate of 26.5% in 2021 (or 27.37% if the 3.3% social surcharge applies reduced to 25% in 2022 or 25.82% if the 3.3% social surcharge applies) 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

FPIs have no access to double tax treaties or EU Directive benefits.

Regulation

An FPI is a regulated entity.

Requirement for authorisation

Both the FPI and the management company require the prior approval of the French Financial Markets Regulator and are under its supervision.

Investment restrictions

At least 60% of the assets must consist of real estate assets. Properties may be held indirectly, 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 5 or 10% liquid asset ratio may apply.

Minimum level of investment

There is no minimum capital requirement when the FPI is set up. A minimum EUR 500,000 net equity requirement must be fulfilled three years after the FPI is set up.

Summary attributes

- No taxation at FPI level.
- Possible automatic French 3% tax exemption (for public funds only).
- No access to double tax treaties and subsequently no French withholding tax mitigation.
- Fund vehicle with little flexibility.
- Need for a French or EU regulated management company.
- To date, only three FPIs have been set up.

France
Société de placement à prépondérance immobilière (SPPICAV)

Background

The *société de placement à prépondérance immobilière* (SPPICAV) is the other category of *organisme de placement collectif immobilier* (OPCI). Its main purpose is to acquire or construct properties (directly or indirectly, i.e. through intermediary companies) for rent.

A SPPICAV is a regulated investment vehicle and its implementation requires the prior approval of the French Financial Markets Regulator.

Legal form

A SPPICAV is a corporate vehicle that has 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 benefitting from the SIIC corporate income tax exemption regime must be distributed.

The SPPICAV is managed by a French or (under certain conditions) EU regulated management company.

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 is fully exempt from paying this tax provided that it complies, among other things, with its distribution requirements. Technically speaking, an EU regulated vehicle (with legal personality) that is governed by regulatory rules (including dividend distribution requirements) similar to those applicable to SPPICAVs should be in a position to benefit from the French corporate income tax exemption with regard to the French properties it holds, either directly or through French pass-through entities. However, this has never been tested. In any case, the position should be secured by an advance tax ruling obtained from the French tax authority.

Treatment of investors

For French resident individual investors, dividends received from SPPICAVs are, in principle, subject to a 30% flat tax (12.8% of individual income tax and 17.2% of social contributions). Nevertheless, the investor could elect to subject the dividends 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 17.2% social surcharges (out of which 6.8% is deductible from the personal income tax basis). In that case, the 40% tax allowance on dividends cannot apply.

Capital gains realised by French resident individual investors on the disposal of SPPICAV shares are subject to the 30% flat tax (see above). Nevertheless, the investor could elect to the progressive individual income tax. In that case, tax allowance (from 50% to 65%) for qualifying holding period can only apply for shares acquired prior to 1 January 2018.

Dividends received from SPPICAVs by French corporate resident investors are, in principle, subject to corporate income tax at the rate 26.5% in 2021 (or 27.37% if the 3.3% social surcharge applies reduced to 25% in 2022 or 25.82% if the 3.3% social surcharge applies).Capital gains realised by French corporate resident investors on the disposal of SPPICAV shares are subject to corporate income tax at the same rates (see above).

Withholding tax

Distributions of dividends by a SPPICAV are subject to withholding tax (which may be reduced according to the DTT) at a rate of:

a. 12,8% if the shareholder is a non-French tax resident individual;

b. 15% if the shareholder is a non-profit organisation established in an EU Member State, Norway or Iceland or if the shareholder is a regulated UCITS (fulfilling certain conditions) established in the EU or in a country that has signed a double tax treaty with France containing an administrative clause;

c. 26.5% (reduced to 25% in 2022) if paid to a company; or

d. 75% if the dividend is paid in a non-tax-cooperative country.

Capital gains realised by non-French resident individual on the disposal of SPPICAV shares are subject to a 19% withholding tax and 17.2% social contributions. By application of the tax allowance applicable after the fifth year of holding, the capital gains realised are fully exempt from the 19% withholding tax after 22 years of holding and from the 17.2% social surcharges after 30 years of holding.

Capital gains recognised on the disposal of shares in a SPPICAV by a non-French corporate tax resident are subject in 2021 to the 26.5% (or 27.37% if the 3.3% social surcharge applies reduced to 25% in 2022 or 25.82% if the 3.3% social surcharge applies) French withholding tax only if the seller owns, directly or indirectly, 10% or more of the SPPICAV's shares. It is debatable whether capital gains recognised on the disposal of shares in a SPPICAV should be subject to corporate income tax at the standard rates mentioned above if the non-French corporate tax resident owns, directly or indirectly, less than 10% of the SPPICAV's shares.

Treaty status

The application of double tax treaty benefits must be reviewed on a case-by-case basis. Recent double tax treaties concluded by France (for instance, with the US, the UK, Germany and Luxembourg) provide specific rates of withholding tax on dividends paid by SPPICAVs. These recent double tax treaties provide for a 15% withholding tax on dividends if the foreign shareholder holds, directly or indirectly, less than 10% of the SPPICAV's shares, or a 26.5% (reduced to 25% in 2022) withholding tax if this ownership threshold is exceeded. 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.

Requirements for authorisation

Both the SPPICAV and the management company require prior approval from the French Financial Markets Regulator and must be supervised by it.

Investment restrictions

At least 60% of the assets must consist of real estate assets. Properties may be held, either directly or indirectly, via intermediaries. Depending on the nature of the SPPICAV (public or limited to qualified investors), prudential investment ratios and a ratio of at least 5/10% of liquid assets may apply.

France
Société de placement à prépondérance immobilière (SPPICAV)

(continued)

Minimum level of investment

There is no minimum capital requirement when the SPPICAV is set up. A minimum EUR 500,000 net equity requirement must be fulfilled three years after the SPPICAV is set up.

Summary attributes

- Dividend nature of income distributed by SPPICAVs.
- No taxation at SPPICAV level.
- Possible automatic French 3% tax exemption (for public funds only).
- Limited access to double tax treaties.
- Need for a regulated French or EU 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)**

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Germany
Immobilien-Sondervermögen (open-end retail fund)

Background

Due to the implementation of the EU Directive on Alternative Investment Fund Managers (AIFM Directive), the German Capital Investment Act, the *Kapitalanlagegesetzbuch* (KAGB), replaced the German Investment Act. It is applicable to both UCITS and alternative investment funds (AIFs). The implementation of the AIFM Directive led to the German Investment Tax Act (*Investmentsteuergesetz* – InvStG) being amended. The Investment Tax Act has been fully revised and the Investment Tax Act (InvStG) applies since 1 January 2018. In principle, vehicles that qualify either as AIFs or as UCITS are within the scope of the German Investment Tax Act.

Legal form

German open-end funds investing in real estate may only be set up as so-called *Sondervermögen*. This contractual form of fund has no legal personality and must be managed by a licenced management company (*Kapitalverwaltungsgesellschaft*, or KVG), which is a stock corporation (AG), a limited liability company (GmbH) or a 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

When categorised as an investment fund (see more detailed explanation below), the previous semi-transparent taxation system will not apply, i.e. the fund and the investors will be taxed separately.

In the first instance, every collective investment undertaking within the meaning of the KAGB, is generally subject to the InvStG. Every collective investment undertaking, especially open-ended retail funds, irrespective of whether it is domiciled in Germany, will be governed by the principle of non-transparent taxation (i.e. as Chapter-2-fund) if it does not qualify as a specialised investment fund.

The opaque taxation system is inspired by the predominant German taxation system of corporations. A lump-sum taxation system will generally apply to investors (under certain conditions). Without distinction, domestic and foreign investment funds will be subject to German corporate income tax on the fund's German sourced income.

Tax treatment at entity level

The investment fund may be exempt from German corporate income tax to the extent certain investors, e.g. churches or pension schemes that are tax-exempt themselves, participate in the investment fund.

A trade tax exemption may be achieved if income from entrepreneurial management would not exceed 5% of the fund's gross income (*unwesentliche aktive unternehmerische Bewirtschaftung*).

Collective investment undertaking vehicles will only be subject to corporate income tax at a rate of currently 15%, plus a solidarity surcharge (if applicable) of their income derived from

- domestic dividends;
- domestic rental income; and
- other domestic income.

As a result, non-domestic income (such as non-German dividends) are not taxed at investment-fund level.

Trade tax at a rate of currently 7% to 17.5% (general range in most municipalities), depending on the municipality, may apply under certain circumstances (e.g. entrepreneurial management of assets) but only on affected assets and not for the entire fund.

Distributions and gains involving the return, sale or withdrawal of a fund share are subject to German withholding tax or, in the event of operating revenue, the tax rate applicable for the investor. Distributions are subject to the regular withholding tax regime. In case of non-German investors generally no German withholding tax apply on the distributions (see below).

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- other domestic income.

As a result, non-domestic income (such as non-German dividends) are not taxed at investment-fund level.

Trade tax at a rate of currently 7% to 17% (general range in most municipalities), depending on the municipality, may apply under certain circumstances (e.g. entrepreneurial management of assets).

Distributions and gains involving the return, sale or withdrawal of a fund share are subject to German withholding tax or, in the event of operating revenue, the tax rate applicable for the investor. Distributions are subject to the regular withholding tax regime. In case of non-German investors generally no German withholding tax apply on the distributions (see below).

Treatment of investors

The investors will be subject to tax depending on their individual tax status. They may receive fund distributions, lump-sum tax amounts or gains from de-investing in the fund (e.g. via the sale of fund shares or redemption).

German individual investors holding the units as private assets are subject

Germany
Immobilien-Sondervermögen (open-end retail fund)

(continued)

to so-called flat tax, i.e. 25% (plus a solidarity surcharge and church tax, if applicable), whilst individual investors holding the units as business assets are subject to income tax at their individual tax rate. Corporate investors are subject to corporate income tax and trade tax.

Partial exemption regulations apply for certain income at investor level. If the investment fund invests at least 51% of its value in qualified equity participations, a 30% tax exemption may be available if the fund share is part of the investor's non-business assets. A 60% tax exemption may be available if the fund share is part of the investor's business assets. Corporate investors may be eligible to an 80% tax exemption. If the investment fund invests at least 51% of its value in real estate or real estate companies, the partial exemption amounts to 60%, irrespective of the type of investor. If the investment fund invests at least 51% of its value in non-German real estate or non-German real estate companies, the partial exemption will increase to 80%.

Withholding tax

If the German open-end fund qualifies as an investment fund (Chapter-2-fund) pursuant to the Investment Tax Act, withholding tax is in principle levied on distributions (in case of German resident investors). The standard German withholding tax for German investors amounts to 26.375% (including a 5.5% solidarity surcharge). The withholding tax rate may be reduced due to national rules for certain investor types or in case of non-German investors.

Treaty status

From both an OECD Model and German tax perspective, treaty access should be granted to the fund (generally, a German Sondervermögen can request a tax residency certificate from the German tax authorities. From the point of view of the treaty partner, there may be access 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

If the German open-end fund qualifies as an investment fund (Chapter-2-fund) according to the InvStG, the fund needs to file a corporate income tax return (if there is German sourced income, which is subject to German CIT at fund level. In addition, the fund needs to file trade tax returns (if the trade tax exemption will not apply).

Regulation

The fund is restricted to investments in eligible assets, e.g. real estate properties (rental, commercial or mixed use), building land, property rights over real estate, shareholdings in real estate companies, cash, securities and REIT interests. Quotas apply. Debt financing is generally limited to 30% of the fair market value of the properties held by the fund. In case the fund would like to fulfil the requirements for a partial tax exemption (relevant at investor's level) certain investment restrictions (see above) need to fulfilled. Any investment fund (Chapter-2-fund) has no restrictions regarding eligible assets, leverage or risk diversification (from a tax point of view).

Minimum level of investment

The fund must invest consistent with the principle of risk spreading, as detailed in legislation (KAGB).

Summary attributes

- The *Immobilien-Sondervermögen* is a widespread and highly trusted investment vehicle in Germany.
- They offer regular (at least once in a 12-month period) redemptions at NAV.
- The fund is tax-exempt regarding non-German sourced income (in addition regarding German sourced income certain investor groups can benefit from special tax-exemption rules applicable at fund level).
- There are no tax filing requirements for non-resident investors in Germany regarding ongoing fund distributions.
- *Immobilien-Sondervermögen* may be unknown to some international investors.
- The flexibility for German and international investments and the range of eligible assets are limited (from a German regulatory point of view).
- Moreover, there are gearing restrictions for real estate companies held by the fund (from a German regulatory point of view).
- Access to double tax treaties in some jurisdictions from a local view is unclear(2). The fund has no access to EU Directives.
- Redemption requests must satisfy a 24-month minimum holding period as well as a 12-month 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 German Capital Investment Act, the *Kapitalanlagegesetzbuch* (KAGB), replaced the former German Investment Act. It applies to UCITS and alternative investment funds (AIFs). The implementation of the AIFM Directive led to the German Investment Tax Act (*Investmentsteuergesetz* – InvStG) needing to be amended. A fully revised InvStG is applicable since1 January 2018, see separate section below). Vehicles that qualify either as AIFs or as UCITS are now in principle within the scope of the German Investment Tax Act.

Legal form

German open-end funds investing in real estate may only be set up as so-called Sondervermögen. This contractual form of fund has no legal personality and must be managed by a German management company (*Kapitalverwaltungsgesellschaft*, or KVG), which is a stock corporation (AG), a limited liability company (GmbH) or a 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

A German open-end fund is treated as a corporate entity for German tax purposes and is in principle subject to German corporate income tax and trade tax. If the German open-end fund fulfils the requirements to qualify as a so-called special investment fund (Chapter-3-fund) pursuant to the InvStG, it is exempt from German corporate income tax with respect to non-German income and can apply for so called "transparency option" regarding certain income, which will shift the taxation of, e.g. German sourced property income, at investor level. Additionally, the fund is exempt from trade tax.

Please note open-end fund, even if structured as special fund form a regulatory point, is treated as Chapter-2-fund if it does not fulfil all requirements of special investment funds according the InvStG. So regulatory and tax treatment need to be carefully distinguished. In the following the taxation for special investment funds (Chapter-3-funds) will be explained (for taxation of Chapter-2-fund see our above comments).

In order to qualify as a special investment fund (Chapter-3-fund), a collective investment undertaking must fulfil the following requirements (amongst others):

- it must be a regulated entity, e.g. by an AIFM;
- the investor must have the right to redeem its share at least once a year;
- only certain investments are eligible;
- the number of investors is limited to 100, whereby every partner in a partnership that is invested in a fund counts as one investor; and
- investors are generally only professional or semi-professional investors (i.e. no individuals).

As a general concept, the special investment fund (Chapter-3-fund) is taxed as an investment fund (insofar as no special tax rules apply). Due to the special rules, the specialised investment fund can (among other things) opt for the transparent taxation system for German dividends that are treated as being directly received by the investors under the transparency option (i.e. no taxation at fund level). Either German real estate income must be taxed with German CIT at specialised-fund level or withholding tax must to be levied on the German real estate income (among other things, for certain German investors such withholding tax can be reduced to 0%/non-German investors will be subject to non-resident tax filing regarding German rental income).

The specialised investment fund will not be subject to trade tax (no harmful entrepreneurial management required; 5% threshold regarding harmful income to be considered).

The specialised investment fund has to avoid performing entrepreneurial activities as it would risk its tax status. It is irrelevant if the actively managed assets are German or foreign assets. The fund hence has to make sure to reduce its activities to passive real estate management (holding, development of assets only for long term holding and eventually sale of such assets while the holding aspect is prevailing).

The specialised investment fund must prepare a sort of partnership tax return, which will allow income to be allocated to its investors for tax purposes. This in turn will allow certain income (such as interest or rental income) to be allocated to the investors regardless of whether it is distributed (i.e. so-called deemed distributed income). Special rules apply for calculating the income for this tax return. As a result, taxation will take place at investor level (taking transparency options and withholding tax rules into consideration). Depending on whether withholding tax was levied at source (for domestic income), withholding tax must be levied at fund level.

Tax treatment at entity level

There is no income tax at fund level on dividends received, capital gains realised and German property income received, provided that the fund qualifies as an special investment fund within the meaning of the InvStG-2018 and applies for transparency option (regarding the German dividends and German property income). Non-German income is not subject to taxation at the level of the special investment fund.

Treatment of investors

If the German open-end fund qualifies as a special investment fund, investors are deemed to receive the fund's income pro rata to their fund shares. The income is subject to taxation at investor level in accordance with the investors' personal tax status. Income determination at fund level must comply with German tax provisions.

Withholding tax

According to InvStG the standard withholding tax on distributions and retained fund income amounts to 15%. Certain income (e.g. foreign property income subject to exemption method according to a double tax treaty) is exempt from German withholding tax. The 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 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

If the German open-end fund qualifies as special investment fund under the InvStG, the fund needs to file a sort of partnership tax return (allocating also retained income to the fund's investors). In addition the fund needs

Germany
Immobilien-Sondervermögen (open-end retail fund)

(continued)

to publish certain tax figures (e.g. treaty income profits). Non-resident investors must file tax returns for German-sourced real estate income from the fund (a potential withholding tax can be credited in course of this tax filing).

Regulation

The fund is subject to BaFin regulatory supervision.

Requirements for authorisation

The KVG must have prior written regulatory approval to manage the fund. However, no approval is required to set up the fund itself. The investment conditions and any material changes thereto must be submitted to BaFin.

Investment restrictions

With the investors' consent, the specialised fund can according to German regulatory rules (KAGB) deviate from most restrictions as long as certain requirements regarding eligible assets and investment quotas are observed, including debt financing not exceeding 60% of the fair market value of the properties held by the fund. Further restrictions apply for German open-end funds qualifying as special investment funds pursuant to the Investment Tax Act.

Minimum level of investment

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

Summary attributes

- The *Spezial-Sondervermögen* is well known to German institutional investors.
- The fund could opt for transparency option (for certain German income).
- There are no tax filing requirements for non-resident investors in Germany, apart from tax returns for German-sourced real estate income.
- Despite the option to deviate from investment restrictions, regulatory constraints must be observed.
- Investors must file tax returns for German-sourced real estate income.
- Moreover, there are gearing restrictions for real estate companies held by the fund.
- Access to double tax treaties in some jurisdictions is unclear. 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 limited liability partnerships (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). The *Investment-KG*, as a partnership, falls not within the scope of the InvStG .

Legal form
The KAGB provides for closed-end funds (among others) to be set up as the commonly used *geschlossene Investmentkommanditgesellschaften* (limited partnerships – *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.

Tax status
The tax treatment for German income tax purposes depends on the legal form of the investment vehicle and the general tax rules. The Investment-KG as a partnership is transparent for German income tax purposes,

i.e. income must be determined separately and uniformly at partnership level and is allocated to the partners, subject to tax depending on their individual tax status. German trade tax at a rate of 7% to 17.15% (depending on the municipality) may be due at fund-vehicle level, especially where there are commercial activities, where there is evidence of a business imprint, or where the fund vehicle participates in other business partnerships.

Tax treatment at entity level
Dividends received, capital gains realised and other income received is not taxed at KG level. For trade tax purposes, an exemption for participations of at least 10% in foreign 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 (e.g. if the KG qualifies as a non-business partnership).

Treatment of investors
For tax purposes, investors are generally 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 investor's individual circumstances. 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 perspective – its partners and the investors can benefit from double tax treaties as the beneficial owners of the KG's income. The KG itself has no access to the EU Directives developed for corporations.

Filing obligations
The *Investment-KG* must 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 the German closed-end fund, falls within the scope of regulation pursuant to the KAGB. The purpose of the *Investment-KG* must be specified in the partnership agreement and must be limited to collective investment and management of capital in accordance with predefined investment conditions for the benefit of the investors.

Requirements for authorisation
The fund's investment conditions, and any changes thereto are subject to BaFin's prior approval, which must usually be given within four weeks provided that the documents meet the legal requirements.

Investment restrictions
A retail *Investment-KG* may invest in property (i.e. real estate, including farmland and forests/woodland), financial assets and participations in other funds and companies, regardless of whether they are traded on a stock exchange. Debt financing is limited to 150% of the committed capital and only if provided in the investment conditions.

Minimum level of investment
The fund must invest according to the principle of risk spreading, as detailed in legislation.

Summary attributes
- 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 is no withholding tax on income distributions.
- Under certain conditions, long-term investments may be made focusing solely on one or a few assets.
- German closed-end funds may be unknown to some international investors.
- German trade tax may apply at KG level. Furthermore, investors may be subject to tax in the target countries (tax-transparent entity).
- The KG generally has no access 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 limited liability partnerships (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 *Investmentaktiengesellschaften* (investment stock corporations with fixed capital – Investment AG), as well as the more commonly used *geschlossene Investmentkommanditgesellschaften* (limited partnerships – *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. Liability for the fund's obligations is therefore 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 depends on the legal form of the investment vehicle and the general tax rules. The *Spezial-Investment-KG* as a partnership is transparent for German income tax purposes, i.e. income must be determined separately and uniformly at partnership level and is allocated to the partners, subject to tax depending on their individual tax status. German trade tax may be due at fund-vehicle level, especially where there are commercial activities, where there is evidence that there is a business imprint, or where the fund vehicle participates in other business partnerships.

Tax treatment at entity level
Dividends received, capital gains realised and other income received is not taxed at KG level. For trade tax purposes, an exemption for participations of at least 10% in foreign 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 (e.g. if the KG qualifies as a non-business partnership).

Treatment of investors
For tax purposes, investors are generally 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 investor's individual circumstances. 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 perspective – its partners and the investors can benefit from double tax treaties as the beneficial owners of the KG's income. The KG has no access to the EU Directives developed for corporations.

Filing obligations
The KG must 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* and the managers of this closed-end fund fall within the scope of regulation pursuant to the KAGB. The purpose of the *Spezial-Investment-KG* must be specified in the partnership agreement and must be limited to collective investment and management of capital in accordance with predefined investment conditions for the benefit of the investors.

Requirements for authorisation
Prior to placement, the fund's investment conditions and any material changes thereto must be submitted to BaFin.

Investment restrictions
A *Spezial-Investment-KG* may invest in property (i.e. real estate, including farmland and forests/woodland), financial assets and participations in other funds and companies, regardless of whether they are traded on

a stock exchange. In general, debt financing is not restricted; however, upon request of BaFin, the level of leverage must be demonstrated to be 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.

Summary attributes
- 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 is no withholding tax on income distributions.
- Long-term investments may be made focusing only on one or a few assets.
- A *Spezial-Investment-KG* provides for very flexible fund structures, including single-asset funds.
- German closed-end funds may be unknown to some international investors.
- German trade tax may apply at KG level. Furthermore, investors may be subject to tax in the target countries (tax-transparent entity).
- The KG generally has no access to double tax treaties and EU Directives.

Ireland

- **Common contractual fund (CCF)**
- **Variable capital investment company (VCC)**
- **Unit trust**
- **Investment limited partnership**
- **ICAV**

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Ireland
Common contractual fund (CCF)

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-ended or closed-ended. A management company must be appointed to carry out the fund's day-to-day activities. CCFs are a useful structure for non-taxable investors who wish to pool their investments in a tax-efficient manner. The investors participate as co-owners of the assets under a contractual deed. CCFs are only available to institutional investors.

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 are exempt from income tax at fund level (tax-transparent).

Treatment of investors
The fund's income is directly allocated to the investors so that the tax (if any) is borne by the ultimate investor (who may benefit from double taxation treaties). 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 capital gains realised on fund investments, provided that the investors are non- Irish-resident or payments are made to exempt Irish investors.

Other taxes
Stamp duty is not chargeable on the issue, transfer or switching of fund units. There is no capital duty on the issue of units by the fund.

Treaty status
The fund itself has no access to treaty benefits, but an investor should be able to access the relevant tax treaties between the investor's country of residence and the countries in which the fund's investments are located. A ruling from the relevant tax authority or an opinion from an appropriate tax adviser may be required in certain cases. More recently enacted treaties contain a protocol stating that the CCF will not be regarded as a resident of Ireland and will be treated as tax-transparent for the purposes of granting tax treaty benefits (e.g. Switzerland and Germany). This is in addition to the long-standing competent authority agreement that currently prevails with the United States.

Filing obligations
The fund must submit an annual tax return in respect of the calendar year by 28 February of the following year, detailing its total profits, together with details on its investors.

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 out 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 alternative investment funds (AIFs) 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 and submit an "Application for Authorisation of an Alternative Investment Fund Manager" to the CBI, containing 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 of EUR 100,000 per investor.

Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied for a QIAIF. A 24-hour authorisation process applies for QIAIFs.

Minimum level of investment
See above.

Summary attributes
- The set-up, taking into account the appointment of service providers and the approval process for the fund vehicle, may take from six to eight weeks.
- Tax-transparent vehicle through which investors can access preferential treaty rates.
- 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 the local GAAP. The CCFcan also be listed on the Irish Stock Exchange.
- 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 (VCC)

Background

An investment company is a corporate investment fund subject to Irish company law, the most common type of which is the variable capital investment company (VCC), similar to the SICAV. Prior to the introduction of the ICAV structure (for further information see ICAV section) it was the most popular form of fund vehicle established in Ireland usually established as a public limited company. It can operate with or without a management company (i.e. being self-managed). The main aim of setting up a fund as an investment company is to collectively invest its funds and property with the aim of spreading investment risk. A company is managed for the benefit of its shareholders.

Legal form

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

Tax status

The VCC is an Irish tax-exempt vehicle which means that it is not chargeable to Irish tax on income and gains.

Treatment of investors

The fund's income is normally paid to investors by means of dividends, or alternatively paid out on the realisation of the investment by the investor upon redemption. No Irish taxation should apply in respect of non-resident investors or exempt Irish investors where the fund derives less than 25% of its value from real estate located in Ireland. The investor may be subject to tax in its resident jurisdiction.

Withholding tax

For Irish-resident taxable investors, withholding tax is levied on both distributions – at a rate of 41% for individuals and 25% for companies

– and gains from encashment, redemption or transfer of shares, also at 41% for individuals and 25% for companies. Where a VCC derives less than 25% of its value from real estate located in Ireland, 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, subject to meeting certain conditions.

Similar exemptions apply to certain categories of Irish investors, including pension funds and charities. The Finance Bill 2016 introduced a new regime to provide for the taxation of Irish real estate funds ("IREFs").

IREFs are defined as investment undertakings (excluding UCITS) where 25% or more of their value is derived directly or indirectly from Irish real estate assets. Where a VCC is categorised as an IREF, it must levy 20% withholding tax on distributions of income, and in certain instances on gains on redemption, that arise from specified IREF assets.

IREF withholding tax does not apply to certain categories of investors, such as Irish pension schemes, Irish regulated funds and life assurance funds and their counterparts in the European Economic Area ("EEA") that are subject to equivalent supervision and regulation. S110 companies, credit unions and charities are also exempt.

Other taxes

Finance Act 2019 introduced anti-avoidance provisions which may result in deemed income, subject to income tax at a rate of 20%, arising to an IREF. A deemed income tax charge will arise where an IREF is deemed to have an 'excessive' level of shareholder debt and/or interest within the context of the two legislative tests, being the excess debt and property financing cost ratio tests.

Broadly, these tests involve a comparison of the IREF's shareholder debt and interest to the cost of its assets, and a comparison of its shareholder interest to the income generated by the IREF respectively.

Finance Act 2019 also introduced a provision such that any expenses incurred by an IREF, which are not wholly and exclusively incurred for the purposes of the IREF business, will be treated as income and the IREF will be subject to tax at the rate of 20%.

All other Irish funds, falling outside of this new categorisation, will not be impacted by the legislative changes.

Shares in the VCC are not liable to stamp duty or capital duty on the transfer of shares in the fund (except for certain transactions as noted below).

Subsequent to the implementation of the Finance Bill 2017, stamp duty at a rate of 7.5% will be imposed on certain conveyances or transfers of shares in VCCs that derive their value or the greater part of their value (>50%), directly or indirectly from Irish non-residential land and buildings ('immovable property'). The 7.5% stamp duty charge on shares will only apply where the transfer results in the person/s having direct/indirect control over the immovable property and the immovable property was acquired/developed by the VCC for the sole or main objective of realising a gain from its disposal or the immovable property was held as trading stock by the VCC. The new rules will also apply to contracts for sale of any such shares which otherwise may not be stampable.

A financial resolution was introduced from 20 May 2021 which levies a 10% stamp duty charge on the bulk purchase of houses and duplexes ("relevant residential units"). A residential unit will be considered a "relevant residential unit" where it's part of a bulk purchase of 10 or more residential units, or where the buyer has bought at least 9 other residential units in the 12 months preceding the current purchase. Apartment blocks are excluded from this definition. The 10% rate applies to shares / units in companies or IREFs that derive their value from relevant residential units. Where there is a transfer of shares which derive their value from residential units, and the transfer results in a change of the control over the underlying residential units, then the proportion of the value of the shares that is derived from the residential units will be liable to stamp duty at the rates applicable to residential property.

Ireland
Variable capital investment company (VCC)

(continued)

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

A VCC is not obliged to make regular distributions; however, it must submit two investment undertaking tax returns twice a year, due on 30 January and 30 July. A VCC categorised as an IREF must pay IREF withholding tax and submit an IREF withholding tax return to the Collector-General for each accounting period. For accounting periods ending on or before 30 June, the payment and return is due by 30 January of the following year. For accounting periods ending on or before 31 December, the payment and return is due by 30 July of the following year. A VCC categorised as an IREF which falls within the anti-avoidance provisions introduced in Finance Act 2019 must pay IREF income tax and submit an IREF income tax return to the Collector-General by 31 October for each accounting period. A preliminary income tax payment is also required by 31 October in respect of each period.

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 fund's board of directors 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 alternative investment funds (AIFs) 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 and submit an "Application for Authorisation of an Alternative Investment Fund Manager" to the CBI, containing 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

If the VCC takes the form of a qualifying investor alternative investment fund (QIAIF) it is dedicated to institutional investors and has a minimum initial subscription requirement of EUR 100,000 per investor. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied for a QIAIF. A 24-hour authorisation process applies for QIAIFs.

Minimum level of investment

See above.

Summary attributes

- 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 VCC is a tax-efficient fund structure that may be able to access treaty benefits in certain cases.
- 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 the local GAAP. The VCC can also be listed on the Irish Stock Exchange.
- Restricted treaty access may apply. Positive steps have been made by the OECD to remove the uncertainty regarding treaty access for widely held collective investment vehicles (CIVs) which may include a VCC depending on number of investors. 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. Furthermore, the OECD's Multilateral Instrument ("MLI") and the 2017 update to the OECD Model Tax Convention include examples of ways in which the Principal Purposes Test ("PPT") may affect CIVS and non-CIVs.

Ireland
Unit trust

Background

The unit trust is an investment fund formed under trust law. It is a contractual fund structure between the management company and a trustee that is appointed under a trust deed. A management company must be appointed to carry out the fund's day-to-day activities. As the unit trust is not a separate legal entity, the trustee acts as the owner of the assets on the investors' behalf.

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 an Irish tax-exempt vehicle. A unit trust is not chargeable to tax on income and gains in Ireland.

Treatment of investors

The fund's income is normally paid to investors by means of income distribution, or alternatively paid out on the realisation of the investment by the investor upon redemption. No Irish taxation should apply in respect of non-resident investors or exempt Irish investors where the fund derives less than 25% of its value from real estate located in Ireland. The investor may be subject to tax in its resident jurisdiction.

Withholding tax

For Irish-resident investors, withholding tax is levied on both distributions – at a rate of 41% for individuals and 25% for companies – and gains from encashment, redemption or transfer of shares, also at 41% for individuals and 25% for companies.

Where a unit trust derives less than 25% of its value from real estate located in Ireland, 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. The Finance Bill 2016 introduced a new regime to provide for the taxation of Irish real estate funds ("IREFs"). IREFs are defined as investment undertakings (excluding UCITS) where 25% or more of their value is derived directly or indirectly from Irish real estate assets. Where a fund is categorised as an IREF, its must levy 20% withholding tax on distributions of income, and in certain instances on gains on redemption.

IREF withholding tax does not apply to certain categories of investors, such as Irish pension schemes, Irish regulated funds and life assurance funds and their EEA counterparts where subject to equivalent supervision and regulation. S110 companies, credit unions and charities are also exempt.

Other taxes

Finance Act 2019 introduced anti-avoidance provisions which may result in deemed income, subject to income tax at a rate of 20%, arising to an IREF. A deemed income tax charge will arise where an IREF is deemed to have an 'excessive' level of shareholder debt and/or interest within the context of the two legislative tests, being the excess debt and property financing cost ratio tests.

Broadly, these tests involve a comparison of the IREF's shareholder debt and interest to the cost of its assets, and a comparison of its shareholder interest to the income generated by the IREF respectively.

Finance Act 2019 also introduced a provision such that any expenses incurred by an IREF, which are not wholly and exclusively incurred for the purposes of the IREF business, will be treated as income and the IREF will be subject to tax at the rate of 20%.

All other Irish funds, falling outside of this new categorisation, will not be impacted by the legislative changes.

Neither stamp duty nor capital duty is chargeable on the issue, transfer, or switching of fund units (except for certain transactions as noted below

Subsequent to the implementation of the Finance Bill 2017, stamp duty at a rate of 7.5% will be imposed on certain conveyances or transfers of units in unit trusts that derive their value or the greater part of their value (>50%), directly or indirectly from Irish non-residential land and buildings ("immovable property"). The 7.5% stamp duty charge on units will only apply where the transfer results in a change in the person/s having direct/indirect control over the immovable property and the immovable property was acquired/developed by the unit trust with the sole or main objective of realising a gain from its disposal or the immovable property was held as trading stock by the unit trust. These new rules will apply not only to conveyances or transfers of units but also to contracts for the sale of any such units which might otherwise not be stampable.

A financial resolution was introduced from 20 May 2021 which levies a 10% stamp duty charge on the bulk purchase of houses and duplexes ("relevant residential units"). A residential unit will be considered a "relevant residential unit" where it's part of a bulk purchase of 10 or more residential units, or where the buyer has bought at least 9 other residential units in the 12 months preceding the current purchase. Apartment blocks are excluded from this definition. The 10% rate applies to shares / units in companies and IREFs that derive their value from relevant residential units. Where there is a transfer of shares which derive their value from residential units, and the transfer results in a change of the control over the underlying residential units, then the proportion of the value of the shares that is derived from the residential units will be liable to stamp duty at the rates applicable to residential property.

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

Similarly to the VCC, a unit trust is not obliged to make regular distributions, but it must submit two six-monthly tax returns per year, due on 30 January and 30 July.

An IREF must pay IREF withholding tax and submit an IREF withholding tax return to the Collector-General for each accounting period. For accounting periods ending on or before 30 June, the payment and return is due by 30 January of the following year. For accounting periods ending on or before 31 December, the payment and return is due by 30 July of the following year. A unit trust categorised as an IREF which falls within the anti-avoidance provisions introduced in Finance Act 2019 must pay IREF income tax and submit an IREF income tax return to the Collector-General by 31 October for each accounting period. A preliminary income tax payment is also required by 31 October in respect of each period.

Ireland
Unit trust

(continued)

Regulation

The unit trust is subject to the regulatory supervision of the CBI. As it is not a legal personality in its own right, it must appoint trustees and a management company to carry out 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 alternative investment funds (AIFs) 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 and submit an "Application for Authorisation of an Alternative Investment Fund Manager" to the CBI, containing 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 of EUR 100,000 per investor. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied for a QIAIF. A 24-hour authorisation process applies for QIAIFs.

Minimum level of investment

See above.

Summary attributes

- The set-up, taking into account the appointment of service providers and the approval process for the fund vehicle, may take from six to eight weeks.
- It is a tax-efficient fund structure that may be able to access treaty benefits in certain cases.
- 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 the local GAAP. The fund can also be listed on the Irish Stock Exchange.
- Restricted treaty access may apply. Positive steps have been made by the OECD to remove the uncertainty regarding treaty access for widely held collective investment vehicles (CIVs) which may include a unit trust depending on the number of investors. 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. Furthermore, the OECD's Multilateral Instrument ("MLI") and the 2017 update to the OECD Model Tax Convention include examples of ways in which the Principal Purposes Test ("PPT") may affect CIVS and non-CIVs.

Ireland
Investment limited partnership

Background

The investment limited partnership (ILP) is a regulated fund, structured as a limited partnership. A general partner must be appointed to carry out the ILP's day-to-day functions. A key feature of the limited partnership is that it does not have an independent legal personality. Accordingly, all of the partnership's assets, liabilities, profits and losses belong to the partners.

The ILP Act made a number of positive changes in 2020 such as additional "safe harbour" activities which ILPs can complete without the ILP losing its limited liability status, clarifying that ILPs should not be liable for partnership debts beyond their committed capital, bringing the ILP Act better into line with AIFMD and other EU legislation and permitting the ILP to register an alternative foreign name. There is no limit to the number of limited partners in an ILP. Liability is restricted to the contribution made by the limited partner.

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

TheILP is transparent for income tax purposes. Dividends received, capital gains realised and other income received are exempt from income tax at fund level (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 (except for certain transactions as noted below)

Subsequent to the implementation of the Finance Bill 2017, stamp duty at a rate of 7.5% will be imposed on certain conveyances or transfers of interests in foreign collective investment schemes and interests in partnerships that derive their value or the greater part of their value (>50%), directly or indirectly from Irish non-residential land and buildings ('immovable property'). The 7.5% stamp duty charge on transfers of interests in partnerships will only apply where the transfer results in the person/s having direct/indirect control over the immovable property and the immovable property was acquired/developed by the ILP for the sole or main objective of realising a gain from its disposal or the immovable property was held as trading stock by the ILP. The new rules will also apply to contracts for sale of ILP interests which otherwise may not be stampable.

A financial resolution was introduced from 20 May 2021 which levies a 10% stamp duty charge on the bulk purchase of houses and duplexes ("relevant residential units"). A residential unit will be considered a "relevant residential unit" where it's part of a bulk purchase of 10 or more residential units, or where the buyer has bought at least 9 other residential units in the 12 months preceding the current purchase. Apartment blocks are excluded from this definition. The 10% rate applies to partnership interests that derive their value from relevant residential units. Where there is a transfer of shares which derive their value from residential units, and the transfer results in a change of the control over the underlying residential units, then the proportion of the value of the shares that is derived from the residential units will be liable to stamp duty at the rates applicable to residential property.

Treaty status

The ILP cannot access 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

Similarly to the CCF, the fund must submit an annual tax return in respect of the calendar year by 28 February of the following year detailing its total profits, together with details on its investors.

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 out 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 alternative investment funds (AIFs) 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 and submit an "Application for Authorisation of an Alternative Investment Fund Manager" to the CBI, containing 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.

The CBI have confirmed that the general partner on an ILP no longer needs to be authorised as an AIF management company but rather will now place reliance on the obligations of the general partner under the ILP Act as well as applying the CBI fitness and probity requirements to each director.

Investment restrictions

A qualifying investor alternative investment fund (QIAIF) is dedicated to institutional investors and has a minimum initial subscription requirement of EUR 100,000 per investor. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied for a QIAIF. A 24-hour authorisation process applies for QIAIFs.

Summary attributes

- 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.
- Tax-transparent vehicle through which investors can access preferential treaty rates.
- 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 the local GAAP. The fund can also be listed on the Irish Stock Exchange.
- 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).

Ireland
ICAV

Background

The ICAV is a corporate vehicle designed specifically as an Irish investment fund. It sits alongside the public limited company ("PLC"), which has been the most successful and popular of the existing Irish collective investment fund vehicles to date. An ICAV can be incorporated with the Central Bank of Ireland and provides a tailor-made corporate fund vehicle for both UCITS and alternative investment funds. Notably, the legal framework applicable to the ICAV isolates it from potential changes in Irish and EU company law and allows it to achieve tax transparency in the US as it may "check the box" (unlike a PLC, the ICAV is not considered a "per se corporation" from a US tax law perspective).

Legal form

The ICAV is not a company under the Irish Companies Act (ICA), but rather a corporate entity with its own facilitative legislation that has been drafted specifically with the needs of collective investment schemes in mind.

The ICAV is as flexible as a VCC and can be open-ended, closed-ended or a limited liquidity fund AIF. It can be established as an umbrella with sub-funds and various share classes. The Central Bank of Ireland is the registration and supervisory authority for the ICAV.

Tax status

The ICAV is subject to the existing Irish tax regime for regulated investment funds. It is not chargeable to tax on income and gains in Ireland.

Treatment of investors

The income of an ICAV is normally paid to investors by means of dividends, or alternatively paid out as the realisation of the investment by the investor upon redemption. No Irish taxation should apply in respect of non-resident investors or exempt Irish investors where the fund derives less than 25% of its value from real estate located in Ireland. The investor may be subject to tax in its resident jurisdiction.

Withholding tax

For Irish-resident investors, withholding tax is levied on both distributions –at a rate of 41% for individuals and 25% for companies – and gains from encashment, redemption or transfer of shares, also at 41% for individuals and 25% for companies. Where an investment undertaking derives less than 25% of its value from real estate located in Ireland, no tax is applied on income distributions or redemption payments made to non-residents, provided that the non-resident has signed the necessary non-resident declaration. The Finance Bill 2016 introduced a new regime to provide for the taxation of Irish real estate funds ("IREFs"). IREFs are defined as investment undertakings (excluding UCITS) where 25% or more of their value is derived directly or indirectly from Irish real estate assets. Where a fund is categorised as an IREF, it must levy 20% withholding tax on distributions of income, and in certain instances on gains on redemption.

IREF withholding tax does not apply to certain categories of investors, such as Irish pension schemes, Irish regulated funds and life assurance funds and their EEA counterparts were subject to equivalent supervision and regulation. S110 companies, credit unions and charities are also exempt.

Other taxes

Finance Act 2019 introduced anti-avoidance provisions which may result in deemed income, subject to income tax at a rate of 20%, arising to an IREF. A deemed income tax charge will arise where an IREF is deemed to have an 'excessive' level of shareholders debt and/or interest within the context of the two legislative tests, being the excess debt and property financing cost ratio tests.

Broadly, these tests involve a comparison of the IREF's shareholder debt and interest to the cost of its assets, and a comparison of its shareholder interest to the income generated by the IREF respectively.

Finance Act 2019 also introduced a provision such that any expenses incurred by an IREF, which are not wholly and exclusively incurred for the purposes of the IREF business, will be treated as income and the IREF will be subject to tax at the rate of 20%.

All other Irish funds, falling outside of this new categorisation, will not be impacted by the legislative changes.

The ICAV is exempt from stamp duty on the transfer of shares in the fund, VAT for fund-management services and exit tax for foreign investors, exempt Irish investors (e.g. pension funds) and shares held in a recognised clearing system (except for certain transactions as noted below).

Subsequent to the implementation of the Finance Bill 2017, stamp duty at a rate of 7.5% will be imposed on certain conveyances or transfers of shares/units in ICAVs that derive their value or the greater part of their value (>50%), directly or indirectly from Irish non-residential land and buildings ('immovable property'). The 7.5% stamp duty charge will only apply on shares where the transfer results in the person/s having direct/indirect control over the immovable property and the immovable property was acquired/developed by the ICAV for the sole or main objective of realising a gain from its disposal or the immovable property was held as trading stock by the ICAV. The new rules will also apply to contracts for sale of ICAV interests which otherwise may not be stampable.

A financial resolution was introduced from 20 May 2021 which levies a 10% stamp duty charge on the bulk purchase of houses and duplexes ("relevant residential units"). A residential unit will be considered a "relevant residential unit" where it's part of a bulk purchase of 10 or more residential units, or where the buyer has bought at least 9 other residential units in the 12 months preceding the current purchase. Apartment blocks are excluded from this definition. The 10% rate applies to shares / units in IREFs (that derive their value from relevant residential units). Where there is a transfer of shares which derive their value from residential units, and the transfer results in a change of the control over the underlying residential units, then the proportion of the value of the shares that is derived from the residential units will be liable to stamp duty at the rates applicable to residential property.

Treaty status

The ICAV may be able to access treaty benefits in certain territories. This would need to be analysed on a case-by-case basis

Ireland
ICAV

(continued)

Filing obligations

An ICAV is not obliged to make regular distributions; however, it must submit two investment undertaking tax returns twice a year, due on 30 January and 30 July.

An ICAV categorised as an IREF must pay IREF withholding tax and submit an IREF withholding tax return to the Collector-General for each accounting period. For accounting periods ending on or before 30 June, the payment and return is due by 30 January of the following year. For accounting periods ending on or before 31 December, the payment and return is due by 30 July of the following year. An ICAV categorised as an IREF which falls within the anti-avoidance provisions introduced in Finance Act 2019 must pay IREF income tax and submit an IREF income tax return to the Collector-General by 31 October for each accounting period. A preliminary income tax payment is also required by 31 October in respect of each period.

Regulation

The ICAV can be regulated either as a UCITS or as an AIF (an alternative investment fund). The ICAV is both authorised and regulated by the Central Bank of Ireland. Like an investment company, an ICAV is a corporate entity that is governed by a board of directors and owned by shareholders. The board of directors must include at least two Irish-resident 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 alternative investment funds (AIFs) 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 and submit an "Application for Authorisation of an Alternative Investment Fund Manager" to the CBI, containing 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.

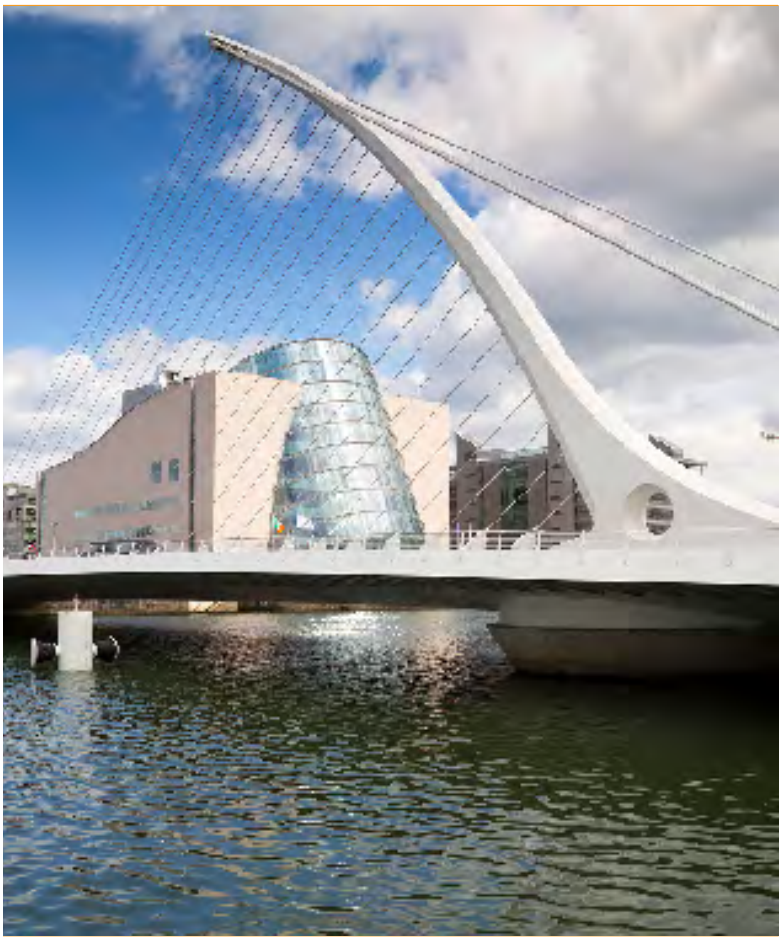
Investment restrictions

A qualifying investor alternative investment fund (QIAIF) is dedicated to institutional investors and has a minimum initial subscription requirement of EUR 100,000 per investor. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied for a QIAIF. A 24-hour authorisation process applies for QIAIFs.

Summary attributes

- The ICAV is a tax-efficient fund structure that may be able to access treaty benefits in certain cases.
- Ability to "check the box" for US taxation purposes.
- May dispense with requirement to hold annual general meetings.
- Accounts can be drawn up at sub-fund level.
- Requirement to have at least 2 directors.
- Ability to have umbrella structure and/or stand-alone structure.
- UCITS/AIF-compliant structure.

Restricted treaty access may apply. Positive steps have been made by the OECD to remove the uncertainty regarding treaty access for widely held collective investment vehicles (CIVs) which may include an ICAV depending on the number of investors. 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. Furthermore, the OECD's Multilateral Instrument ("MLI") and the 2017 update to the OECD Model Tax Convention include examples of ways in which the Principal Purposes Test ("PPT") may affect CIVS and non-CIVs.



Italy

- **Real estate investment fund**
- **Real estate SICAF**

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Italy
Real estate investment fund

Background

The real estate investment fund (REIF) is one of the most appealing ways of directing collective savings towards real estate in Italy.

The REIF was first introduced in 1994, and since then, continuous improvements to its regulation and tax regime have been made.

The current tax regime is provided by Decree-Law no. 351 of 25 September 2001 (enacted by Law no. 410 of 23 November 2001), as most recently amended and integrated by Decree-Law no. 70 of 13 May 2011 (enacted by Law no. 106 of 12 July 2011), and is based on an income tax exemption, with taxation at investors level and tax benefits for certain investors and real estate operations.

Legal form

The Italian REIF is a regulated collective investment vehicle entitled to invest in real estate. It is a closed-end contractual "investment fund" without legal personality, established and managed by a management company: the società di gestione del risparmio (SGR). The SGR is an Italian regulated joint-stock company, which can manage one or more investment funds. It is generally a licensed Alternative Investment Fund (AIF) manager, in compliance with the Alternative Investment Fund Managers Directive (AIFMD).

Further to the implementation of the AIFMD in Italy (in March 2014), the "investment fund" qualifies as an "OICR" (undertaking for the collective investment of savings), which in turn is defined as "an undertaking established to provide the financial service of 'investment and management of savings on a collective basis', whose assets are raised among a plurality of investors by means of issuing or offering of shares and units, managed on a collective basis in the interests of the investors and autonomously from the same, and invested in financial instruments, receivables, interest and other transferable and immovable assets, in accordance with a predetermined investment strategy".

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

Tax status

The REIF has been liable to income tax since 2012, although it is exempt from Italian corporate income tax (IRES – ordinary rate: 24%) and regional tax on production (IRAP – ordinary rate: 3.9%). On the other hand, the REIF's profits are taxable at unitholders level, pursuant to different methods and/ or limits in consideration of the unitholders' nature/ tax status.

Tax treatment at entity level

Dividends received, capital gains realised and other income earned by the REIF are exempt from corporate income tax at REIF level. For income normally subject to withholding tax at source, withholding tax (generally at a rate of 26%) applies as a final payment unless the law excludes its application for REIFs (e.g. interest from bank deposits and from certain foreign funds).

For real estate properties held by the REIF, local property taxes (namely IMU, the municipal tax on properties) apply according to ordinary rules.

As far as VAT and other indirect taxes are concerned, the REIF follows the ordinary rules. However, it benefits from some tax reliefs with regard to indirect/ transfer taxes. The subscription, issuance and redemption of REIF units are not subject to registration tax.

Treatment of investors

In the current framework, two categories of REIF are identified, according to the nature of the unitholders:

- institutional funds: REIFs entirely owned by "institutional" investors; and
- non-institutional funds: REIFs owned (also) by investors that are not "institutional".

For this purpose, "institutional" investors are deemed to be the following:

a. States and public entities/ bodies;

b. undertakings for the collective investment of savings;

c. pension funds;

d. insurance companies (limited to investments related to "technical reserves" coverage);

e. banking and financial intermediaries that are subject to prudential supervision;

f. entities specified in a) to e) above that are established in countries on the White List (which lists countries that have specific agreements for exchanging tax information with Italy) and that allow the beneficial owner of income to be identified;

g. non-profit organisations/ charities resident in Italy; and

h. SPVs of which more than 50% is owned by any of the entities listed under a) to g) above.

Foreign institutional investors under letter f) include foreign States and foreign public bodies as well as foreign subjects corresponding to the other listed Italian entities that are subject to "prudential supervision". This 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 (or proved by adequate documentation if certification cannot be obtained).

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

With reference to "institutional funds", the REIF's profit distributions are generally subject to 26% withholding tax at source (certain reductions/ exemptions are provided). For investors that are subject to corporate/ business income tax, the REIF's profits collected are taxed accordingly and the withholding tax is credited against the income tax due. In other cases, the withholding tax, if applicable, is a final taxation.

Regarding "non-institutional funds", the following rules apply:

- for institutional investors (regardless of the amount of their interest in the REIF) and non-institutional investors owning (directly or indirectly) up to 5% of the REIF (i.e. "non-qualified" investors), the REIF's profit distributions are subject to 26% withholding tax at source according

Italy
Real estate investment fund

(continued)

to the ordinary rules (with reductions/ exemptions where applicable); for investors that are subject to corporate/ business income tax, the REIF's profits collected are taxed accordingly and the withholding tax is credited against the income tax due. In other cases, the withholding tax, if applicable, is a final taxation;

- for resident non-institutional investors that own (directly or indirectly) more than 5% of the REIF (i.e. "qualified" investors), the REIF's annual profit/ loss is attributed to the investors proportionally to their interest in the REIF and is taxable to them in accordance with their tax regime/ status. The annual profits are attributed regardless of the REIF's actual distribution. As a result, the REIF acts as a tax-transparent entity/ partnership and withholding tax at source does not apply;
- for non-resident investors, the REIF's profit are in any case taxable according to the ordinary rules, thus upon distribution through 26% final withholding tax at source (with the reductions/ exemptions stated below).

Withholding tax

Withholding tax is levied on the REIF's profit distributions, even upon redemption, at a rate of 26% (if the REIF's units are reimbursed, distributions of the REIF's profits earned before 1 July 2014 benefit from the previously applicable lower withholding tax rates).

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

- non-institutional resident unitholders, subject to transparency taxation;
- Italian pension funds and Italian undertakings for the collective investment of savings (OICRs);
- pension funds and foreign undertakings for the collective investment of savings (OICRs) established in countries that have an adequate exchange of tax information with Italy (i.e. countries on the White List), subject to the conditions stated below;
- international bodies established on the basis of international agreements that are valid in Italy, as well as central banks or entities that manage a State's official reserves.

Foreign pension funds and foreign OICRs are identified with reference to their home country's legislation. In particular, the exemption applies to entities that pursue the same purposes as Italian pension funds and OICRs, regardless of their legal form. Conversely, formal and insubstantial similarity is insufficient to be entitled to the exemption. The foreign fund or, alternatively, the competent management entity (also the latter established in a White List country) must be subject to supervision (as detailed above – the fulfilment of this requirement needs to be documented). In principle, the exemption does not apply to indirect investment; however, entitlement to the exemption is granted for investment through fully owned SPV(s) located in White List countries.

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

In principle, capital gains derived from disposal of REIF units are subject to 26% substitute tax, with the following exceptions:

for resident unitholders:

- gains realised in the context of a business activity, thus subject to business income taxation rules;
- gains realised by resident entities subject to special tax regimes (e.g. mutual and pension funds);

for non-resident unitholders (thus benefiting from tax exemption):

- gains concerning REIF units listed in a regulated market;
- gains from unlisted REIF units, if the recipient is the beneficial owner (or, in case of a fund or a transparent entity, if it qualifies as an institutional investor according to Italian legislation concerning certain interest payments) and its residence country allows an effective exchange of tax information with Italy (i.e. White List country).

For other cases, the application of double taxation treaties may be claimed depending on the individual circumstances.

However, for "qualified" non-institutional investors, the transfer of REIF units may be assimilated to disposal of "qualified" interest in an Italian partnership, with the consequence that the capital gain would become subject to 26% substitute tax (until the end of 2018, 50.28% of the gain was exempt from income taxation), unless a more favourable treaty regime is available.

Treaty and EU Tax Directive status

As the REIF has been liable to income tax since 2012, from the Italian perspective the REIF should benefit from treaties application, despite being tax-exempt.

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

Filing obligations

The withholding tax agent's reporting obligations are generally fulfilled on behalf of the REIF by the management company (SGR).

Regulation

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

The rules, which were established 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" for institutional/ professional investors), the adoption and amendment of the fund's rules no longer require the prior approval of the regulatory authority. In addition, mergers of these funds no longer have to meet the regulatory provisions established for mergers between regulated funds.

Italy
Real estate investment fund

(continued)

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 must comply with the minimum amount established by the Bank of Italy, which is 1 million euros (exceptions may apply).
- The persons in charge of performing administrative, managerial and control functions must fulfil statutory professional and independence requirements.
- Shareholders must also fulfil honourableness requirements.
- Activities are limited to those permitted by law.

Reserved funds that are only accessible to professional investors have fewer restrictions than ordinary funds. Moreover, reserved funds require a minimum investment of EUR 500,000 for retail investors, apart from those that are accessible to professional investors.

Investment restrictions

The REIF invests mainly or exclusively in real estate assets, property rights over real estate and shareholdings of real estate companies, for at least two-thirds of its value (some exceptions are provided).

Investment diversification requirements must be met. In particular, direct investment (or indirect, through controlled companies) into a single property with single urban and functional characteristics cannot exceed 20% of the REIF's asset value. This limit is increased to 33% for properties leased out, provided that the annual rent from the main tenant (and from subjects of the same group) does not exceed 20% of the annual aggregated rent. Investments in companies authorised to carry out building development are limited to 10% of the REIF's total asset value. Reserved funds are not subject to these limitations, although their regulations must provide minimum asset- and risk- diversification rules.

Direct building development business is forbidden (developments may be executed through building-work contracts with professional builders).

Minimum level of investment

The REIF does not require a minimum level of investment unless it is established as reserved fund, for which the minimum level is EUR 500,000 for retail investors, apart from those that are accessible to professional investors.

Summary attributes

- The REIF is not subject to income tax: limitations provided in the corporate income taxation system do not apply (e.g. interest deductibility limitation).
- The REIF profits are taxed only upon distribution and/ or reimbursement of the units, with the exception of unitholdings which are more than 5% of the REIF and are held by resident non-institutional investors.
- Certain foreign qualifying institutional investors may be tax exempt. Other foreign investors can benefit from DTT reductions/ exemptions.
- The REIF benefits from some tax reliefs in terms of indirect taxes.
- The REIF profits in favour of resident non-institutional investors holding more than 5%, are taxed on an accrual basis (tax transparency taxation method).
- Unitholders cannot manage the REIF: this role is undertaken by the management company (SGR, the AIFM), which must be independent from the investors.
- The REIF is substantially a regulated entity, which results in higher operating costs.
- Real estate properties must be evaluated twice a year on the basis of external appraisals.

Italy
Real estate SICAF

Background

Within the implementation of the AIFMD (the Alternative Investment Funds Managers Directive), Legislative Decree no. 44 of 4 March 2014 introduced a new investment vehicle to Italy: the "SICAF" (*"società di investimento a capitale fisso"*), the investment company with fixed capital.

In a nutshell, the SICAF is a regulated closed-end fund with a corporate form. If it invests primarily in real estate (as stated for Italian real estate investment funds, REIFs), it qualifies as a "real estate SICAF" and is thus entitled to take advantage of the same tax regime and benefits provided for the Italian REIF (with just one specific exception).

Thanks to its corporate form and the fact that investors are the SICAF's shareholders, with the rights and powers specific to this role, investors should be able to "influence", to a certain extent (i.e. within the limits of the shareholders' powers), how the SICAF's real estate assets are managed, bypassing some of the governance constraints of investing through contractual real estate funds.

Legal form

The SICAF is an "OICR" (undertaking for the collective investment of savings – for the definition, please refer to the section concerning the Italian REIF) with a closed-end form, incorporated as a limited company by shares (and so with legal personality), with fixed capital, registered office and general management in Italy and whose sole purpose is the collective investment of savings raised by issuing its shares and other equity instruments.

The SICAF is a regulated investment vehicle and is subject to authorisation and supervision by regulatory authorities (this requires several requirements to be met).

The SICAF's shares/ equity instruments may be listed.

Tax status

The SICAF is liable to income tax. However, as an OICR, it is exempt from Italian corporate income tax (IRES – applicable rate: 24%) and regional tax on production (IRAP – applicable rate: from 4.65% to 5.57%), with one exception (see below).

On the other hand, the real estate SICAF profits are taxable at shareholders-investors level, pursuant to different methods and/ or limits depending on their nature/ tax status.

Tax treatment at entity level

As a closed-end fund, the SICAF is allowed to invest in different kinds of assets, including real estate. When real estate investment is prevalent (as stated for Italian REIFs, this condition is met if investments in real estate and rights on real estate - including those from financial leasing contracts -, real estate companies and REIF units are at least two-thirds of the SICAF's value, with some exceptions), the SICAF qualifies as a "real estate SICAF" (RE SICAF) and is subject to the same tax regime as Italian REIFs (apart from a small difference with respect to the regional production tax - *"imposta regionale sulle attività produttive"* - known as "IRAP").

Consequently, for a RE SICAF, dividends received, capital gains realised and other income earned are exempt from corporate income tax. For income normally subject to withholding tax at source, the withholding tax (generally at a rate of 26%, with a few exceptions) applies as a final payment, apart from cases where its application is expressly excluded by law (e.g. interest from bank deposits and from certain foreign funds).

As far as the IRAP is concerned, the SICAF is subject to tax, but the tax base is limited to its net commission income (i.e. underwriting commissions collected, net of commissions eventually paid to distributors), if any.

As stated for Italian REIFs, local property taxes (namely IMU and TASI) and VAT apply according to ordinary rules. With regard to VAT and other indirect taxes, the tax reliefs stated for REIFs are also applicable to the RE SICAF.

Treatment of investors

The SICAF shares can be subscribed to or purchased by either institutional investors or any other investors, even retail ones, in compliance with the provisions of the SICAFs by-laws.

As for REIFs, depending on the nature of the shareholders, two categories of RE SICAF can be identified:

- institutional RE SICAF: a SICAF entirely owned by institutional investors (for the definition, please refer to the section concerning the Italian REIF); and
- non-institutional RE SICAF: a SICAF owned (also) by investors that are not institutional.

With reference to the institutional RE SICAF, the SICAF profit distributions are generally subject to 26% withholding tax at source (certain reductions/ exemptions are provided); for investors that are subject to corporate/ business income tax, the SICAF profits collected are taxed accordingly and the withholding tax is credited against the income tax due. In other cases, the withholding tax, if applicable, is a final taxation.

Regarding the non-institutional RE SICAF, the following rules apply:

- for institutional investors (regardless of the amount of their interest in the SICAF) and non-institutional investors owning (directly or indirectly) up to 5% of the SICAF (i.e. "non-qualified" investors), the SICAF profit distributions are subject to 26% withholding tax at source, according to the ordinary rules (with reductions/ exemptions where applicable); for investors that are subject to corporate/ business income tax, the SICAF profits collected are taxed accordingly and the withholding tax is credited against the income tax due. In other cases, the withholding tax, if applicable, is a final taxation;
- for resident non-institutional investors that own (directly or indirectly) more than 5% of the SICAF (i.e. "qualified" investors), the SICAF annual profit is attributed to such investors in proportion to their interest in the SICAF, regardless of its actual distribution, and is taxable to them in accordance with their tax regime/ status. As a result, the RE SICAF acts as a tax-transparent entity/ partnership and withholding tax at source does not apply;
- for non-resident investors, the SICAF profit distributions are in any case taxable according to the ordinary rules, thus upon distribution through 26% final withholding tax at source (with reductions/ exemptions stated below).

Withholding tax

Withholding tax is levied on the RE SICAF profit distributions, even upon redemption, at a rate of 26%.

Italy
Real estate SICAF

(continued)

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

- non-institutional "qualified" shareholders subject to transparency taxation (see above);
- Italian pension funds and Italian undertakings for the collective investment of savings (OICRs);
- foreign pension funds and foreign undertakings for the collective investment of savings (OICRs) established in countries that have an adequate exchange of tax information with Italy (i.e. countries on the White List), under the conditions stated below; or
- international bodies established on the basis of international agreements that are valid in Italy, as well as central banks or entities that manage a State's official reserves.

Foreign pension funds and foreign OICRs are identified with reference to the home country's legislation. In particular, the exemption applies to entities, regardless of their legal form, that pursue the same purposes as Italian pension funds and OICRs. Conversely, formal and insubstantial similarity is insufficient to be entitled to the exemption. The foreign fund or, alternatively, the competent management entity (also the latter established in a White List country) must be subject to supervision (for details, please refer to the section concerning the Italian REIF – the fulfilment of this requirement needs to be documented). In principle, the exemption does not apply to indirect investment; however, entitlement to exemption is recognised for investment through fully owned SPV(s) located in White List countries.

The SICAF profits distributed to other investors that are resident in countries with which a double taxation treaty exists may benefit from the more favourable tax regime 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 must be fulfilled (e.g. beneficial owner status; tax certificate issued by the tax authority of the beneficial owner's country of residence that is valid until 31 March of the following year).

In principle, capital gains derived from the disposal of RE SICAF shares are subject to 26% substitute tax, with the following exceptions:

for resident investors

- gains realised in the context of a business activity, thus subject to business income taxation rules;
- gains realised by resident entities subject to special tax regimes (e.g. mutual and pension funds);

for non-resident unitholders (thus benefiting from tax exemption)

- gains concerning RE SICAF shares listed in a regulated market;
- gains from unlisted RE SICAF shares, if the recipient is the beneficial owner (or, in case of a fund or a transparent entity, if it qualifies as an institutional investor according to Italian legislation concerning certain interest payments) and its residence country allows an effective exchange of tax information with Italy (i.e. White List country).

For other cases, the application of double taxation treaties may be claimed depending on the individual circumstances.

However, for "qualified" non-institutional investors, the transfer of RE SICAF shares may be assimilated to disposal of "qualified" interest in an Italian partnership, with the consequence that the capital gain would become subject to 26% substitute tax (until the end of 2018, 50.28% of the gain was exempt from income taxation), unless a more favourable treaty regime is available.

Treaty and EU Tax Directive status

Because the SICAF has a corporate form and is liable to income tax, from the Italian perspective it should benefit from treaties application, despite being tax-exempt.

Conversely, its exemption from Italian corporate income tax should prevent access to the EU Tax Directives.

Filing obligations

Generally, the SICAF must fulfil the withholding tax agent's reporting obligations.

Regulation

SICAFs are subject to the supervision of the Italian regulatory authorities, the Bank of Italy and Consob (the regulatory body for the Italian Stock Exchange).

In principle, the SICAF is managed internally (as such, it qualifies as an "AIFM"). However, the management can be also entrusted to an external AIFM (i.e. an SGR – for the definition, please refer to the section concerning the Italian REIF).

Requirements for authorisation

The Bank of Italy authorises a company to hold the status of a SICAF if the following main requirements are met:

- it is set up as limited company by shares;
- it has its registered office and general management in Italy;
- its initial share capital amounts to at least EUR 1 million (or EUR 500,000 for SICAFs reserved for professional investors);
- people who carry out administrative, management and control functions fulfil honourableness, professional and independence requirements;
- substantial shareholders (i.e. holding an interest of at least 10% of voting rights or capital) also fulfil honourableness requirements;
- its by-laws specify the exclusive purpose as being the collective investment and management of savings raised by issuing its shares and the equity instruments provided therein; and
- a suitable initial activity programme and organisational structure report are submitted.

Investment restrictions

Investment diversification requirements must be met. In particular, direct investment (or indirect, through controlled companies) into a single property with single urban and functional characteristics cannot exceed 20% of the RE SICAF's asset value. This limit is increased to 33% for properties leased out, provided that the annual rent from the main tenant (and from subjects of the same group) does not exceed 20% of the annual aggregated rent.

Investments in companies authorised to carry out building development are limited to 10% of the RE SICAF's total asset value.

Reserved SICAFs are not subject to these limitations, although their regulations must provide minimum asset- and risk-diversification rules.

Direct building development business is forbidden (developments may be executed through building-work contracts with professional builders).

Italy
Real estate SICAF

(continued)

Minimum level of investment

The SICAF does not require a minimum level of investment, with the exception of the reserved SICAF, for which the minimum level of investment is EUR 500,000 for retail investors.

Summary attributes

- As a real estate corporate fund, the SICAF is not subject to income tax (with the exception of the net commission income, if any, which is generally subject to IRAP).
- The RE SICAF profits are taxed only upon distribution and/ or reimbursement of the shares, with the exception of holdings exceeding 5% held by resident non-institutional investors.
- Certain foreign qualifying institutional investors may be tax-exempt; other foreign investors can benefit from DTT reduction/ exemption.
- The RE SICAF (corporate fund) benefits from the indirect tax reliefs provided for the REIF (contractual fund).
- Investors, as the SICAF shareholders, appoint the SICAF directors and can “influence”, to a certain extent, how the real estate assets are managed – more so than for a REIF.
- The RE SICAF profits in favour of resident non-institutional investors holding more than 5% are taxed on an accrual basis (tax transparency taxation method).
- The SICAF is subject to authorisation and supervision by regulatory authorities (which results in higher operating costs).
- Real estate properties must be evaluated twice a year on the basis of external appraisals.
- The SICAF cannot issue corporate bonds.

Luxembourg

- **Part II UCIs (FCPs, SICAVs and SICAFs)**
- **SIF regime (FCPs, SICAVs and SICAFs)**
- **RAIF (FCP, SICAV and SICAF)**
- **SICAR**
- **Securitisation vehicle**

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Luxembourg
Part II UCIs (FCPs, SICAVs and SICAFs)

Background

Real estate undertakings for collective investment, under Part II of the Law of 17 December 2010 (Part II UCIs) offer a wide range of investment possibilities, such as direct and indirect investment in real estate properties. They can be considered the classic type of Luxembourg regulated real estate fund vehicles publicly distributed to retail clients.

Legal form

The legal forms publicly distributed UCIs may take are:

- A *fonds commun de placement* (FCP), which is a contractual form (i.e. a separate pool of assets), equivalent to the concept of a UK "unit trust" or a German Sondervermögen. As it has no separate legal status, it must be managed by a Luxembourg alternative investment fund manager (AIFM) pursuant to the Law of 12 July 2013 on alternative investment fund managers (the "AIFM Law"), or by a management company that appoints an AIFM.
- A *société d'investissement à capital variable* (SICAV), which is an investment company with variable share capital that is equal to the fund's net asset value at all times. It may operate as either an open- end or closed-end fund but can only be set up as a public limited company (société anonyme). The SICAV must be managed by an AIFM pursuant to the AIFM Law or be registered/ authorised as an AIFM itself.
- A *société d'investissement à capital fixe* (SICAF), which is an investment company with fixed capital and may operate as either an open-end or closed-end fund. A SICAF may be set up any of 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 must be managed by an AIFM pursuant to the AIFM Law, or be registered/authorised as an AIFM itself.

Tax treatment at entity level

The Part II UCI vehicle is exempt from corporate and municipal business tax, as well as from net wealth tax. 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 Luxembourg withholding tax.

Other taxes

Subscription tax (*taxe d'abonnement*) at a rate of 0.01% per year is levied on the net asset value at the end of each quarter. Part II UCIs whose securities are reserved for institutions for occupational retirement pension or investment vehicles dedicated to fund employment retirement benefits are in principle exempt from subscription tax.

Non-tax transparent Luxembourg fund vehicles investing directly in Luxembourg real estate, with both gross rental income and disposal gains arising as from 1 January 2021 are being subject to a real estate levy ("*prélèvement immobilier*") applying at a 20% rate. The levy does not apply to any fully taxable corporate (i.e. non-transparent) entities owning Luxembourg real estate, even when owned by Luxembourg fund vehicles.

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. The management of Part II UCIs is VAT-exempt. This exemption covers main functions such as strategic portfolio management, investment advice, fund accounting and the administrative management of the Part II UCI's assets where the place of taxation of these services is Luxembourg. The placement of Part II UCIs' units/shares is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 17% VAT, the lowest rate in the EU.

The depositary bank's supervisory functions are subject to 14% VAT. Part II UCIs are not required to register for VAT in Luxembourg unless they receive taxable services from abroad – for which they must 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. Part II UCIs in the form of FCPs do not register for VAT in Luxembourg. The FCP uses the VAT ID of the Luxembourg management company.

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 more than 55 countries, as defined in a Circular issued by the Luxembourg tax authority in December 2017. None of the legal forms has access to the EU Parent-Subsidiary Directive.

Regulation

All Part II UCIs are categorised as alternative investment funds under the AIFM Law and must therefore be managed by an AIFM.

Furthermore, Part II 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 (ii) supervising the structure's ongoing operations.

This type of fund vehicle is highly regulated and offers the broadest investor protection, due to its ability to be distributed to retail clients. Therefore, there is a more extensive CSSF approval process.

Requirements for authorisation

All Part II UCIs must be authorised by the CSSF before carrying out any activities. A Part II UCI is authorised if the CSSF has reviewed and approved its constituting documents (i.e. the articles of incorporation or the management regulations, and the prospectus), its choice of depositary and the other intervening parties in the fund, such as the central administration, the investment manager (if any) and the approved statutory auditor.

In addition, Part II UCIs set up in contractual form (FCP) are only authorised if the CSSF has approved the management company's or AIFM's application to manage the respective Part II UCI. Part II UCIs set up in corporate form (SICAV or SICAF) that appoint a management company or an AIFM are only authorised if the CSSF has approved that management company's or AIFM's application to manage the respective Part II UCI.

Part II UCIs must disclose their investment strategies, their policy on leverage, their risk profile and their other characteristics in their prospectuses, including any other information that must be disclosed to investors in accordance with the AIFM Law.

Luxembourg
Part II UCIs (FCPs, SICAVs and SICAFs)

(continued)

The directors of a Part II UCI must have a sufficiently good reputation and enough experience in relation to the type of UCI concerned.

The investment manager must be regulated and subject to prudential supervision or, if established in a third country, cooperation between the CSSF and the respective country's supervisory authorities must be ensured. The investment management function may not be delegated to the depositary.

The depositary and the central administrator must be located in Luxembourg and supervised by the CSSF.

For a real estate UCI, the net asset value on which the issue and redemption prices of securities are based must be determined at least once a year, as well as on each day on which shares or units are issued or redeemed. Part II UCIs must compute their net asset value at least monthly. The valuation of assets is subject to specific requirements, such as appointing at least one independent property valuer to value the underlying real properties. An approved statutory auditor (*réviseur d'entreprises agréé*) must audit the fund's annual accounts.

The authorisation process with the CSSF to set up a new Part II UCI can be summarised in the following steps:

1. Request for authorisation submitted

The application file consists of the duly completed application questionnaires (available on the CSSF website) and the attached documents.

Applicants are advised to file an application only once all elements of the project are fully agreed upon and stable. Transmitting an incomplete application may prevent the approval process from either starting or progressing swiftly and may cause unexpected delays.

Once the application file is complete, it is submitted to the CSSF, usually by email.

The CSSF acknowledges receipt of the application file within a few working days and provides the name of the officer in charge of examining the application file.

2. Request for authorisation examined

After receiving the application file, the CSSF will contact the applicant or the contact person named in the application questionnaire for initial feedback. The applicant may be asked to provide further information and/or supporting documents to complete the file, or to explain specific aspects of the application.

This step may be repeated until the examination phase is completed to the CSSF's satisfaction.

The CSSF will inform the applicant when the examination phase is complete and will invite the applicant to submit final and signed-off versions of all compulsory documents.

At this point, the CSSF no longer allows changes in scope or alterations to the final draft versions of the constitutive documents on the basis of which the examination has been completed.

3. Part II UCI entered onto the official list

The CSSF keeps official lists of the UCIs that are authorised in Luxembourg and subject to its supervision. Upon satisfactory receipt of the prospectus and all other compulsory documents as requested, the CSSF will register the Part II UCI on the official list.

In parallel, the CSSF will issue the official accreditation letters and the CSSF identification codes. The CSSF will register the documentation and return an electronic visa-stamped version of the prospectus.

The replacement of the management company, AIFM, investment manager or depositary, as well as any amendment to the Part II UCI's articles of incorporation or management regulations, prospectus or offering document are subject to prior approval by the CSSF.

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. In principle, there is some flexibility as regards risk-diversification rules concerning the CSSF's administrative practices.

Minimum capital requirements

A Part II UCI must have a minimum net asset value of EUR 1.25 million. This amount must be reached within six months of authorisation by the CSSF. Debt financing of up to 50% (or more in some cases; there is some flexibility) of the real estate value is possible. Part II UCIs may have various sub-funds and can issue different classes of shares.

Summary attributes

- A fund in one of the above legal forms is highly flexible, subject to expert and flexible supervision, and is well known by international investors.
- Low tax leakage and scope for optimising carried interest.
- No EU passport available. For distribution outside Luxembourg, material approval procedure with local regulators necessary.
- Since Part II UCIs are distributed to retail investors, they face a stricter regulatory regime than SIFs (see below).

Luxembourg
SIF regime (FCPs, SICAVs and SICAFs)

Background

In February 2007, the Luxembourg Parliament adopted a law (the "SIF Law") to replace the 1991 Law on UCIs dedicated to institutional investors, thus formalising the concept of specialised investment funds (SIFs). The main change compared to previous legislation 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 was 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 communs de placement*) with a management company, for SICAVs (*sociétés d'investissement à capital variable*), and for SICAFs (*sociétés 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* – S.à r.l.), the public limited company (SA), the (commonly used) partnership limited by shares (SCA), the simple partnership with legal personality (*société en commandite simple* – SCS), the special limited partnership without legal personality (*société en commandite spéciale* – SCSp), or the cooperative in a form of a public limited company (*société coopérative organisée sous forme de société anonyme* – SCSA).

Tax treatment at entity level

The SIF vehicle is exempt from corporate and municipal business tax, as well as from net wealth tax, 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 Luxembourg withholding tax.

Other taxes

Subscription tax (*taxe d'abonnement*) at a rate of 0.01% per year is levied on the net asset value at the end of each quarter. SIFs whose securities are reserved for institutions for occupational retirement pension or investment vehicles dedicated to fund employment retirement benefits are in principle exempt from subscription tax. There is no net wealth tax.

Non-tax transparent Luxembourg fund vehicles investing directly in Luxembourg real estate, with both gross rental income and disposal gains arising as from 1 January 2021 are being subject to a real estate levy ("*prélèvement immobilier*") applying at a 20% rate. The levy does not apply to any fully taxable corporate (i.e. non-transparent) entities owning Luxembourg real estate, even when owned by Luxembourg fund vehicles.

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. The management of SIFs is VAT-exempt. This exemption covers main functions such as strategic portfolio management, investment advice, fund accounting and the administrative management of the SIF's assets where the place of taxation of these services is Luxembourg. The placement of SIFs' units/shares is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 17% VAT, the lowest rate in the EU. The depositary bank's supervisory functions are subject to 14% VAT. SIFs are not required to register for VAT in Luxembourg unless they receive taxable services from abroad – for which they must 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. SIFs in the form of FCPs do not register for VAT in Luxembourg. The FCP uses the VAT ID of the Luxembourg management company.

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 more than 55 countries, as defined in a Circular issued by the Luxembourg tax authority in December 2017. None of the legal forms has access to the EU Parent-Subsidiary Directive.

Regulation

The regulatory authority is the CSSF.

Requirements for authorisation

Prior CSSF approval has been 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 qualify as AIFs under the AIFM Law and must be managed by an authorised AIFM that either manages the fund internally or is externally appointed to manage it.

SIFs that do not qualify as AIFs are not affected by the AIFM Law and remain subject, to a large extent, to requirements similar to those under the SIF regime before the AIFM Law entered into force.

A SIF is authorised if the CSSF has reviewed and approved its constituting documents (i.e. the articles of incorporation or the management regulations, and the offering document), the choice of depositary and the other intervening parties in the fund, such as the central administrator, the investment manager (if any), and the approved statutory auditors.

In addition, SIFs set up in contractual form (FCP) are only authorised if the CSSF has approved the application of the management company or AIFM (if applicable) to manage the respective SIF. SIFs set up in corporate form (SICAV or SICAF) appointing a management company or an AIFM (if applicable) are only authorised if the CSSF has approved that management company's or AIFM's application to manage the respective SIF.

SIFs must disclose their investment strategies, their policy on leverage, their risk profile and their other characteristics in their offering document, including any other information that must be disclosed to investors in accordance with the AIFM Law, if applicable.

The directors of a SIF must have a sufficiently good reputation and sufficient experience in relation to the type of SIF concerned.

The investment manager must be regulated and subject to prudential supervision or, if established in a third country, cooperation between the CSSF and respective country's supervisory authorities must be ensured. The investment management function may not be delegated to the depositary.

The depositary and the central administrator must be located in Luxembourg and supervised by the CSSF.

Luxembourg
SIF regime (FCPs, SICAVs and SICAFs)

(continued)

For SIFs qualifying as AIFs whose investors have no redemption rights for five years from the date of their initial investment and which generally do not invest in assets that must be held in custody, the depositary may also be an entity that:

- carries out depositary functions as part of professional or business activities;
- is subject to mandatory professional registration recognized by law, to legal or regulatory provisions or to rules of professional conduct; or
- can provide sufficient financial and professional guarantees.

An approved statutory auditor (*réviseur d'entreprises agréé*) must audit the SIF's annual accounts.

Moreover, a SIF must implement an appropriate risk-management system and an effective conflict-of-interest policy.

A SIF is only required to produce an annual audited report. However, SIFs qualifying as AIFs under the AIFM Law must report in accordance with the provisions of the AIFM Law.

The authorisation process with the CSSF to set up a new SIF can be summarised in the following steps:

1. Request for authorisation submitted

The application file consists of the duly completed application questionnaires (available on the CSSF website) and the attached documents.

Applicants are advised to file an application only once all elements of the project are fully agreed upon and stable. Transmitting an incomplete application may prevent the approval process from either starting or progressing swiftly, and may cause unexpected delays.

Once the application file is complete, it is submitted to the CSSF, usually by email.

The CSSF will acknowledge receipt of the application file within a few working days and provide the name of the officer in charge of examining the application file.

2. Request for authorisation examined

After receiving the application file, the CSSF will contact the applicant or the contact person named in the application questionnaire for initial feedback. The applicant may be asked to provide further information and/or supporting documents to complete the file or to explain specific aspects of the application.

This step may be repeated until the examination phase is completed to the CSSF's satisfaction.

The CSSF will inform the applicant when the examination phase is complete and will invite the applicant to submit final and signed-off versions of all compulsory documents.

At this point, the CSSF no longer allows changes in scope or alterations in the final draft versions of the constitutive documents on the basis of which the examination has been completed.

3. SIF entered onto the official list

The CSSF keeps official lists of the SIFs that are authorised in Luxembourg and subject to its supervision. Upon satisfactory receipt of the offering document and all other compulsory documents as requested, the CSSF will register the SIF on the official list.

In parallel, the CSSF will issue the official accreditation letters and the CSSF identification codes. The CSSF will register the documentation and return an electronic visa-stamped version of the offering document.

The replacement of the management company, AIFM (if applicable), investment manager or depositary, as well as any amendment to the SIF's articles of incorporation, management regulations or offering document, are subject to prior approval by the CSSF.

Investment restrictions

The investment restrictions are not onerous. Some risk diversification is required, and consequently a maximum of 30% of the assets (there is some flexibility) can in principle 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 invest at least EUR 125,000 or who can provide a bank confirmation of suitable experience, and confirm in writing that they adhere to the status of a well-informed investor.

Minimum capital requirements

The minimum asset base of a SIF is EUR 1.25 million. This amount must be reached within 12 months of the SIF's authorisation. Debt financing of real estate is not restricted. SIFs may have various sub-funds and may 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.

Summary attributes

- The SIF is the most flexible fund vehicle and uses the well-known Luxembourg fund types (FCP, SICAV).
- Use of the SCA legal form allows fund managers to exercise a strong influence.
- Low tax leakage and scope for optimising carried interest.
- Requirement to use a depositary, although the depositary's duties for non-AIF SIFs are less severe than for SIF-AIFs.
- Subscription tax payable.
- An AIFM licence may be required to manage the SIF.

Luxembourg
RAIF (FCP, SICAV and SICAF)

Background

On 18 July 2016, the Luxembourg Parliament adopted a law (the "RAIF Law"), creating a new investment structure under the name of a reserve alternative investment fund ("RAIF"). The RAIF is similar to a SIF from an investment policy and tax perspective but is exempt from the CSSF's authorisation and supervision requirements. A RAIF complying with the investment policy of a SICAR could benefit from the same tax treatment as a regulated SICAR (see SICAR section below).

Legal form

The RAIF regime is available for FCPs (*fonds communs de placement*) with a management company, for SICAVs (*sociétés d'investissement à capital variable*) and for SICAFs (*sociétés d'investissement à capital fixe*). FCP, SICAV and SICAF have to appoint a fully authorized AIFM.

Both the SICAV and the SICAF may choose from a number of legal forms

– the limited liability company (*société à responsabilité limitée* – S.à r.l.), the public limited company (SA), the newly introduced simplified public limited company (*société anonyme simplifiée* – SAS), the (commonly used) partnership limited by shares (SCA), the simple partnership with legal personality (*société en commandite simple* – SCS), the special limited partnership without legal personality (*société en commandite spéciale* – SCSp), or the cooperative in a form of a public limited company (*société coopérative organisée sous forme de société anonyme* – SCSA).

Tax treatment at entity level

The RAIF vehicle is exempt from corporate and municipal business tax, as well as from net wealth tax, 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 RAIF, whether paid to resident or non-resident investors, are not subject to Luxembourg withholding tax.

The management of RAIFs is VAT-exempt. This exemption covers main functions such as strategic portfolio management, fund accounting and the administrative management of the RAIF's assets where the place of taxation of these services is Luxembourg. The placement of RAIFs' units/shares is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 17% VAT. RAIFs are generally 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, RAIFs are not required to register for VAT in Luxembourg unless they receive taxable services from abroad – for which they must self-account for Luxembourg VAT under the reverse-charge mechanism – and/or if they carry out intra- Community acquisitions of goods under certain conditions.

RAIFs in the form of FCPs do not register for VAT in Luxembourg. The FCP uses the VAT ID of the Luxembourg management company.

Other taxes

Subscription tax (*taxe d'abonnement*) at a rate of 0.01% per year is levied on the net asset value at the end of each quarter. RAIFs whose securities are reserved for institutions for occupational retirement pension or investment vehicles dedicated to fund employment retirement benefits are in principle exempt from subscription tax.

Non-tax transparent Luxembourg fund vehicles investing directly in Luxembourg real estate, with both gross rental income and disposal gains arising as from 1 January 2021 are being subject to a real estate levy ("*prélèvement immobilier*") applying at a 20% rate. The levy does not apply to any fully taxable corporate (i.e. non-transparent) entities owning Luxembourg real estate, even when owned by Luxembourg fund vehicles.

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 more than 55 countries, as defined in a Circular issued by the Luxembourg tax authority in December 2017. None of the legal forms has access to the EU Parent-Subsidiary Directive.

The RAIF itself is not subject to any regulations, but must appoint a fully licensed AIFM, which itself is fully subject to the regulations of its country of domiciliation (EU).

Regulation

RAIFs are normally subject to 0.01% subscription tax (levied on the fund's net asset value – with some exemptions available) and are not subject to any other Luxembourg taxes (e.g. corporate income tax, municipal business tax, net wealth tax). Exemptions from subscription tax apply to RAIFs whose securities are reserved for institutions for occupational retirement pension or investment vehicles dedicated to fund employment retirement benefits.

As an exception, RAIFs that invest exclusively into risk-capital-related securities may opt for a tax regime similar to that of a SICAR (i.e. liable for corporate income tax and municipal business tax, but with an exemption for income related to risk capital securities). Under this regime, RAIFs are subject to the minimum net wealth tax. The possibility of being able to combine these two different tax regimes within the same legal entity with different compartments is unlikely.

Requirements for authorisation

RAIFs are not subject to CSSF authorisation or supervision. A RAIF must generally appoint the following service providers:

1. AIFM authorised in any EU jurisdiction
2. Luxembourg-based depositary, which must also be AIFMD- compliant
3. Luxembourg-based central administrator
4. Luxembourg-based external auditor (*réviseur d'entreprises*)

The AIFM may delegate portfolio management to an entity duly licensed for portfolio management in its country of residence. The portfolio manager must be regulated and subject to prudential supervision, or if established in a third country, cooperation between the CSSF and the respective country's supervisory authorities must be ensured. The investment management function may not be delegated to the depositary.

Luxembourg
RAIF (FCP, SICAV and SICAF)

(continued)

Investment restrictions

The investment restrictions depend on whether the RAIF has been established with a SIF-type or a SICAR-type corporate purpose.

1. For SIF-type RAIFs, the investment restrictions are identical to those applicable to SIFs. This means that there are no restrictions on the type of assets; however, investments are in principle subject to a 30% diversification requirement (there is some flexibility).
2. For SICAR-type RAIFs, the restrictions applicable to SICARs apply. This means that there is no diversification requirement and the company may, in principle, invest 100% of its capital in a single asset. The approved statutory auditor of the RAIF must draw up a report for each financial year to certify that during the past financial year, the RAIF has complied with the risk capital investment policy. This report will be sent to the Luxembourg Tax Authority.

Eligible investors

Participation in either SIF-type or SICAR-type RAIFs is only open to "well-informed investors", i.e. institutional, professional investors or high-net-worth-individual investors who invest at least EUR 125,000 or who can provide a bank confirmation of suitable experience, and confirm in writing that they adhere to the status of a well-informed investor.

Minimum capital requirements

The minimum asset base of a RAIF is EUR 1.25 million. This amount must be reached within 12 months of the RAIF's establishment. RAIFs may have various sub-funds and may 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.

Summary attributes

Combines the advantages of a directly regulated fund vehicle (umbrella structure, AIF marketing passport) with the flexibility of an indirectly supervised fund (time to market):

- Fund establishment and prospectus amendments require no CSSF approval and can therefore be carried out in a very short time frame.
- Since it is managed by an authorised AIFM, the RAIF benefits from the marketing passport (applies only to SIF-type RAIFs).
- Appointing a fully authorised AIFM can be costly, especially for a fund that falls under the "de minimis threshold", according to Article 3.2 of the AIFMD.

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 is 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 a corporation. Various legal forms are available:

- a public limited company (SA);
- a limited liability company (S.à r.l.);
- a cooperative in the form of a public limited company (SCSA) (rarely used);
- a partnership limited by shares (SCA);
- a limited partnership (*société en commandite simple* – SCS) (rarely used); or
- 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 fund level. The other legal forms are fully taxable, although the income (including interest) that is connected to investments in risk-bearing capital is tax-exempt. All other income is subject to corporate income tax and municipal business tax at an aggregate effective tax rate (in Luxembourg City) of 26.01%for 2019 and onwards. SICARs incorporated as corporations may benefit from the EU Parent-Subsidiary directive. Treatment of investors

Investors in both SCS- and SCSp-type SICARs 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 their country of residence.

Treatment of investors

Investors in both SCS- and SCSp-type SICARs 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 their country of residence.

Withholding tax

Distributions by a SICAR, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax.

Other taxes

A SICAR is not subject to annual subscription tax. Since 2016, SICARs have been subject to minimum net wealth tax amounting to EUR 4,815.

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. The management of SICARs is VAT-exempt. This exemption covers main functions such as strategic portfolio management, fund accounting and the administrative management of the SICAR's assets where the place of taxation of these services is Luxembourg. The placement of SICARs' units/shares is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 17% VAT, the lowest rate in the EU. The depositary bank's supervisory functions are subject to 14% VAT. SICARs are not required to register for VAT in Luxembourg unless they receive taxable services from abroad – for which they must 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.

Treaty status

SICARs having the form of a SA, S.à r.l., SCA, or SCSA should generally be entitled to tax treaty benefits; however, this must 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 no differentiation is made between SCS- and SCSp-type SICARs.

Regulation

A SICAR is subject to regulation by the CSSF.

Requirements for authorisation

A SICAR must be authorised by the CSSF to carry out its activities in Luxembourg. The CSSF will ensure that the SICAR meets the requirements of the SICAR Law. In particular, the investment strategy will be a central element of the CSSF's review in order to analyse its qualification as investment in risk capital, which is defined as the investment of assets into entities in view of their launch, development or listing on a stock exchange.

SICARs governed by Part II of the SICAR Law 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 affected by the AIFM Law and will remain subject, to a large extent, to requirements similar to those under the SICAR regime prior to the entry into force of the AIFM Law.

The directors of a SICAR must have a sufficiently good reputation and enough experience in consideration of the investment policy of the SICAR concerned.

The depositary and the central administrator must be located in Luxembourg and supervised by the CSSF.

For SICARs that qualify as AIFs whose investors have no redemption rights for five years from the date of their initial investment, and which generally do not invest in assets that must be held in custody, the depositary may also be an entity that:

- carries out depositary functions as part of professional or business activities
- is subject to mandatory professional registration recognised by law, to legal or regulatory provisions or to rules of professional conduct; or
- can provide sufficient financial and professional guarantees.

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

The authorisation process with the CSSF to set up a new SICAR follows the same steps as for a SIF.

Luxembourg
SICAR

(continued)

The replacement of any agent (depositary, central administration, approved statutory auditor or AIFM) and any amendment to the SICAR's instruments of incorporation are subject to approval by the CSSF.

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 as 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 1 million and must be reached within 12 months of CSSF authorisation. The share capital must then be fully subscribed, but only 5% needs to be paid- up. There are no requirements for legal reserves.

Summary attributes

- No investment restrictions, investment in only one asset possible.
- The SICAR is a flexible, tax-neutral and lightly tailored regulated fund.
- Compared to publicly distributed UCIs, SICARs are subject to lighter regulation by the CSSF.
- 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 to "opportunistic" real estate funds.
- 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 a reasonable cost. Securitisation works by grouping together assets with predictable cash flows, or rights to future income streams (such as mortgages and loans) and turning them into bond-style securities that are then sold to investors.

The Luxembourg Minister of Finance submitted a draft law on 21 May 2021 in order to modernise the Luxembourg Securitisation Law. Contrary to the European Securitisation Regulation 2017/2402, the Draft Law remains an opt-in law, meaning a vehicle can choose to be subject to the benefits and obligations of the Luxembourg Securitisation Law.

The key modifications are, in broad:

- The refinancing of a transaction is no longer limited to securities but would open to any financial instrument, i.e. including promissory notes or loans, as long as the repayable amount depends on the securitised risks.
- The flexibility of compartmentalisation and the choice to create either a securitisation company or a securitisation fund remains an integral part in the Draft Law.
- The options of legal forms that can be used for securitisation companies are enlarged by “société en nom collectif ”, “société en commandite simple”, “société en commandite spéciale” and “société par actions simplifiée” which have been established in Luxembourg law since the adoption of the Securitisation Law in 2004.
- The Draft Law confirms that a securitisation vehicle must be subject to CSSF supervision, when it issues to the public on a continuous basis.
- The treatment and distribution of profits and losses of equity financed compartments is now clearly defined in the Draft Law, stating that this has to be done on a compartment basis.
- With the Draft Law, active management (by the vehicle or a third party) is now allowed for Luxembourg securitisation vehicles for risks linked to bonds, loans or other debt instruments, except if the financing instruments are issued to the public.
- The Draft Law also defines the legal subordination of different types of debt and equity instruments issued by a securitisation vehicle.
- The Draft Law allows a securitisation vehicle to grant security interests over the assets to parties that are involved in a securitisation transaction but are not direct creditors of the securitisation vehicle.
- The Draft Law further clarifies that securitisation funds (and their liquidation) have to be registered with the Luxembourg business register, with existing securitisation funds having to register within six months after entering into force of the Draft Law.

Please note that the Draft Law is still under the approbation process at the level of the Luxembourg Parliament. The following developments are the points about securitization that are valid today, pending the vote and implementation of the Draft of Law.

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 (S.à r.l.), 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 or fiduciary estate).

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 26.01% for 2019 and onwards.

Tax treatment at entity level

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

Securitisation funds set up in the form of FCPs are not subject to corporate tax. Therefore, these types of securitisation vehicles are not subject to the interest limitation rule under ATAD 1.

For the other types of securitisation vehicles, it persists some uncertainty whether they would be subject to the limitation interest rule under ATAD I, especially for equity-financed vehicles when they distribute distressed debt.

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 Luxembourg withholding tax.

Other taxes

There is no annual subscription tax, and only minimum net wealth tax is 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. The management of securitisation vehicles is VAT-exempt. This exemption covers main functions such as strategic portfolio management, fund accounting and the administrative management of the securitisation vehicle’s assets where the place of taxation of these services is Luxembourg. The placement of securitisation vehicles’ units/shares is generally VAT-exempt. Services that cannot benefit from a VAT exemption are generally subject to 17% VAT, the lowest rate in the EU. Securitisation vehicles are not required to register for VAT in Luxembourg unless they receive taxable services from abroad – for which they must 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.

Luxembourg
Securitisation vehicle

(continued)

Treaty status

Securitisation vehicles with corporate forms should generally be entitled to double tax treaty benefits and access to EU Directives; however, this must be reviewed on a case-by-case basis as some countries may challenge this.

Regulation

Securitisation vehicles are, in principle, unregulated. Only securitisation vehicles that issue securities to the public on a continuous basis (usually interpreted as more than three times per year) fall under the supervision and regulation of the CSSF. Offers to institutional investors and private placements do not constitute a "public offer". In addition, Luxembourg securitisation vehicles may be subject to Regulation (EU) 2017/2402 if they fulfil the respective conditions, namely securitising and tranching non-recourse credit risk. Regulation (EU) 2017/2402 lays down a general framework for securitisation and creates a specific framework for simple, transparent and standardised securitisation and entails certain obligations like risk retention, transparency and investor due diligence.

Requirements for authorisation

Where required, the CSSF must approve the securitisation vehicle's articles of incorporation or management regulations (subject to the provisions of the Securitisation Law) and, if necessary, authorise the management company.

Securitisation companies and management companies of securitisation funds must have an adequate organisational structure and adequate resources to exercise their activities. The directors of the securitisation vehicle must be of good repute and have adequate experience.

Authorised securitisation vehicles must entrust the custody of their liquid assets and securities with a credit institution established or having its registered office in Luxembourg, and an approved statutory auditor must audit their annual accounts.

Investment restrictions

All types of investors may investment in an SPV. There are no investment restrictions or risk-diversification requirements for the vehicle.

Minimum capital requirements

The minimum amount of investment for corporate structures is the minimum capital, which, depending on the legal form, is EUR 12,000 or EUR 30,000. Securitisation vehicles offer the possibility of creating several compartments/sub-funds within one legal entity.

Summary attributes

- The SPV is a tax-efficient and highly flexible fund vehicle.
- Unsuitable for direct investments in real estate.

Additional developments

Loan origination

On 15 June 2021, the Luxembourg financial regulator ("CSSF") updated its Frequently Asked Questions ("FAQ") on professionals of the financial sector ("PFS") performing lending operations.

The loan origination activity is normally reserved for credit institutions and professionals of the financial sector acting under the law of 5 April 1993 on the financial sector and requires a CSSF's authorization. However, UCITS, Part II Fund, SIF and SICAR are notably exempt from getting a banking license.

In its update, the CSSF clarifies that loans are not granted to the public and therefore no banking license needed where:

They are granted to a limited circle of previously determined persons under the articles of the Luxembourg SPV or the Fund that holds the Luxembourg SPV; or

The nominal value of a loan amounts at least to EUR 3,000,000 (or the equivalent amount in another currency) and the loans are granted exclusively to professionals such as defined in Article L. 010-1. 2) of the Consumer Code.

The means that a Lux RAIF can originate loan directly or indirectly through a Luxembourg SPV as usually the PPM defines the limited circle of pre-determined borrowers it intends to loan to.

Also Luxembourg SPV held by a Foreign Fund (eg Cayman, Channel Islands) can originate loans if the above conditions are met.

Poland

- **Closed-end investment fund of non-public assets (FIZ)**

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Poland
Closed-end investment fund of non-public assets (FIZ)

Background

Until 2017 real estate investments on the Polish market were frequently performed within investment structures comprising Polish closed-end investment fund of non-public assets (FIZ).

Until 31 December 2016, FIZ benefited from a full corporate income tax exemption in Poland. Under a FIZ typical structure, FIZ held shares in a Luxembourg special limited partnership (SCSp) acting as a limited partner in a tax-transparent Polish limited partnership holding the Polish real property. Alternatively, real estate could have been held directly by a FIZ. However, due to regulatory restrictions (in particular, restrictions on acquisition by the FIZ of encumbered real estate or further encumbering the real estate with mortgage), such structures have not been popular.

Since 1 January 2017, the corporate income tax ("CIT") exemption for the FIZ has been significantly limited to certain sources of income. Since 2018, the exemption was further narrowed due to introduction of so-called real estate minimum tax (independent of CIT) on buildings subject to lease (the minimum tax was further modified as of 1 January 2019). Briefly, income from leased buildings subject to the minimum real estate tax cannot benefit from CIT exemption.

Recently, a package of tax legislation within the so-called "Polish Deal" programme was signed into law providing for significant changes to the Polish tax regulations. While these changes do not directly impact standard taxation rules of investment funds, some of the legislative changes may have an impact on the tax position of the investment fund itself or other entities within the structure covering the investment fund. Therefore, it is advisable to consider the impact of the Polish Deal on the existing and planned structures.

Additionally, increased administrative and regulatory burdens imposed by the Polish Financial Supervisory Authority which oversees closed- end investment funds and fund management companies, as well as high scrutiny on the part of financial institutions, make this type of vehicles even less popular.

Legal form

A FIZ has legal personality separate from its participants (investors) and investment fund management company (TFI).

A TFI is a licenced specialised entity being FIZ's statutory governing body. It manages the FIZ's affairs, including representation of the FIZ towards third parties as well as taking care of administration and compliance activities.

The FIZ's assets remain the separate property of the FIZ, separate from the TFI. Within the typical structure, investors are holding the economic interest in the FIZ's investments through investment certificates issued by the FIZ. Technically, investors are no legal owners of the FIZ.

The investors may keep control over the FIZ's activities and investments under the mechanisms stipulated in the Articles of Association of the FIZ and in the cooperation agreement executed between the investors and TFI.

Tax status

The FIZ is a CIT-payer in Poland, that can apply an exemption to certain types of income.

Tax treatment at entity level

Until 31 December 2016, the FIZ benefited from a full CIT exemption in Poland.

As of 1 January 2017, the CIT exemption no longer applied to all incomes of the FIZ. In particular, the following income became no longer CIT exempt:

- income received on a participation in tax-transparent entities (including rental proceeds and capital gains from the disposal of real property held through tax-transparent partnerships);
- capital gains from sale of securities issued by tax-transparent entities and shares thereof;
- interest on loans and other receivables owed by the tax-transparent entities to the FIZ (also on securities issued by these entities);
- certain other income items related to participation in such tax-transparent entities.

On the other hand, rental proceeds and capital gains from the disposal of real properties **held directly by the FIZ** may have been exempt from Polish CIT (as mentioned previously, historically, holding real property directly by FIZ was not widespread due to legal limitations with respect to debt financing and security instruments).

Please note, however, that since 1 January 2018 t**he CIT exemption does not apply to rental proceeds and capital gains from the disposal of buildings subject to the minimum tax** (although we are aware of lower court rulings according to which capital gains may benefit from exemption, this is yet to be considered by the Supreme Administrative Court). The minimum tax was initially applicable to certain classes of buildings (including shopping centres, department stores, stores, office buildings), initial value of which exceeded PLN 10m ca (ca. EUR 2.2m – this threshold was calculated per an asset).

Since 2019, the minimum tax is applicable to all buildings subject to lease located in Poland, initial value of which exceeds PLN 10m (the threshold is now calculated per a taxpayer and not per an asset). If a given building is leased only in part, the minimum tax applies to the proportion of initial value corresponding to the leased area. If leased area does not exceed 5% of the usable floor area of the building, the minimum is not applicable.

In view of the above, since 1 January 2018, application of the CIT exemption for FIZ operating in real estate industry is very limited.

Treatment of investors

There is no direct allocation of FIZ income to investors. At the same time, investors are not liable for obligations of FIZ.

Profits from the investment may be repatriated to investors through: (i) buy-back of investment certificates, (ii) sale of investment certificates to third parties or (iii) dividend-like distributions of the FIZ's income (without buy-back of investment certificates).

Currently, distributions from FIZ to the investors are treated as a "dividend-like" or capital gains under domestic Polish law and should be subject to 19% corporate income tax in Poland. However, under the double tax treaties concluded by Poland, investors may benefit from treaty protection (exemption in relation to capital gains derived as a result of buy-back of investment certificates or exemption / reduced tax rate in relation to "dividend-like" distribution). Note that treaty protection for capital gains

Poland
Closed-end investment fund of non-public assets (FIZ)

(continued)

derived as a result of buy-back of investment certificates may not be available in case of the treaties covering a broad "real estate clause" that allows treating FIZ as a real estate rich company (in addition, please note that under the amended double taxation treaty with the Netherlands expected to apply as of 2033, such gains would be treated as dividends). Relevant double tax treaty needs to be checked each time to review tax implications. Also, it should be observed that investors in FIZ should not have a permanent establishment in Poland for tax purposes.

Withholding tax

Proceeds from (i) buy-back of investment certificates by FIZ and (ii) sale of investment certificates to third parties are treated under the Polish CIT Law as capital gains and are subject to standard 19% CIT in Poland. Generally, tax should be accounted for by the investor receiving the distribution (unless exemption resulting from a double tax treaty applies) and technically no withholding tax obligations should be imposed on FIZ.

However, in case FIZ qualifies as a "real estate company" under a specific definition, it would be obliged to forfeit tax from the investor and remit this to the tax authority.

As of 1 January 2018, proceeds from (iii) "dividend-like" distributions are subject to 19% withholding tax in Poland, to be collected and remitted by FIZ. As FIZ has no access to EU Directives, such income may benefit only from double tax treaty protection (if available). Relevant double tax treaty needs to be checked each time to review tax implications.

Treaty status

A FIZ has access to double tax treaties, but it does not have access to EU Directives.

Filing obligations

A FIZ is subject to standard tax reporting obligations for CIT-payers in Poland.

Regulation

Both the FIZ and the TFI are subject to supervision of Polish Financial Supervisory Authority (PFSA). In 2016 AIFMD regulations were implemented into Polish law. Impact of new legislation on existing or new FIZ structures is fairly limited although certain new compliance obligations were introduced (e.g. notification of employees of entities in which the FIZ invests). The new law introduced alternative investment funds legislation as well as regulations on cross border offering of investment certificates in the FIZ.

Requirement for authorisation

A FIZ is established by a TFI.

A FIZ needs to appoint an authorised Depositary. Generally, a bank or other financial institution (such as brokerage house) subject to supervision of PFSA. The role of the Depositary is, in particular, to maintain the asset register of the FIZ and to supervise flow of funds of the FIZ through its bank accounts. The Depositary should act independently from the TFI in the interest of the investors. Given the inflation of responsibilities of the Depositaries due to implementation of the AIMFD and related regulations, the role the Depositaries in daily operations of the FIZ was increased significantly, triggering additional compliance.

Investment restrictions

The sole business of a FIZ consists of investing funds in assets defined in the Polish Investment Funds Law. In particular, a FIZ may invest in securities, shares in Polish limited liability companies or foreign currencies.

As regards real estate assets, a FIZ may invest in ownership or co-ownership of land, buildings and premises representing separate real estate or a perpetual usufruct right. FIZ can only acquire real estate that does not serve as collateral and/or is not subject to enforcement. A FIZ can acquire real estate encumbered with third party rights only if the exercise of such rights does not create the risk of a loss of the ownership of such real estate. A FIZ shall not allocate more than 25% of the value of its assets in one real estate asset.

The real estate portfolio held directly by a FIZ may be subject to mortgage only up to 50% of FIZ's net assets. A FIZ may contract loans exclusively from domestic banks, credit institutions and/or foreign banks, provided that their aggregate value doesn't exceed 75% of the fund's net asset value upon conclusion of the loan or credit agreement.

Minimum level of investment

N/A (subject to provisions of the FIZ's Articles of Association).

Summary attributes

- Due to its regulation, the FIZ may be perceived by banks and investors as a safe and reliable platform for investment operations (however subject to many regulatory constraints and burdens).
- Tax free distribution of profits via buy-back of investment certificates by the FIZ to investors resident in selected treaty protected jurisdictions may be possible (e.g. the Netherlands or Cyprus; this is expected to change as of 2022 in respect of the Netherlands due to amendments to the Dutch DTT; also, MLI may limit the preferential treatment further).
- Sale of land by FIZ may be exempt from CIT.
- Relatively high annual maintenance costs.
- CIT exemption strongly limited since 1 January 2018.
- In case of direct real estate investment by a FIZ, there are regulatory restrictions on encumbering the property with mortgage.
- Potential applicability of GAAR should be considered on a case-by-case basis.
- Increased administrative and regulatory burdens imposed by PFSA.
- Increased compliance obligations related to more extensive role of Depositaries.

Portugal

- **Fundo de investimento imobiliário (FII)**
- **Sociedades de investimento imobiliário (SIIMOs)**

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Portugal
Fundo de investimento imobiliário (FII)

Background

In 2015, following the approval of Law no. 16/2015 of 24 February, several changes in the collective investment vehicle (CIV) regime were made. The law results from the partial transposition of EU Directives 2011/61/EU and 2013/14/EU and applies to all CIVs, irrespective of their legal form.

Additionally, several substantial changes were introduced to the CIV's tax regime through Decree-Law no. 7/2015 of 13 January, which has been effective since 1 July 2015. These changes aimed to modernise the CIV's tax regime in Portugal, aligning it with its European peers and promoting its international competitiveness. The Decree-Law also provided a transitional regime applicable to income obtained by the CIV between 1 January and 30 June 2015 and to capital gains arising from CIV's assets acquired before 30 June 2015.

The CIV tax regime impacts on the *fundo de investimento imobiliário* (FII), which is a common real estate investment vehicle in Portugal. It has been used by both the banking industry and investors.

Legal form

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

An FII can be an open-end or closed-end. It is established and managed by a management company whose primary object is to manage one or more CIVs. FIIs' securities are entrusted to a depositary, which must be established in Portugal. Among other things, the depositary guarantees to investors to adhere to the CIV rules, to execute the instructions given by the management company and to pay them the income arising from the securities.

Tax status

In general, income derived from real estate assets held by the FII is not taxed unless it is derived from "offshore" entities. Other income obtained by the FII is liable to corporate income tax (CIT).

Tax treatment at entity level

The FII is subject to CIT at the standard rate (currently 21%). It is exempt from municipal and state surcharges, but is subject to autonomous taxation as provided by the CIT Code.

The FII's taxable profit corresponds to the net income of the period, calculated in accordance with the applicable accounting standards. However, for the purpose of assessing the taxable profit, the following income/expenses, among others, are disregarded:

- investment income, rental income and capital gains (unless derived from "offshore" entities);
- expenses related to the income referred to above;
- income and expenses related to management services, as well as other commissions reverting to the FII.

FIIs are also subject to stamp duty (SD), levied on its net asset value (NAV) at 0.0125% and payable quarterly to the tax authority.

Treatment of investors

The taxation "at exit" rule applies to investors.

Income obtained by resident investors or non-residents with permanent establishments in Portugal is taxed as follows:

- for individuals, income is subject to personal income tax (PIT) (generally at a rate of 28% in case of income distributed by FIIs, or, in case of capital gains, income should be considered, in 50%, for the computation of the taxable income subject to PIT progressive rates);
- for entities, income is subject to CIT (included in the taxable profit of the investors and taxed at a rate of 21%, plus municipal and state surcharges if applicable).

Income obtained by non-resident investors without a permanent establishment is taxed at 10%. This regime does not apply – with the PIT and CIT rate of 35% being applicable instead – if the investors are tax residents in "offshore" jurisdictions or, as a general rule, if the entities to which income is paid/ distributed are held in more than 25% by tax residents in Portugal.

Withholding tax

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

- For resident individuals, income distributed by FIIs and income arising from the redemption of units is subject to definitive WHT at a rate of 28%. Resident individuals may opt to aggregate such income to the remaining income and subject it to taxation at PIT progressive rates.
- For resident entities, income distributed by FIIs and income arising from the redemption of units is subject to WHT at a rate of 25% (this WHT works as a payment on account) and must be included in the taxable profit for the year.
- Income obtained by non-resident investors without a permanent establishment is generally subject to WTH at a rate of 10%.

Other taxes

Property transfer tax (IMT) is due on the transfer of ownership of real estate located in Portugal (e.g. offices, retail and other commercial property). IMT is levied on the highest of the purchase price or the tax registration value (TRV) appraised under the annual property tax (IMI) rules. The IMT rates vary according to the type of use of the real estate: (i) up to 7.5%, in case of residential real estate, (ii) 6.5%, in case of other urban real estate such as retail, offices or land for construction, and (iii) 5% in case of rural land. When the acquiring entity is directly or indirectly controlled by another entity resident or domiciled in a tax haven, according to the relevant "black-list", it is applicable the IMT rate of 10%, without possibility to apply for any IMT exemption or reduction. IMI is due by owners of real estate located in Portugal, who, at 31 December of each year bear the tax. IMI is levied on the TRV of the real estate at rates vary depending on its nature and on the municipality in which the property is located. For urban property, the rate varies from 0.3% to 0.45%. When the owner of the real estate is directly or indirectly controlled by another entity resident or domiciled in a tax haven, according to the relevant "black-list", it is applicable the IMI rate of 7.5%. "Additional to the IMI" is payable, among others, by individuals and corporations owning urban properties located in Portugal and intended for residential purposes, and land for construction (regardless of the purpose of the construction).

Although an FII is a separate and autonomous pool of assets, thus not qualifying as a corporation, it is subject to the Additional to the IMI under the same terms applicable to corporations.

The tax rate is 0.4% and the tax base corresponds to the sum of the TRV of all residential properties and land for construction held by each taxpayer, reported as at 1 January of each year.

Portugal
Fundo de investimento imobiliário (FII)

(continued)

Treaty status

In principle, an FII has access to treaty benefits.

Filing obligations

CIT due by FIIs is self-assessed in the CIT return (Form Modelo 22), to be filed before the end of May of the following tax year (or the end of the 5th month following the end of the tax year, if different from the calendar year), and payment must be made by the last day of the deadline for submitting the tax return.

SD on the NAV is self-assessed quarterly, in March, June, September and December of each year, and is payable by FIIs before the 20th of the month following the taxable event.

The management company sends periodic financial reports to the CMVM (*Comissão do Mercado de Valores Mobiliários*), the Portuguese Securities Market Commission.

Regulation

The regulatory authority, the CMVM, supervises FIIs. The management company is governed by banking law, is supervised by *Banco de Portugal* and the CMVM, and is only allowed to manage regulated funds.

Requirements for authorisation

Authorisation for setting up a FII is granted by the CMVM upon the request of the management company.

Investment restrictions

There are several investment restrictions for FIIs, imposed by risk-diversification rules. Eligible assets are urban real estate, real estate rights in rem, shares in real estate companies (subject to further restrictions), investment units in real estate funds, and cash and other instruments. In addition, the composition of the portfolio is subject to certain restrictions.

Restrictions for open-ended funds, among others:

i. eligible real estate assets must represent at least two thirds of the total assets;

ii. one single real estate asset cannot represent more than 20% of the total assets; and

iii. the fund leverage cannot exceed a maximum of 25% of the total assets.

Conversely, the requirements are less strict for close-ended funds, i.e., for some privately placed close-ended funds, only restriction (i) of the above restrictions applies.

Minimum level of investment

After 12 months of activity, the FII's NAV must amount to EUR 5,000,000.

Summary attributes

- A significant part of the FII's income is not actually taxed.
- Non-resident investors benefit from a favourable tax regime.
- Privately placed closed-end FIIs have more flexible portfolio composition and leveraging rules.
- FIIs are fully liable to property taxes (IMT, IMI and Additional to the IMI).

Portugal
Sociedades de investimento imobiliário (SIIMOs)

Background

Sociedades de investimento imobiliário (SIIMOs) were introduced in June 2010. They are regulated real estate investment vehicles for real estate. Although the regime has been in place for more than eight years, Portuguese SIIMOs have not been used much by investors in Portugal, meaning that there is little practical experience regarding them.

Both FIIs and SIIMOs follow the same tax regime.

Legal form

SIIMOs are collective investment vehicles (CIVs) 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). They can be self-managed or managed by an independent management company. SIIMOs' shares are entrusted to a depositary, which must be established in Portugal. Among others, the depositary guarantees to investors to adhere to the CIV rules, to execute the instructions given by the management company and to pay the income arising from the securities to the investors.

Tax status

In general terms, income derived from real estate assets held by SIIMOs is not taxed unless it is derived from "offshore" entities. Other income obtained by SIIMOs is liable to CIT.

Tax treatment at entity level

SIIMOs are subject to CIT at the standard rate (currently 21%). They are exempt from municipal and state surcharges but are subject to autonomous taxation as provided by the CIT Code.

The SIIMO's taxable profit corresponds to the net income of the period, calculated in accordance with the applicable accounting standards. However, for the purpose of assessing the taxable profit, the following income/expenses, among others, are disregarded:

- investment income, rental income and capital gains (unless derived from "offshore" entities);
- expenses related to the income referred to above;
- income and expenses related to management fees and other commissions reverting to the SIIMO.

SIIMOs are also subject to SD levied on their net asset value (NAV) at 0.0125% and payable on a quarterly basis.

Treatment of investors

The taxation "at exit" rule applies to investors.

Income obtained by resident investors or non-residents with a permanent establishment in Portugal is taxed as follows:

- for individuals, income is subject to personal income tax (PIT) (generally at a rate of 28% in case of income distributed by SIIMOs, or, in case of capital gains, should be considered, in 50%, for the computation of the taxable income subject to PIT progressive rates);
- for entities, income is subject to CIT (included in the taxable profit of the investors, taxed at a rate of 21%, plus municipal and state surcharges, if applicable).

IIncome obtained by non-resident investors without a permanent establishment is taxed at 10%. This regime does not apply – and instead the PIT and CIT rate of 35% applies – if the investors are tax residents in "offshore" jurisdictions or, as a general rule, if the entities to which income is paid/ distributed are held in more than 25% by tax residents in Portugal.

Other taxes

IMT is due on the transfer of ownership of real estate located in Portugal (e.g. offices, retail and other commercial property). IMT is levied on the highest of the purchase price or the TRV appraised under the IMI rules. The IMT rates vary according to the type of use of the real estate: (i) up to 7.5%, in case of residential real estate, (ii) 6.5%, in case of other urban real estate such as retail, offices or land for construction, and (iii) 5% in case of rural land. When the acquiring entity is directly or indirectly controlled by another entity resident or domiciled in a tax haven, according to the relevant "black-list", it is applicable the IMT rate of 10%, without possibility to apply for any IMT exemption or reduction.

IMI is due by owners of real estate located in Portugal, who, at 31 December of each year bear the tax. IMI is levied on the TRV of the real estate, at rates vary depending on its nature and on the municipality in which the property is located. For urban property, the rate varies from 0.3% to 0.45%. When the owner of the real estate is directly or indirectly controlled by another entity resident or domiciled in a tax haven, according to the relevant "black-list", it is applicable the IMI rate of 7.5%.

Additional to the IMI is payable, among others, by individuals and corporations owning urban properties located in Portugal and intended for residential purposes, and land for construction (regardless of the purpose of the construction). The tax rate is 0.4% and the tax base corresponds to the sum of the TRV of all residential properties and land for construction held by each taxpayer, reported as at 1 January of each year.

Withholding tax

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

- For resident individuals, income distributed by SIIMOs and income arising from the redemption of shares is subject to definitive WHT at a rate of 28%. Resident individuals may opt to aggregate such income to the remaining income and subject it to taxation at the progressive rates.
- For resident entities, income distributed by SIIMOs and income arising from the redemption of shares is subject to WHT at a rate of 25% (this WHT works as a payment on account) and must be included in the taxable profit for the year.
- Income obtained by non-resident investors without a permanent establishment is generally subject to a WTH rate of 10%.

Treaty status

In principle, SIIMOs have access to treaty benefits.

Filing obligations

CIT due by the SIIMOs is self-assessed in the CIT return (Form Modelo 22), to be filed before the end of May of the following tax year (or the end of the 5th month following the end of the tax year, if different from the calendar year), and payment must be made by the last day of the deadline for submitting the tax return.

Portugal
Sociedades de investimento imobiliário (SIIMOs)

(continued)

SD on the NAV is self-assessed quarterly, in March, June, September and December of each year, and is payable by the SIIMO before the 20th of the month following the taxable event.

The management company sends periodic financial reports to the CMVM (*Comissão do Mercado de Valores Mobiliários*), the Portuguese Securities Market Commission.

Regulation

The regulatory authority, the CMVM, supervises SIIMOs. The management company, if any, is governed by banking law, is supervised by Banco de Portugal and CMVM and is only allowed to manage regulated funds.

Requirements for authorisation

Authorisation for setting up a SIIMO is granted by the CMVM.

Investment restrictions

These matters fall under the same rules that apply for FIIs. In principle, SIIMOs in the form of SICAVIs follow the same regime as open-ended FIIs, and SIIMOs in the form of SICAFIs follow that of closed–ended FIIs, unless otherwise stated.

Minimum level of investment

At incorporation, the minimum capital required for a self-managed SIIMO is EUR 300,000. After 12 months of activity, the SIIMO's NAV must amount to EUR 5,000,000.

Summary attributes

- A significant part of SIIMOs' income is not actually taxed.
- Non-resident investors benefit from a favourable tax regime.
- SIIMOs can be self-managed (not requiring a management company), which can be an advantage in certain situations.
- SICAFIs may have flexible portfolio composition and leveraging rules.
- SIIMOs are subject to property taxes (IMT, IMI and Additional to the IMI).


CARREIRA

Spain

- **Fondo de inversión inmobiliaria (FII)**
- **Sociedad de inversión inmobiliaria (SII)**

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Spain
Fondo de inversión inmobiliaria (FII)

Background
The *fondo de inversión inmobiliaria* (FII) is one of the two categories of real estate collective investment institutions (of a non-financial nature) available in Spain. Its exclusive purpose is the acquisition of real estate assets for lease. An FII is a regulated investment vehicle and its implementation requires the prior approval of the CNMV (*Comisión Nacional del Mercado de Valores*).

Legal form
A Spanish real estate investment fund is a collective investment institution with no legal personality. The fund must be managed by a management company known as an SGIIC. The SGIIC is a regulated Spanish public limited company (S.A.) with its effective head office in Spain and subject to CNMV approval and supervision. 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 withholding tax incurred is refundable.

Capital gains are taxed at 1% provided that the asset is held for a period of at least three years (7 years in case of dwellings).

Other tax benefits may apply.

Treatment of investors
Capital gains are taxable upon the transfer or redemption of units. Taxation at investor level must be in accordance with the investor's personal tax status.

Withholding tax
Capital gains are subject to 19% withholding tax as of 2016, 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 must file an annual corporate income tax return, as well as withholding tax returns.

Regulation
The fund is subject to CNMV regulatory supervision.

Requirements for authorisation
The SGIIC must obtain prior regulatory approval from the CNMV in order to set up the fund. The SGIIC must also comply with certain equity requirements and key organisational characteristics, and is fully taxable at 25%.

Investment restrictions
The fund must invest in accordance with the principles of risk spreading as detailed in legislation. At least 70% of the annual average monthly account balances must be invested in real estate for lease and must maintain a minimum liquidity ratio of 10% of the total assets for the previous month. Shareholdings in real estate entities are limited to maximum 15% of total assets. The remaining 20% may be invested in listed securities or cash. Real estate assets require a minimum holding period of three years.

Minimum level of investment
The minimum investment is EUR 9 million. There is no statutory minimum level of investment. However, the minimum level of EUR 100,000 may be relevant if it is intended to be used for marketing the relevant fund, with the exception of the obligation to publish an offering prospectus; therefore, such an offering is not considered a public offering, but instead a private placement.

Summary attributes
- Income taxable at 1% at fund level vs 25% standard corporate income tax rate.
- The fund should be entitled to double tax treaty benefits.
- Investment restrictions do not have be complied with in the first 3 years after registering with the CNMV.
- Subject to supervision by the authorities as a regulated collective investment institution.
- Need for a regulated Spanish management company.
- Minimum of 100 unitholders.

Spain
Sociedad de inversión inmobiliaria (SII)

Legal form
A Spanish real estate investment company (SII) is a collective investment institution with legal personality. The SII is a regulated public limited company (S.A.) with its 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 withholding tax incurred is refundable.

Capital gains are taxed at 1% provided that the asset is held for a period of at least three years (7 years in case of dwellings).

Other tax benefits may apply.

Treatment of investors
Dividends and capital gains are taxable at investor level, depending on the investor's tax status.

Withholding tax
Dividends and capital gains are subject to 19% withholding tax as of 2016, but this may be reduced by double tax treaties and EU Directives.

Treaty status
The vehicle is entitled to double tax treaty benefits and could potentially have access to EU Directives.

Filing obligations
The SII must file an annual corporate income tax return, as well as withholding tax returns.

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

Requirements for authorisation
The SII must obtain prior regulatory approval from the CNMV. The SII may be self-managed or managed by an SGIIC, which is subject to CNMV approval and supervision.

Investment restrictions
The SII must invest in accordance with the principles of risk spreading as detailed in legislation. At least 80% of the assets must comprise eligible real estate for lease, with certain limitations (e.g. shareholdings in real estate entities are limited to a maximum 15% of total assets). The remaining 20% may be invested in listed securities and cash. Real estate assets require a minimum holding period of three years.

Minimum level of investment
The minimum share capital is EUR 9 million. There is no statutory minimum level of investment. However, the minimum level of EUR 100,000 may be relevant if it is intended to be used for marketing the relevant fund, with the exception of the obligation to publish an offering prospectus; therefore, such an offering is not considered a public offering, but instead a private placement.

Summary attributes
- Income taxable at 1% at SII level vs 25% standard corporate income tax rate.
- There is access to double tax treaties and it could potentially have access to EU Directives.
- Investment restrictions do not have to be complied with in the first 3 years after registering with the CNMV.
- Subject to supervision by the authorities as a regulated collective investment institution.
- Minimum of 100 shareholders.

Sweden

- **Partnership/Limited partnership (HB/KB)**
- **Limited Liability Company (AB)**

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Sweden
Partnership/Limited partnership (HB/KB)

Background

There are no designated fund vehicles, accordingly no specific tax regime exists for real estate funds. Funds may be structured in the legal form of limited liability companies or (limited) partnerships either in a pure domestic structure or combined with foreign fund vehicles where the Swedish entities function as holding companies.

Funds structured as (limited) partnership can be open-end or closed-end funds.

Legal form

There are two different forms of partnerships, standard partnerships and limited partnerships ("*handelsbolag/kommanditbolag*").

The difference between a partnership and a limited partnership is that a limited partnership has one or several owners whose financial obligations are limited to the equity injected and at least one owner that have an unlimited obligation.

Tax status

A partnership is not subject to income tax. Instead, the partners are liable to income tax on their share of the income from the partnership. A partnership is, however, liable for e.g. property tax, real estate transfer tax, social security fees and VAT.

Tax treatment at entity level

Current Income Tax

Current income less operating and financial costs are taxed at the ordinary corporate income tax rate of 20.6%.

The taxable income is assessed at the level of the partnership, which means that the partnership is liable to file an income tax return. The taxable income is taxed at the level of the partners and distributed to them in accordance with their participation in the partnership. However, items such as property tax, real estate transfer tax and social security fees – to the extent the partnership has employees – shall be paid by the partnership. Foreign partners of a Swedish partnership that directly holds real estate will always be liable to Swedish tax for the income arising in the partnership.

A Swedish limited liability company, or a similar foreign entity, holding shares in a Swedish partnership that receives income from the partnership are tax exempt for the partner, if the dividend would have been tax free at the level of the partner in case the partner had hold the shares directly.

Capital Gains Income Tax

Capital gains arising from the partner's disposal of participations in a Swedish partnership held as capital assets are not subject to taxation when held by a Swedish limited liability company. The same applies to a foreign owner irrespective of the shares being capital assets or not. A limited liability company or a similar foreign entity holding participations in a Swedish partnership that receives capital gains are tax exempt for the partner, if the capital gain would have been tax free at the level of the partner if the partner had hold the shares directly.

Capital gains from the sale of shares held by the partnership that is not qualifying as described above, as well as capital gains from the sale of real estate are taxed at the ordinary income tax rate of 20.6% at the level of the partners.

Profit Distributions

The accumulated accounting profit, less any reserves, may be distributed from a Swedish partnership to its shareholders. The distribution paid out is not tax deductible.

Treatment of investors

Foreign investors are liable to tax in Sweden on income arising from activities in the partnership to the extent the activities in the partnership constitute a permanent establishment in Sweden or the income is derived from a real estate investment.

Please also see under "Current income tax" and "Capital Gains Income Tax".

Withholding tax

Profit distributed from a Swedish partnership is generally not subject to withholding tax as it is not considered as a dividend distribution, i.e. any excess cash in the partnership can be distributed to the partners without withholding tax.

Treaty status

Subject to case-by-case analysis.

Filing obligations

A partnership must file an annual income tax return. Further, if a partnership is registered for VAT purposes, VAT returns must be filed and tax must be paid monthly, quarterly or on an annual basis. The number of filings per annum depends both on turnaround and what has been applied for when registering the company for VAT. Additional filing may be required depending on the business of the partnership, e.g. if it has employees.

Regulation

If the partnership (as the fund) is an AIF, its manager is required to obtain a license or registration from the Swedish financial supervisory authority ("*Finansinspektionen*"). In case an AIF is self-managed, the license or registration must be obtained by the AIF itself. However, no Swedish license is required if a manager is authorized as an AIF manager in a country within EEA.

AIF managers are generally subject to regulation based on Alternative Investments Funds Managers Act ("*Lagen om förvaltare av alternativa investeringsfonder*") in which AIFMD has been implemented.

Requirement for authorisation

Filing obligations, VAT

If a partnership is registered for VAT purposes, VAT returns must be filed and tax must be paid on a monthly, quarterly or annual basis. The number of filings per annum depends both on the company's VATABLE turnover and what has been applied for when registering the company for VAT.

Sweden
Partnership/Limited partnership (HB/KB)

(continued)

Investor requirements/obligation, CIT

The partners need to file an income tax return to report the taxable income from the partnership.

Entity qualification requirements

Based on tax legislation, there are no requirements to be met by the Fund, as there are no designed real estate fund vehicles with a specific tax regime.

Activity limitations

None, for tax purposes.

Investment restrictions

None for tax purposes.

Minimum level of investment

No minimum level of investment.

Summary attributes

- No limitations on distributable profit.
- Any excess cash can be distributed to the partners.
- No withholding tax on profit distribution to partners.
- The partnership structure is normally not tax efficient for a domestic taxable investor.
- For a foreign investor, the tax liability is a disadvantage at least for the compliance work it creates.

Sweden
Limited Liability Company (AB)

Background

There are no designated fund vehicles, accordingly no specific tax regime exists for real estate funds. Funds may be structured in the legal form of limited liability companies or (limited) partnerships either in a pure domestic structure or combined with foreign fund vehicles where the Swedish entities function as holding companies.

A Swedish limited liability company cannot have variable capital unlike e.g. SICAV. Thus, funds structured as Swedish limited liability company are closed-end funds.

Legal form

Limited liability company (Sw. *aktiebolag*).

Tax status

A taxable entity.

Tax treatment at entity level

Current Income Tax

Operating income less operating and financial costs are taxed at the ordinary corporate income tax rate of 20.6%. Dividends received on unquoted shares held as capital assets are tax exempt. Dividends on quoted shares held as capital assets are tax exempt if the interest held amounts to at least 10% during a minimum period 12 months (please note that the 12 month prerequisite refers to the total holding period of the shares, and not only up until the occasion where the dividend is distributed). Dividends on non-listed shares would most likely be tax exempt following the Swedish participation exemption.

Capital Gains Income Tax

Capital gains arising from the sale of unlisted shares held as capital assets are tax exempt. Capital gains arising from the sale of listed shares are tax exempt if the interest held amounts to at least 10% and the shares have been held for at least 12 months at the time of disposal. Other capital gains, such as gains on shares not qualifying as described above and capital gains arising from the sale of real estate are taxable at the ordinary corporate income tax rate of 20.6%.

Profit Distributions

The accumulated accounting profit, less any reserves, may be distributed to the shareholders. The dividend paid out is not tax deductible.

Treatment of investors

Foreign investors are liable to tax in Sweden on income arising from activities in Sweden, to the extent they constitutes a permanent establishment of the investor. The mere holding of shares in a limited liability company does not create a permanent establishment for the foreign investor.

Withholding tax

The main rule is that withholding tax ("WHT") is levied at a rate of 30% on any dividends paid from a Swedish limited liability company to a non-tax resident shareholder. Dividends to EU-resident companies, covered by the EU Parent/Subsidiary Directive, which holds at least 10% in the distributing company, are exempt from withholding tax. Further, dividends attributed to any foreign company similar to a Swedish limited liability company and subject to income tax similar to that imposed on a Swedish company are exempt from withholding tax in case the dividends would have been exempt from income tax in a domestic situation. In other situation, the withholding tax according to domestic law is often reduced provided that an applicable double tax treaty is in force.

The Swedish Ministry of Finance has proposed that the current Swedish WHT act should be replaced by a new WHT act, which e.g. will include explicit substance requirements and focus on tax evasion in situations where the person who is entitled to the dividend is not the same as the person who receives the dividend (i.e. beneficial owner). As the proposal has been heavily criticized (especially with regards to the effects of the participation exemption rules), the details on the new WHT act are still being evaluated.

The Swedish government has proposed that the Coupon Tax Act should be replaced by a new act on Withholding Tax on dividends. A proposal has been submitted and the government intends to issue a bill in 2022, which is proposed to partly enter into force on 1 July 2023 and in its entirety on 1 January 2024.

Treaty status

A limited liability company is covered by the double tax treaties concluded by Sweden.

Filing obligations

CIT

Limited liability companies must file an annual corporate income tax return. The applicable due date for tax return submissions depends on the month in which the financial year ends. It is most common to have a financial year corresponding to the calendar year. In such case the filing deadline is 1 July in the following year. 1 month respite is received in case e-filing is applied.

WHT

In case of dividend distributions, the distributing company is required to file (a) WHT-return(s). The record should contain a summary on e.g. the dividend per share, total dividends distributed and whether any tax is withheld. Also, the record should contain information on the recipient of the dividends. The WHT-returns are due no later than 4 months following the decision to distribute dividends.

VAT

If a company is registered for VAT purposes, VAT returns must be filed and tax must be paid monthly, quarterly or annual basis. The number of filings per annum depends both on turnaround and what has been applied for when registering the company for VAT.

Regulation

If the company (as the fund) is an AIF, its manager is required to obtain a license or registration from the Swedish financial supervisory authority ("*Finansinspektionen*"). In case an AIF is self-managed, the license or registration must be obtained by the AIF itself. However, no Swedish license is required if a manager is authorized as an AIF manager in a country within EEA.

AIF managers are generally subject to regulation based on Alternative Investments Funds Managers Act (Sw. *Lagen om förvaltare av alternativa investeringsfonder*) through which the AIFMD has been implemented.

Sweden
Limited Liability Company (AB)

(continued)

Requirements for authorisation

Filing obligations, VAT

CIT

Limited liability companies must file an annual corporate income tax return. The applicable due date for tax return submissions depends on the month in which the financial year ends. It is most common to have a financial year corresponding to the calendar year. In such case the filing deadline is 1 July in the following year. 1-month respite is received in case e-filing is applied.

WHT

In case of dividend distributions, the distributing company is required to file (a) WHT-return(s). The record should contain summary on e.g. the dividend per share, total dividends distributed and whether any tax is withheld. Also, the record should contain information on the recipient of the dividends. The WHT-returns are due no later than 4 months following the decision to distribute dividends.

VAT

If a company is registered for VAT purposes, VAT returns must be filed, and tax must be paid on a monthly, quarterly or annual basis. The number of filings per annum depends both on the company's VATable turnover and what has been applied for when registering the company for VAT.

Investor requirements/obligation, WHT

No formal filing requirements but may have to provide the company/subsidiary with information in order for the company/subsidiary to assess the WHT-status before/upon dividend distributions.

Entity qualification requirements

Based on tax legislation there are no requirements to be met by the Fund as there are no designed real estate fund vehicles with a specific tax regime.

Activity limitations

None, for tax purposes.

Minimum level of investment

Minimum equity to incorporate a limited liability company is SEK25k.

Summary attributes

- The holding of real estate investments can often be structured tax efficiently.
- There is no withholding tax on interest payments.
- Withholding tax on dividends may be reduced to nil.
- It is not a designated real estate fund vehicle with a special purpose tax regime.

Switzerland

- **Swiss collective investment schemes**

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Switzerland
Swiss collective investment schemes

Background

The legislation regarding collective investments (the Federal Act on Collective Investment Schemes "CISA", *Bundesgesetz über die kollektiven Kapitalanlagen*) entered into force on 1 January 2007. There have been several amendments, which entered into force on 1 March 2013. Further, the Federal Act on Financial Services "FinIA" (*Bundesgesetz über die Finanzdienstleistungen*) and the Federal Act on Financial Institutions FinSA (*Bundesgesetz über die Finanzinstitute*) entered into force on 1 January 2020. In addition, the Swiss Federal Tax Administration published Circular Letters No. 24 and 25 (issued in January and March 2009, with updated circular letters published in November 2017 and February 2018), and a communication regarding redemptions in kind at collective investments schemes on 12 January 2021 providing additional information on the tax treatment of 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 company with variable capital), a SICAF (investment company with fixed capital), a contractual collective investment fund (FCP or *vertraglicher Anlagefonds*) or a KGK (limited partnership for collective capital investments).

The subsequent comments are mainly based on the legal forms of SICAV and FCP. Switzerland does not have a REIT regime and KGKs holding real estate are still uncommon.

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 the collective investment schemes (such as SICAV and FCP) holding direct real estate investments in Switzerland.

Tax treatment at entity level

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

For an indirect Swiss real estate investment held by a special-purpose vehicle (SPV), income is subject to ordinary statutory income tax (8.5% direct federal tax and cantonal and communal taxes, e.g. City of Zurich 16.03% profit after tax as of 2021) at SPV level. Furthermore, the SPV is subject to annual capital tax at cantonal level (e.g. City of Zurich 0.1718%).

Depending on the canton in which the real estate is located, capital gains realised by the sale of real estate held by the fund directly or indirectly might be taxed differently at cantonal and communal levels. 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 corporate income tax. In general, the tax rate is higher than the ordinary income tax rate; however, a progressive deduction depending of the ownership period is available, which 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 real estate are subject to corporate 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, 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 an FCP or a SICAV has a direct real estate investment, the income derived from real estate is attributable to the collective investment scheme for tax purposes. Hence, real estate income is not taxed at the level of the Swiss-resident investor.

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

Withholding tax

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

For income from indirect real estate investments and/or other income, distributions (dividend income and/or interest) are subject to 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 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 of the distribution due date.

Accumulating funds must declare and pay the withholding tax due on accumulated income within 30 days of the time of its credit (accumulation), which essentially occurs at financial year-end.

Exceptions to the above filing requirements for withholding tax purposes may apply to funds when following the affidavit procedure (a requirement is that the Swiss fund's overall income is at least 80% foreign-sourced).

Switzerland
Swiss collective investment schemes

(continued)

Other taxes

Stamp Duties

The issuance and redemption of shares of Swiss collective investment funds as well as the redemption (but not the issuance) of shares of foreign collective investment funds with direct or indirect real estate investments are exempt from securities transfer tax and Swiss issuance stamp tax respectively.

In the event of a purchase, sale or transfer of shares in a Swiss or foreign collective investment scheme with direct or indirect real estate investments (secondary market transactions) through a Swiss securities dealer (e.g. a Swiss bank), a security transfer tax will be levied, which must generally be borne equally by the seller and the purchaser. The securities transfer tax is usually levied on the consideration and amounts to 0.15 bp for securities issued by a Swiss resident and 0.3 bp for securities issued by a foreign resident. Exemptions may apply to certain transactions (e.g. qualifying reorganisations) and/or investors (e.g. qualifying Swiss and foreign collective investments schemes, foreign companies whose shares are listed on a recognised stock exchange, as well as their foreign consolidated group companies, etc.).

Real Estate Transfer Tax

Most cantons levy a real estate transfer tax on the transfer of property ownership. A transfer of ownership is also deemed to occur in the event 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 in which the real estate is located. The tax is usually borne by the buyer, though in some cantons the tax is divided between the seller and the buyer.

Treaty status

The collective investment scheme usually 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 collective investment schemes to reclaim foreign withholding tax for their Swiss investors. Collective investment schemes have no access to EU Directive benefits.

Filing obligations

Collective investment schemes 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 regulated Swiss collective investment schemes and their management companies or asset managers is the Swiss Financial Market Supervisory Authority (FINMA). In addition, various other rules, set by self-regulation bodies, such as the Swiss Funds & Asset Management Association (SFAMA), may apply. Contrary to other types of collective investment schemes, real estate collective investment schemes must issue a simplified prospectus rather than a key investor information document (KIID).

Requirement for authorisation

The authorisation of the collective investment scheme is granted by FINMA, subject to the fulfilment of the various conditions of CISA, FinSA, FinIA and related ordinances, as stipulated in the fund prospectus or fund contract.

Investment restrictions

Investment restrictions are stipulated in the CISA, FinSA, FinIA, the related ordinances and the fund prospectus. In particular, 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 collective investment schemes or assign any such assets to them.

Minimum level of investment

The CISA, FinSA, FinIA and/or the regulatory authority may require risk diversification, restrictions for certain types of real estate investments, etc.

Summary attributes

- No withholding tax on distributions or accumulated income consisting of profits and capital gains of direct real estate investments.
- No withholding tax on distributions of capital gains if distributed by a separate coupon or separately disclosed.
- Preferential tax rate on income derived from directly held real estate investments at collective investment scheme level for direct federal tax and cantonal and communal tax purposes in most cantons, which results in lower taxation for taxable individual investors.
- 35% withholding tax on distributions or accumulated interest and dividend income (if no exemption applies).
- Securities transfer tax of up to 0.3 bp in in the event of a purchase, sale or transfer of shares in a collective investment scheme (secondary market transactions) or issuance of shares of foreign collective investment schemes provided that a Swiss securities dealer is involved.

The Netherlands

- **Transparent funds (CV/FGR)**
- **Fiscal investment institutions (FBI)**

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The Netherlands
Transparent funds (CV/FGR)

Background

The Netherlands has two forms of tax-transparent investment fund vehicles that are used for real estate investments. These are the limited partnership (*Commanditaire Vennootschap* or CV) and the mutual fund (*Fonds voor Gemene Rekening* or FGR). The CV and FGR may be closed or open-end funds and, as such, are not necessarily meant to be used as widely held funds.

Legal form

The CV and FGR are contractual arrangements without legal personality, that are based on a contract between the General and Limited Partners (in the case of a CV) or between the Manager and investors (in the case of the FGR). Legal title to the fund's assets is typically held by a separate custodian.

Tax status

If constituted properly, an FGR or CV is not recognised as a taxable person for Dutch corporate income tax purposes.

In March 2021, the Dutch Ministry of Finance published a consultation document on amending the qualification rules for limited partnerships (CV's) and FGRs and entities under foreign law. It is expected that the unanimous consent criterion for tax tax transparency will be abolished resulting in partnerships and FGRs to be treated as tax transparent in more cases.

It is envisaged the new rules to be applicable as of 2022.

Tax treatment at entity level

A transparent FGR or CV is not subject to corporate income tax.

Treatment of investors

The transparent FGR or CV are disregarded for Dutch corporate income tax purposes. Consequently, all assets and liabilities, as well as profits and losses are directly allocated to the investors. The income retains its underlying qualification for Dutch tax purposes (for instance as rental income, capital gains, dividends or interest).

Withholding tax

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

Treaty status

Transparent funds have no treaty access and are not eligible for 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 with, for instance, Canada, the UK, Denmark, Norway, Spain and the US, which make this approach explicit.

Filing obligations

No income tax filing obligations apply at fund level.

Regulation

Managers of Dutch fund vehicles are in principle subject to regulation based on the Dutch investment supervision law (*Wet op het financieel toezicht*) in which the AIFMD has been implemented. The regulatory authority is the *Autoriteit Financiële Markten*.

Requirement for authorisation

In order to qualify as tax-transparent for Dutch tax purposes, certain conditions must be met.

An FGR is considered transparent in case the participation rights in the fund are not freely transferrable. The participation rights are not freely transferable when:

1. the disposal of participation rights can only take place with the prior consent of all participants ("unanimous consent model"); or
2. the participation rights in the fund can only be disposed of to the fund itself by means of redemption or to relatives connected by blood or affinity in the direct line of the investor/participant in the fund ("redemption model").

A CV is transparent when the prior consent of all partners is required for the admission or replacement of limited partners.

The requirements for admission of partners and transfer of participation rights should be clearly adopted in the fund agreement. The fund agreement may provide that unanimous consent is deemed to be given when unanimous consent is requested to all the partners or participants of the fund; and none of them has objected to the proposed admission or transfer within four weeks after such request was made to the partners.

Investment restrictions

None.

Minimum level of investment

None.

Summary attributes

- A transparent fund is not subject to tax at the fund level.
- There is no dividend withholding tax on distributions made by the fund.
- No specific requirements with respect to investors in the fund.
- The fund itself has low costs of establishment, and can be implemented relatively quickly.
- The fund vehicle has no access to treaty benefits and EU Directives, although some Competent Authority Agreements have been concluded to confirm the look-through treatment for tax treaty purposes.
- The fact that participation rights cannot be freely traded restricts the liquidity of the investment in the fund. This requirement may however be amended.

The Netherlands
Fiscal investment institutions (FBI)

Background

Fiscal investment institutions (*Fiscale beleggingsinstellingen* or FBIs) are open or closed-end funds, used for passive investments. The purpose of the FBI regime is to create tax neutrality for investors that prefer to (collectively) invest.

Legal form

The regime for FBIs is available to Dutch resident Public Limited Liability Companies (NV), Private Limited Liability Companies (BV) and non-transparent mutual funds (FGR). An FGR must qualify as a taxable entity for Dutch corporate income tax purposes, i.e. not treated as a tax-transparent FGR. In addition, similar entities established under the laws of Aruba, the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao, St. Maarten, EU Member States or states with which The Netherlands has concluded a double tax treaty that contains a non-discrimination provision for companies may also qualify for the FBI regime provided certain conditions are met.

Tax status

Entities eligible for the FBI regime are taxable persons for Dutch corporate income tax purposes. The FBI is therefore not treated as tax transparent. Income from investment is perceived as income of the FBI itself.

Tax treatment at entity level

The FBI is subject to corporate income tax at a rate of 0%.

Treatment of investors

Dutch entities and individuals are subject to (corporate) income tax on dividends and capital gains derived from the shares held in the FBI.

Non-resident corporate investors with an interest of at least 5% in the FBI (so-called substantial interest holders) may be subject to Dutch corporate income tax on dividends, capital gains and interest derived from that FBI. This should only be the case if the investment in the FBI is held with the purpose or one of the main purposes to avoid dividend withholding tax or income tax. In practice, this rule should not often apply to investors in an FBI.

Non-resident private individuals with an interest of at least 5% are subject to Dutch income tax on dividends, capital gains and interest derived from the FBI. Tax treaties may limit The Netherlands' right to tax non-resident shareholders of an FBI.

Withholding tax

A Dutch resident FBI is obliged to withhold dividend withholding tax at a rate of 15%, unless a double tax treaty applies that provides for a reduced tax rate. The exemption of dividend withholding tax pursuant to the EU Parent-Subsidiary Directive is not applicable to the FBI. If Dutch or foreign withholding tax was due on income derived by the FBI, this withholding tax may under circumstances be credited against the withholding tax liability on dividends distributed by the FBI.

Capital gains can be allocated to a special reinvestment reserve. Distributions out of the reinvestment reserve are exempt from dividend withholding tax.

Per 2021 a conditional withholding tax on interest and royalty payments will be introduced. This conditional withholding tax will be due:

a. When the recipient is resident in a designated countries that do not tax profits or tax profits are a statutory rate of less than 9%;

b. When the recipient is resident in a country on the EU list of non-cooperative jurisdictions; or

c. In tax abuse situations (conduit companies);

d. In certain cases of hybridity of the recipient of the payment

The withholding tax rate is equal to the highest CIT rate, resulting in a rate of 25% (2021).

Treaty status

Generally speaking, the FBI is eligible to the benefits of double treaties. The EU Parent-Subsidiary Directive is not applicable to an FBI.

Filing obligations

The FBI is obliged to file a corporate income tax return.

Regulation

If the FBI is an AIF, its manager may be required to obtain an AIFMD licence from the *Autoriteit Financiële Markten*.

Requirements for authorisation

For tax purposes, the following general conditions are relevant.

Shareholder/investor restrictions

For the purpose of the shareholder/investor restrictions, a distinction is made between listed or licenced FBIs (regulated FBI) and other FBIs (private FBI). A licenced FBI is an FBI managed by a manager under an AIFMD licence.

Regulated FBI

No single entity that is subject to tax on its profits (or the profits of which are subject to tax at the level of the shareholders/participants of such entity) may, together with related entities, own 45% or more of the shares in the FBI.

A director, or more than half of the members of the supervisory board, may not be a director, or a member of the supervisory board, or an employee of an entity which holds (alone or together with related parties) 25% or more of the shares in the FBI unless such entity is a regulated FBI.

A single individual may not hold an interest of 25% or more.

Only up to 25% of the shares may be held by Dutch corporate entities through the interposition of foreign entities.

Private FBIs

At least 75% of the shares need to be held by

- private individuals; and/or
- entities that are not subject to a taxation on their profits or are exempt from tax and the profits of which entities are not subject to tax at the level of the shareholders/participants of such entities; and/or
- regulated FBIs.

No individual may hold a substantial interest (which broadly means a direct or indirect interest of 5% or more) in the FBI.

The Netherlands
Fiscal investment institutions (FBI)

(continued)

Investment restrictions

The statutory purpose, as well as the actual activities of the FBI must consist solely of passive investment activities.

Investment activities may include any type of investment including real estate or investments of a financial nature (such as loan notes, shares or other securities).

Activities such as trading in real estate or real estate development are generally not allowed.

The FBI is allowed to manage and hold shares in an entity carrying out real estate development activities for this entity itself, for the FBI, or for certain related entities. This development subsidiary is taxed at the regular corporate income tax rate (maximum rate 25.8%. A reduced 15% rate applies on profits up to EUR 395,000).

Furthermore, the FBI is allowed to manage and hold shares in a subsidiary providing auxiliary services. As a precondition, the activities of this subsidiary must consist of auxiliary services in connection to the real estate held by the FBI. Examples of such services are conference facilities or promotion services, but also thermal storage or the supply of solar energy is under conditions permitted. This services subsidiary is taxed at the regular corporate income tax rate (maximum rate 25%).

The improvement or expansion, including maintenance of real estate is considered a passive investment activity if the investment in an asset is less than 30% of the community assessment value (WOZ-waarde) of such asset.

Guarantees towards third parties in relation to obligations of subsidiaries and the on-lending of third-party financing to subsidiaries are considered passive investments activities.

Distribution requirements

An FBI is required to distribute its entire taxable profit within eight months following the financial year-end.

Capital gains do not have to be distributed if they are contributed to a reinvestment reserve.

Minimum level of investment

Not applicable

Summary attributes

- 0% CIT rate.
- Freely transferable shares.
- Can be used as holding and financing vehicle of (foreign) real estate entities.
- Strict shareholder requirements, unless listed or regulated FBI.
- Relatively strict investment restriction.
- Leverage restrictions.

Turkey

- **Gayrimenkul yatırım fonları (GYF) – Real Estate Investment Funds (REIFs)**

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Turkey

Gayrimenkul yatırım fonları (GYF) – Real Estate Investment Funds (REIFs)

Background

Real Estate Investment Funds (REIFs) were introduced into Turkish law with the Capital Markets Board of Turkey ("CMB") Communiqué on "Principles Regarding Real Estate Investment Funds", which was published in the Official Gazette on 3 January 2014 (No. 28871). This Communiqué aims to provide the regulatory framework for establishing and operating Turkish REIFs and selling their units to qualified investors, and related transparency and reporting requirements for REIFs. It has been legally possible to establish REIFs in Turkey since July 2014.

Legal form

Turkish REIFs are defined as asset pools (collective investment schemes) with no legal personality, established and managed by portfolio management companies or real estate and private equity portfolio management companies (REPEPMCs) and licensed by the CMB for a definite or indefinite period of time, on behalf of qualified investors, based on fiduciary ownership. Their purpose is to make real estate investments in a wide range of real property assets such as land, real property, residences, offices, shopping centres, hotels, logistics centres, warehouses, parks and hospitals. REIFs have "legal personality" only for the purposes of land registration, changes related to registration, and cancellations and corrections at the Land Registry Office, and for the purpose of joint stock company registration, including all transactions related with the joint stock companies at the Trade Registry Office. One PMC, REPMC and/or REPEPMC may found and/or manage several REIFs.

Tax status

Turkish REIFs are treated as corporate taxpayers and thus have a tax personality.

Tax treatment at entity level

Income earned by a Turkish REIF is fully exempt from Turkish corporate tax. VAT and certain transaction taxes may apply to the fund's transactions (e.g. title deed fees).

Treatment of investors

Capital gains (from the sale of fund units by investors to third parties, if and when permissible), cash dividend distributions and cash proceeds from returning units to the founder (redemption) by qualified investors are all subject to the same rate of withholding taxation.

Resident and non-resident individual qualified investors benefit from an income withholding tax rate of 10%, which is the final tax burden. These investors are not required to file a tax return. The 10% withholding tax rate is reduced to 0% for investors holding the fund units for more than 2 years. Moreover, for fund units acquired before 31.12.2021 the rate of withholding is also 0%, irrespective of the holding period.

For resident corporate qualified investors (including non-resident corporate taxpayers that have a permanent establishment, such as a branch office, in Turkey), income and gains from REIFs are subject to corporate tax unless there is a special corporate tax exemption (e.g. for Turkish- resident pension funds, real estate investment companies, etc.).

For non-resident corporate qualified investors, 0% withholding tax is the final taxation.

Withholding tax

At REIF level

The REIF's corporate tax-exempt income is subject to 0% withholding tax.

At investor level

As mentioned above, 0% or 10% withholding tax is applicable, depending on the status of the investor.

Treaty status

Investment funds should generally be entitled to tax treaty benefits as corporate taxpayers under Turkish tax legislation. However, this may need to be analysed on a case-by-case basis as some countries may challenge treaty access.

Filing obligations

REIFs must file a quarterly and annual corporate income tax return, monthly tax returns such as VAT, Stamp Tax and withholding tax returns.

Regulation

REIFs are subject to the regulatory supervision of the Capital Markets Board of Turkey (CMB). The regulatory framework for establishing and operating Turkish REIFs, selling their units to qualified investors, and related transparency and reporting requirements for REIFs, are regulated under the CMB Communiqué on "Principles Regarding Real Estate Investment Funds" (numbered III-52.3).

Requirement for authorisation

In order to establish a REIF, the founder (which must be either a portfolio management company (PMC) or a real estate PMC (REPMC) or a real estate and private equity PMC (REPEPMC) licensed by the CMB) must file an application with the CMB by submitting a draft circular, standard forms, and other required documents and information.

Within two months, the CMB carefully examines the circular and how the founder has laid out the operations of the proposed REIF. Upon approval of the prospectus, the CMB grants permission to establish an REIF, and a custodianship agreement must be signed by the founder and a custodian. The founder must register the approved circular with the Trade Registry Office and publish it in the Trade Registry Gazette.

Following the establishment of the fund, the founder must apply to the CMB to start issuance, by submitting the issuance certificate and other required documents within six months of registering the prospectus. The issuance certificate must be approved by the CMB in order to raise funds from qualified investors.

Where a founder intends to raise a subsequent REIF, circular and issuance certificate applications should be made at the same time, enabling a shorter establishment period.

Investment restrictions

REIFs may not engage in any activity other than real estate investments and other allowable investments. At least 80% of the REIF's total fund value (i.e. real estate investments + other allowable investments + receivables – liabilities) must consist of real estate investments.

Classifying real estate investments: all investments in real estate and related rights are considered real estate investments for REIF purposes.

Turkey

Gayrimenkul yatırım fonları (GYF) – real estate investment funds (REIFs)

(continued)

The REIF's founder or portfolio manager may engage in the sale, purchase, lease, and promise to sell. It may buy all types of real estate for the purpose of generating income based on lease, sale and purchase.

Investment in capital-markets instruments issued by real estate investment companies, real estate certificates, lease certificates in which Housing Development Administration acts as fund user, participation units of other REIFs and shares of joint-stock companies with a minimum 75% of real estate investments in their total assets, are considered real estate investments under the above thresholds.

Other allowable investments

Apart from real estate investments, REIFs are only permitted to invest in the following:

- shares of joint-stock companies registered in Turkey, - public and/or private debt instruments,
- foreign public and/or private debt instruments and shares of foreign companies, as long as the requirements of the Foreign Exchange Law are met,
- bank deposits and participation bank account deposits,
- investment fund participation units,
- repo and reverse repo transactions,
- transactions executed in committed transactions market,
- gold and other precious metals, and money market and capital market instruments backed by these metals,
- warranties and certificates,
- lease certificates and real estate certificates,
- settlement and custody bank money-market transactions,
- cash collateral for derivative market instruments and premiums,
- foreign special-purpose investment instruments (subject to approval by the CMB), and
- other investment instruments (subject to approval by the CMB).

- REIFs may invest no more than 20% of their total fund value in real estate companies (companies with assets of at least 75% real estate investments on a regular basis).
- The REIF's total fund value consisting of encumbered real estate property and rights cannot exceed 30% of its total fund value. However, REIFs may also be established to invest in a specific real estate property or in a specific sector (e.g. hotels, shopping centres, etc.).
- The REIF's founder or portfolio manager is forbidden from investing in real estate projects and construction or performing any related property management, project development or project control activities. However, independent sections of the real estate projects realised by public institutions and their affiliates may be included in the REIF's portfolio.
- REIF founders are forbidden from carrying out short-term sales and purchases of REIF real estate on a regular basis, investing in commodities and purchasing, selling or leasing real estate abroad.
- REIF founders are forbidden from undertaking short sales of capital market instruments included in the REIF's portfolio, margin trading and borrowing capital market instruments, and derivative transactions that will incur an open position value exceeding 20% of the total fund value.

Minimum level of investment

The minimum amount of the fund to be raised and invested within one year of the issuance of units is TRY 10 million (otherwise the fund must be liquidated).

Summary attributes

- Lightly regulated and flexible regulatory model, in line with international market standards and customary practices for REIFs.
- The fund itself is fully exempt from corporate taxation.
- There is no dividend withholding tax on distributions by the fund, and income from the fund is taxed at 0% withholding tax for resident and non-resident corporate investors and 10% for resident and non-resident individual investors, (for which withholding is the final taxation). The 10% rate is reduced to 0% if the fund units are held for more than 2 years or were acquired before 31.12.2021.
- Subject to supervision by the regulatory authority (CMB) as a regulated collective investment scheme.
- Need to be managed by a regulated Turkish portfolio management company.
- Investor restrictions – accessible only for investors with qualified investor status.
- There are certain portfolio restrictions.

United Kingdom

- **Limited partnership**
- **Tax-transparent funds (TTFs)**
- **Property authorised investment fund**

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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. (KMD1)

Tax status

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

Tax treatment at entity level

There is generally 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 may be are generally taxableed in their home territory (depending on any applicable double tax treaty or exemptions / reliefs).

Withholding tax

Withholding tax is not levied on distributions made by the LP as it should generally be tax transparent, although income or gains, e.g. Payments such as dividends, interest income or royalties received by the LP may suffer withholding tax, depending on the underlying territory making the payment, entitlement of the partners to double tax treaty relief, etc.

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 directly 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 relevant double tax treaties 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. A "qualifying limited partnership" may be subject to additional reporting and disclosure rules. The identity and nature of the general partner would be important in this regard. The LP may be an alternative investment fund and the manager or operator an alternative investment fund manager for AIFMD purposes.

Requirements for authorisation

None.

Investment restrictions

None.

Minimum level of investment

None.

Summary attributes

- 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
- No UK capital gains tax.
- 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. (KMD2)

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

With effect from 1 April 2016 and subject to certain qualifying conditions being met, Stamp duty land tax ("SDLT") exemption is available on seeding of properties by property funds to CCAs and no charge to SDLT should also arise on transfer of CCAs units by investors. The exemption is not extended to ALPs.

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.

Summary attributes

- 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;
  - potentially no UK capital gains tax; and
  - tax treaty relief structured appropriately.
- The structure easily accommodates "carry" arrangements for the management team.
- 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 UK tax on qualifying (property investment business) capital gains. Its activities are also subject to all other taxes e.g. employment taxes, VAT and transfer taxes.

Tax treatment at entity level
Tax treatment at entity level

In general terms, PAIFs' 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). 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 generally there is effectively no taxation at the level of the fund.

Treatment of investors
UK corporate investors may have to pay corporate taxes (currently 19%) on returns from the PAIF, with the exception of dividend income, which may be exempt from UK tax. Individual investors pay income tax at a rate of 45% on property income distributions and interest and up to 37.5% on dividends.

Withholding tax
Withholding tax is levied at a rate of 20% on distributions of rental income 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 treaty relief can be made by recipients after the distributions are received but there is no upfront treaty rate reduction. Note that there is no requirement to withhold income tax from interest distributions made on or after 6 April 2017.

Other taxes
With effect from 1 April 2016 and subject to certain qualifying conditions being met, SDLT exemption is available on seeding of properties into PAIFs.

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 Conduct Authority.

Requirements for authorisation
The OEIC needs to fulfil the following conditions:

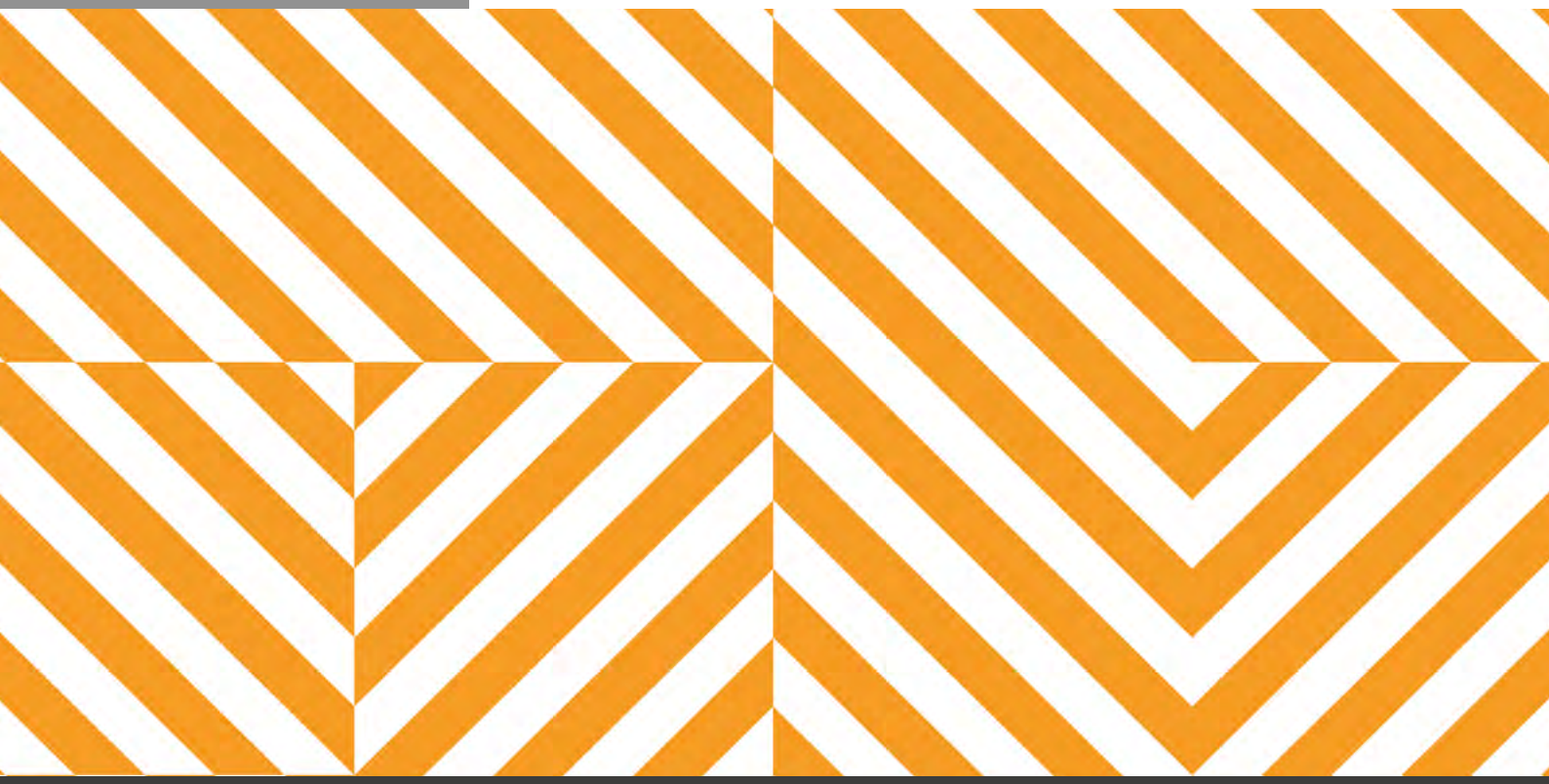
- Property investment business conditions.
- Genuine diversity of ownership conditions.
- A limitation on corporate ownership condition.
- Loan creditor conditions (where relevant).

A balance of business condition and, if relevant, an additional limited borrowing condition also apply 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.

Summary attributes
- 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.
- 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.



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