Asset Management

European Real Estate Fund Regimes

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PRICEWATERHOUSECOOPERS

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Introduction

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

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

PricewaterhouseCoopers[1] European Real Estate Investment Management (REIM) tax group is a well-established informal network of our senior tax advisers who specialise in real estate fund structuring work. The REIM group has collaborated to prepare this booklet at a time when – as the real estate market picks itself up off the canvas after the heavy blows of the financial crisis – thoughts are turning once again to the launch of new real estate funds tailored to the changed environment of the 2010 decade.

This booklet seeks to compare more than 20 different types of fund vehicle in a summary form, by looking at a consistent set of key topics, and noting major pros and cons. We hope that you will find it a useful starting point, and a source of reference.

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

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France

OPCI – FPI

OPCI – SPPICAV

France

OPCI – FPI

An OPCI is an *Organisme de Placement Collectif en Immobilier*.

Legal form	An OPCI in the form of an FPI (*Fonds de Placement Immobilier*) does not have any legal personality (it is purely a pool of assets) - the fund vehicle is managed by a management company.
Tax status	There is no French corporate income taxation at the fund vehicle level.
Tax treatment at entity level	Dividends received, and capital gains and rental income recognised by the fund, are exempt from French corporate income tax, subject to distribution requirements (at least 85% of rental income, capital gains and dividends must be distributed) being met by the FPI.
Treatment of investors	Unit holders are generally subject to tax only when the revenues recognised by the FPI are distributed. There is an exception for capital gains on shares - when an individual owns at least 10% of an FPI, the gains realised by the FPI are subject to tax in the hands of all the unit holders upon recognition of the gains without waiting for their distribution by the FPI. All income retains its own qualification (rental income, interest, dividends). Rental income received by unit holders is subject to income tax in France.
Withholding tax	Dividends distributed by the FPI attract French withholding tax at the rate of 25% or 18% (for individuals located in the EU, in Norway and Iceland). Capital gains on non-real estate shares recognised by the FPI and distributed to the unit holders do not attract any French withholding tax. Conversely, gains recognised upon the disposal of French real estate assets or units in the FPI are subject to a 33.33%, or 16% (for individuals located in the EU, in Norway and Iceland), French income withholding tax.
Treaty status	Generally the fund vehicle has no access to treaty or EC Directive benefits.
Regulation	Both the FPI and the management company require prior approval. The regulatory authority is the *Autorité des Marchés Financiers.*
Investment restrictions	At least 60% of the assets must comprise real estate assets, and 10% must be liquid assets. The direct or indirect (via holding companies) holding of real estate property is possible. Depending on the nature of the FPI (public, or limited to qualified investors), diversification of risk regulations may apply.
Pros	• No taxation at the FPI level. • Possible automatic French 3% tax exemption (for public funds only).
Cons	• No access to tax treaties and subsequently no mitigation of French withholding tax. • An FPI is a highly regulated fund vehicle, with little flexibility and significant administrative costs. • To date no FPIs have been set up.

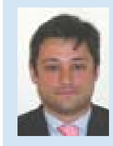
France

OPCI – SPPICAV

An OPCI is an *Organisme de Placement Collectif en Immobilier.*

Legal form	In the form of an SPPICAV (*Société de Placement à Prépondérance Immobilière à Capital Variable*), the fund vehicle is vested with legal personality, and is managed by a management company.
Tax status	The SPPICAV is exempt from French corporate income tax
Tax treatment at entity level	Dividends, capital gains and rental income are exempt from French corporate income tax, subject to distribution requirements (at least 85% of rental income, 50% of capital gains and 100% of dividends received).
Treatment of investors	Income distributed by the SPPICAV qualifies as dividends. French individual investors are subject to personal income tax (at progressive rates of 0% to 40% after a 40% allowance, or at the proportional rate of 18%, excluding 12.1% social taxes). French corporate investors are subject to corporate income tax at the standard rate of 34.43% (including social taxes).
Withholding tax	Distributions of dividends are currently subject to a 25%, or 18% (for individuals located in the EU, in Norway and Iceland), French withholding tax. Capital gains recognised upon the disposal of shares in a SPPICAV may be subject to the 33.33% French withholding tax where the seller owns more than 10% of the SPPICAV shares.
Treaty status	Application of treaty benefits needs to be reviewed on a case-by-case basis. However there is no access to EC Directives.
Regulation	Both the SPPICAV and the management company require prior approval. The regulatory authority is the *Autorité des Marchés Financiers.*
Investment restrictions	The holding of real estate property via holding companies is possible. At least 60% of the total assets need to be represented by real estate assets. Depending on the nature of the SPPICAV (public or limited to qualified investors), “diversification of risk” regulations may apply.
Pros	• Competitive advantage at the time of the investment subject to the condition that the SPPICAV keeps the real estate asset for at least five years: the seller benefits from a reduced rate of CIT 19.63% (including social surtax) on the gain realised. This favourable tax regime is due to terminate on 31 December 2011. • Possible automatic French 3% tax exemption (for public funds only).
Cons	• Limited access to tax treaties. • Need for a regulated French management company.

Contacts



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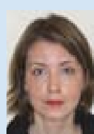

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Germany

GmbH & Co. KG
Immobilien-Sondervermögen
Spezial-Sondervermögen

Germany

GmbH & Co. KG

German closed end funds are most commonly set up as a German limited partnership (KG). These are largely non-regulated vehicles. At present, it is likely that managers of German closed end funds will be subject to the planned EU Directive on Alternative Investment Fund Managers (AIFM Directive).

Legal form	Under German commercial law, the GmbH & Co. KG is a special form of limited partnership (KG). The general partner is not a natural person but a limited liability company. Investors are typically limited partners. The liability of limited partners for the vehicle's obligations is generally limited to their contributions.
Tax status	The fund vehicle is transparent for German corporate income tax purposes. German trade tax may be due at the level of the fund vehicle, notably where there are commercial activities, where there is evidence that there is a business imprint, or participation in other business partnerships.
Tax treatment at entity level	Dividends received, capital gains realised and other income received are all exempt from corporate income tax at the level of the fund. For trade tax purposes, an exemption for participations of at least 10% in EU companies and 15% in non-EU and domestic companies (active income required for non-EU companies) is available for dividends received. Other trade tax exemptions may be available.
Treatment of investors	For tax purposes, investors are deemed to receive their income from the KG pro rata to their participation, regardless of its actual distribution policy. The income is subject to tax according to the individual circumstances of the investor. Resident investors are, and non-resident investors may be (depending on the type of income), subject to German taxation on their income deriving from the fund.
Withholding tax	No withholding tax is levied on income distributed by the KG (a tax transparent entity).
Treaty status	For the KG itself there is generally no access to treaty benefits; instead - from a German tax point of view - the investors can benefit from double tax treaties as the beneficial owners of the KG's income. There is no access to the EC Directives for the KG.
Filing obligations	The KG submits an annual income tax return, a so-called separate and uniform determination of profits. Resident investors are, and non-resident investors may be (depending on the type of income), required to file a German tax return including their income deriving from the KG (determined based on the KG's tax return).
Regulation	The KG is not subject to any form of regulatory investment supervision (non-regulated fund).
Requirements for authorisation	In case of public placement, the fund's prospectus is subject to a formal review (20 days) by the regulatory authority *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin) prior to publication.
Investment restrictions	None.
Minimum level of investment	None.
Pros	• German closed end funds are widespread, and well accepted among German investors. • The legal form of a GmbH & Co. KG provides for a fast establishment procedure, low cost and easy handling. • The vehicle is tax transparent (except for trade tax) and there are no withholding taxes on income distributions.
Cons	• German closed-ended funds may be unknown to some international investors. • German trade tax could apply at KG level. Furthermore, investors could be subject to tax in the target countries (tax transparent entity). • There is generally no access to double tax treaties and EC Directives.

Germany

Immobilien-Sondervermögen

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

Legal form	A German *Sondervermögen* is a German open-ended fund. The fund (no legal personality) will be managed by a German management company (*Kapitalanlagegesellschaft, KAG*), which will be either a German limited liability company (GmbH) or a stock corporation (AG). One KAG may set up several funds. An Immobilien-Sondervermögen is a real estate retail fund, accessible to all investors.
Tax status	The fund is exempt from German corporate income tax and from German trade tax.
Tax treatment at entity level	There is no income taxation at the level of the fund on dividends received, capital gains realised, and other income received.
Treatment of investors	Investors are deemed to receive the fund income pro rata to their fund shares. The income is subject to taxation at the level of the investors in accordance with the investors' personal tax status and the nature of the income. Income determination at fund level must comply with German tax provisions.
Withholding tax	Withholding tax is in principle levied on both distributed and retained fund income. Income derived from domestic and foreign dividends, interest and other capital income sources is liable to WHT at 26.375% (including the 5.5% solidarity surcharge) at fund level as from 1 January 2009. Redemptions and exceptions are available for certain investor types.
Treaty status	From both an OECD Model and German tax perspective, treaty access should be granted to the fund. From the point of view of the treaty partner there may be access either for the fund itself, the KAG, or the investors as the beneficial owners of the fund income. There is no access to EC Parent-Subsidiary Directive for the fund.
Filing obligations	Under the German Investment Tax Act, special tax reporting (indicating e.g. the taxable income per fund unit) has to be published on the website of the German Federal Gazette in order to ensure the tax transparent status of the fund. Deadlines apply. There are no tax filing requirements for non-resident investors in Germany, and there should be no tax filing requirements for investors in target countries of the fund.
Regulation	The regulatory authority for German open-ended funds is the *Bundesanstalt für Finanzdienstleistungsaufsich*t (BaFin). The fund is subject to its regulatory supervision.
Requirements for authorisation	Prior written regulatory approval is necessary for the KAG in order to set up the fund. For the fund itself, however, no approval is required.
Investment restrictions	The fund is restricted to investments in eligible assets e.g. real estate properties (rental, commercial or mixed use), building land, property rights over real estate, shareholdings in real estate companies, cash, securities and REIT interests. Quotas apply.
Minimum level of investment	The fund has to invest consistent with the principle of risk spreading, as detailed in legislation.
Pros	• *Immobilien-Sondervermögen* are a widespread and highly trusted investment vehicle in Germany. • The fund is tax exempt. • There are no tax filing requirements for non-resident investors in Germany.
Cons	• German open-ended funds may be unknown to some international investors. • The flexibility for German and international investments and the range of eligible assets is limited. • Moreover there are gearing restrictions for real estate companies held by the fund. • The access to double tax treaties in some jurisdictions is not clear. There is no access to EC Directives.

Germany

Spezial-Sondervermögen

Legal form	*Spezial-Sondervermögen* is not a separate class of funds, but a regime that allows a fund to avoid certain regulatory requirements under the Investment Act (applicable e.g. to *Immobilien-Sondervermögen*). The fund is a German open-ended fund with no legal personality, and is managed by a German management company (*Kapitalanlagegesellschaft*, KAG), which is either a German limited liability company (GmbH) or a stock corporation (AG).
Tax status	The fund is exempt from German corporate income tax and from German trade tax.
Tax treatment at entity level	There is no income taxation at the level of the fund on dividends received, capital gains realised, and other income received.
Treatment of investors	Investors are deemed to receive the fund income pro rata to their fund shares. The income is subject to taxation at the level of the investors in accordance with the investors' personal tax status. Income determination at fund level must comply with German tax provisions.
Withholding tax	Withholding tax is levied on both distributed and retained fund income. Income derived from domestic and foreign dividends, interest and other non-dividend sources is liable to WHT at 26.375% at fund level as from 1 January 2009. Redemptions and exceptions are available for certain investor types.
Treaty status	From both an OECD Model and German tax perspective, treaty access should be granted to the fund. From the treaty partner's point of view there may be access either for the fund itself, the KAG, or the investors as the beneficial owners of the fund income. There is no access to EC Directives for the fund.
Filing obligations	There is no obligation to publish special fund reporting, provided however that data necessary for the investors' income determination is made available to investors. Non-resident investors are required to file tax returns for German source real estate income derived from the fund.
Regulation	The fund is subject to BaFin regulatory supervision.
Requirements for authorisation	Prior written regulatory approval is necessary for the KAG in order to set up the fund. For the fund itself, however, no approval is required.
Investment restrictions	The fund is restricted to institutional investors. In principle, restrictions (e.g. eligible assets, quotas) apply. With the consent of investors, however, the fund can deviate from most restrictions.
Minimum level of investment	The fund has to invest according to the principle of risk spreading, as detailed in legislation.
Pros	• *Spezial-Sondervermögen* are well-known to German institutional investors. • The fund is tax exempt. • There are no tax filing requirements for non-resident investors in Germany (except for German source real estate income).
Cons	• German open-ended funds may be unknown to some international investors. • Despite the option to deviate from investment restrictions, regulatory constraints have to be observed. • Investors are required to file tax returns for German source real estate income. • Moreover there are gearing restrictions for real estate companies held by the fund. • The access to double tax treaties in some jurisdictions is not clear. There is no access to EC Directives.
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Ireland

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

Ireland

Common Contractual Fund

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. It requires the appointment of a management company to carry out the day-to-day activities of the fund.

Legal form	A CCF is a collective investment vehicle without a legal personality, established and managed by a management company.
Tax status	The CCF is transparent for income tax purposes.
Tax treatment at entity level	Dividends received, capital gains realised, and other income received is exempt from income taxation at the level of the fund (tax transparent).
Treatment of investors	The fund´s income is directly allocated to the investors. However, non-resident investors are not subject to any Irish tax on income received from the fund.
Withholding tax	No Irish withholding tax is levied on fund distributions or on capital gains realised on fund investments.
Other taxes	Stamp duty is not chargeable on the issue, transfer or switching of fund units. No capital duty arises on the issue of units by the fund.
Treaty status	There is no access to treaty benefits by the fund itself but an investor should be able to access the relevant tax treaties between the investor's country of residence and the countries where the fund´s investments are located. But a ruling from the relevant tax authorities, or an opinion from an appropriate tax advisor, may be required in certain cases.
Filing obligations	The fund must submit an annual tax return in respect of the calendar year by the following 28 February, detailing the total profits of the fund, together with details relating to the investors in the fund.
Regulation	The vehicle is subject to the regulatory supervision of the Irish Financial Regulator. As it is not a legal entity in its own right, the CCF must appoint an Irish management company to carry on its day-to-day activities. The Irish management company must appoint at least two Irish directors.
Requirements for authorisation	Approval is a two stage process, involving the approval of the fund's promoter and the authorisation of the fund itself. The fund must submit a standard application to the Irish Financial Regulator comprising various information and documentation, including the draft prospectus, deed of constitution and material contracts, details of service providers etc.
Investment restrictions	A Qualifying Investor Fund (QIF) is dedicated to institutional investors and has a minimum initial subscription requirement per investor of EUR 250,000. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied in the case of a QIF. A 24-hour authorisation process applies for QIFs. The Professional Investor Fund (PIF), which is a specialised fund dedicated to professional investors, has a minimum initial subscription requirement per investor of EUR 125,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.
Minimum level of investment	See above.
Pros	• The set up, taking into account the appointment of service providers and the approval process of the fund vehicle, may take from six to eight weeks, with an indicative cost of around EUR 100,000. • The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds. • Moreover for reporting purposes, the fund has the option of reporting under various GAAPs, including IFRS, US GAAP or local GAAP. The fund can also be listed on the Irish Stock Exchange.
Cons	• Restricted treaty access

Ireland

Variable Share Capital Investment Company

The Investment Company is a corporate investment fund, the most common of which is the Variable Capital Investment Company (VCC), similar to the SICAV. It can operate with or without a management company.

Legal form	A VCC is an open or closed end company limited by shares, which is marketed to the public or sold by private placement.
Tax status	The VCC is not liable to Irish taxation if it meets either of the following conditions: • The VCC vehicle is available to the public. • The VCC vehicle is marketed by private placement as a "non-designated fund", where all shares are held by collective investors (e.g. life assurance companies, pension funds, other investors investing in securities or property on behalf of 50 or more persons).
Treatment of investors	The income of the fund is normally paid to investors by means of dividends, or alternatively paid out on the realisation of the investment by the investor on redemption.
Withholding tax	Withholding tax is levied on both distributions, at a rate of 25%, and on gains from encashment, redemption or transfer of shares, at 28%. No tax is applied on income distribution or redemption payments made to non-residents, provided that the non-resident has signed the necessary non-resident declaration.
Other taxes	Shares in the VCC are not liable to stamp duty or capital duty
Treaty status	The VCC may be able to access treaty benefits in certain cases. This would need to be considered on a case-by-case basis.
Filing obligations	The fund must submit two six-monthly tax returns a year, due on 30 January and 30 July.
Regulation	The VCC is subject to the regulatory supervision of the Irish Financial Regulator. The promoter of the fund is also subject to approval by the Financial Regulator. The board of directors of the fund must include at least two Irish residents.
Requirements for authorisation	Approval is a two stage process involving the approval of the fund's promoter and the authorisation of the fund itself. The fund must submit a standard application to the Irish Financial Regulator comprising various information and documentation, including the draft prospectus, memorandum and articles of association and material contracts, details of the service providers etc.
Investment restrictions	A Qualifying Investor Fund (QIF) is dedicated to institutional investors and has a minimum initial subscription requirement per investor of EUR 250,000. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied in the case of a QIF. A 24-hour authorisation process applies for QIFs. The Professional Investor Fund (PIF), which is a specialised fund dedicated to professional investors, has a minimum initial subscription requirement per investor of EUR 125,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.
Minimum level of investment	See above.
Pros	• The set up, taking into account the appointment of service providers and the approval process of the fund vehicle, may take from six to eight weeks, with an indicative cost of around EUR 100,000. • The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds. • Moreover for reporting purposes, the fund has the option of reporting under various GAAPs, including IFRS, US GAAP or local GAAP. The fund can also be listed on the Irish Stock Exchange.
Cons	• Restricted treaty access

Ireland

Unit Trust

The Unit Trust is an investment fund under trust law. Under the trust deed trustees are appointed. It requires the appointment of a management company to carry out the day-to-day activities of the fund.

Legal form	A Unit Trust can be formed as an open or closed end fund, which may be marketed to the public or sold by private placement.
Tax status	The Unit Trust is exempt from Irish taxation in respect of its income and gains.
Treatment of investors	The income of the fund is normally paid to investors by means of an income distribution, or alternatively paid out on the realisation of the investment by the investor on redemption
Withholding tax	Withholding tax is levied on both distributions, at a rate of 25%, and on gains from encashment, redemption or transfer of shares, at 28%. No tax is applied on income distribution or redemption payments made to non-residents, provided that the non-resident has signed the necessary non-resident declaration.
Other taxes	Neither stamp duty nor capital duty is chargeable on the issue, transfer or switching of fund units.
Treaty status	The Unit Trust may be able to access treaty benefits in certain cases. This would need to be considered on a case-by-case basis.
Filing obligations	Similar to the VCC, the fund must submit two six-monthly tax returns a year, due on 30 January and 30 July.
Regulation	The Unit Trust is subject to the regulatory supervision of the Irish Financial Regulator. As it is not a legal personality in its own right the Unit Trust must appoint trustees and a management company to carry on its day-to-day activities. The management company must appoint at least two Irish directors.
Requirements for authorisation	Approval is a two stage process involving the approval of the fund's promoter and the authorisation of the fund itself. The fund must submit a standard application to the Irish Financial Regulator comprising various information and documentation, including the draft prospectus, the trust deed and material contracts, details of the service providers etc.
Investment restrictions	A Qualifying Investor Fund (QIF) is dedicated to institutional investors and has a minimum initial subscription requirement per investor of EUR 250,000. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be disapplied in the case of a QIF. A 24-hour authorisation process applies for QIFs. The Professional Investor Fund (PIF), which is a specialised fund dedicated to professional investors, has a minimum initial subscription requirement per investor of EUR 125,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.
Minimum level of investment	See above
Pros	• The set up, taking into account the appointment of service providers and the approval process of the fund vehicle, may take from six to eight weeks, with an indicative cost of around EUR 100,000. • The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds. • Moreover for reporting purposes, the fund has the option of reporting under various GAAPs, including IFRS, US GAAP or local GAAP. The fund can also be listed on the Irish Stock Exchange.
Cons	• Restricted treaty access

Ireland

Irish Limited Partnership

The Investment Limited Partnership (ILP) is a regulated fund structured as a limited partnership. It requires the appointment of a General Partner to carry out the day-to-day functions of the ILP.

Legal form	An ILP can be formed as an open- or closed-end fund which may be marketed to the public or sold by private placement.
Tax status	An ILP can be formed as an open- or closed-end fund which may be marketed to the public or sold by private placement.
Treatment of investors	The income of the fund is normally paid to investors by means of an income distribution or alternatively paid out on the realisation of the partnership interest by the investor.
Withholding tax	Withholding tax is levied on both, distributions, at a rate of 25% and on gains from the realisation or transfer of partnership interests, at a rate of 28%. No tax is applied on income distribution or redemption payments made to non-residents provided that the non-resident has signed the necessary non-resident declaration.
Other taxes	Neither stamp duty nor capital duty is chargeable on the issue, transfer or switching of partnership interests.
Treaty status	The ILP is generally not able to access to treaty benefits under Ireland's tax treaties, although it may be regarded as tax transparent in certain jurisdictions, in which case the investors may be able to access treaty rates under their own tax treaties. This would need to be considered on a case-by-case basis.
Filing obligations	Similar to the VCC, the fund must submit two six-monthly tax returns a year due on 30 January and 30 July.
Regulation	The ILP is subject to the regulatory supervision of the Irish Financial Regulator. As it is not a legal personality in its own right the ILP, the partnership agreement must provide for a general partner to carry on its day-to-day activities.

Ireland

Irish Limited Partnership (continued)

Requirements for authorisation	Approval is a two stage process involving the approval of the fund's promoter and the authorisation of the fund itself. The fund must submit a standard application to the Irish Financial Regulator comprising of various information and documentation, including draft prospectus, partnership agreement and material contracts, details of the service providers, etc.
Investment restrictions	A Qualifying Investor Fund (QIF) is dedicated to institutional investors and has a minimum initial subscription requirement per investor of EUR 250,000. Investment restrictions and borrowing restrictions that generally apply in relation to regulated funds can be dissapplied in the case of a QIF. A 24-hour authorisation process applies for QIFs. The Professional Investor Fund (PIF), which is a specialized fund dedicated to professional investors, has a minimum of initial subscription requirement per investor of EUR 125,000. The Financial Regulator has the discretion to grant derogations from standard investment restrictions and borrowing restrictions.
Pros	• The set up, taking into account the appointment of service providers and the approval process of the fund vehicle, may take from six to eight weeks, with an indicative cost of around EUR 100,000. • The fund can be formed as a single fund, or as an umbrella fund with segregation of liability between sub-funds. • Moreover for reporting purposes, the fund has the option of reporting under various GAAPs, including IFRS, US GAAP or local GAAP. The fund can also be listed on the Irish Stock Exchange.
Cons	• Restricted treaty access
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Italy

Real Estate Investment Fund

Italy

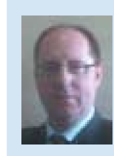
Real Estate Investment Fund

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

Legal form	The Real Estate Investment Fund is a collective investment vehicle (closed end regulated fund) without legal personality, established and managed by a management company known as an SGR (*Società di Gestione del Risparmio*). The SGR is a regulated Italian joint-stock company, which can manage one or more funds.
Tax status	The REIF is outside the scope of Italian corporate income tax (IRES) and Italian regional production tax (IRAP). From 2008, in situations where a REIF owns assets of less than EUR 400 million and is not listed on a regulated exchange, an annual 1% net worth tax may apply, based on the fund's annual average net asset value, if one of these two conditions exists: (i) there are fewer than 10 investors ("low-participated" funds); (ii) in the case of reserved or speculative funds, if more than 2/3 of the units are held directly or indirectly by family members ("family-owned" funds). Some exceptions apply, mainly for funds held by institutional and certain non-resident investors.
Tax treatment at entity level	Dividends received, capital gains realised and other income received are exempt from corporate income taxation at the level of the fund. For income normally subject to withholding tax at source, if the application of withholding tax is not expressly excluded for REIFs (as is the case, for example, for interest from bank deposits, income from certain foreign regulated funds, etc.), the withholding tax applies as a final payment (this is the case, for example, for interest derived from bonds issued by non-listed companies and "atypical" securities), with a rate ranging from 12.5% to 27%, according to the type of income. Fund units are not subject to registration tax. For real estate properties held by the REIF, the municipal property tax (ICI) applies ordinarily, with a rate of between 0.4% and 0.7% (in certain cases 0.9%), being applied on the cadastral value of the property.
Treatment of investors	The REIF's profits qualify as "income from capital", regardless of their original sources. Profits are taxable upon distribution.
Withholding tax	Withholding tax is levied on the REIF's profit distributions, even on redemption, at a rate of 20%. The following exceptions apply: • 0%, when paid to Italian investment funds and Italian pension funds; • 0%, when paid to non-resident recipients as the beneficial owners of the income (or which qualify as institutional investors) and are resident in countries which allow an effective exchange of tax information with Italy. Capital gains derived from the disposal of REIF units are subject to 12.5% substitute tax. For low-participated funds and family-owned funds that are subject to the 1% net-worth tax, this can increase to 20%. Under the following circumstances a tax exemption for non-residents is provided: • the fund units are listed on a regulated market; • the recipient is the beneficial owner of the income (or qualifies as an institutional investor), does not have a permanent establishment in Italy, and its residence country allows an effective exchange of tax information.
Treaty status	A REIF does not have access to treaty benefits because, from an Italian perspective, it lacks legal personality and taxpayer status.

Italy

Real Estate Investment Fund (continued)

Filing obligations	Withholding tax agent reporting obligations are generally fulfilled on behalf of the REIF by the management company (SGR).
Regulation	The fund and the management company (SGR) are subject to the supervision of the Italian regulatory authority, the Bank of Italy.
Requirements for authorisation	For the management company (SGR), the following requirements apply: • the registered office and the head office must be located in Italy; • the paid-up share capital, complying with the minimum amount established by the Bank of Italy, is EUR 1,000,000; • the persons in charge of performing the administrative, managerial and control functions must fulfil professional and independence legal requirements; • shareholders are also required to fulfil honourableness requirements; • activities are limited to those allowed by law. Reserved funds that are only accessible to “qualified investors” have fewer restrictions than ordinary funds. Moreover, speculative funds are only accessible to a maximum of 200 investors who must each invest at least EUR 500,000. Secured funds require a guarantee for payment of capital invested, or a minimum return.
Investment restrictions	Investment assets have to be mainly or exclusively real estate assets, property rights over real estate assets and shareholdings of real estate companies, with value no lower than 2/3 of the total value of the REIF, but allowing some exceptions. Investment diversification requirements have to be observed, e.g. investments with a single zoning classification are generally limited to 1/3 of the total fund assets, and investments in companies allowed to carry on building development business are limited to 10% of the total fund assets.
Minimum level of investment	The REIF does not require a minimum level of investment, with the exception of speculative funds for which the minimum level is EUR 500,000.
Pros	• Only distributions are subject to taxation. Exemptions for qualifying foreign investors are available and thin capitalisation rules are not applicable. • Not only do REIFs benefit from several tax reliefs in terms of direct taxes, but also in terms of indirect taxes.
Cons	• Unit holders cannot manage the REIF. • Due to the fact that the fund is a regulated entity, it is subject to supervision by regulatory authorities. Real estate properties have to be evaluated twice each year on the basis of external appraisals. • Above all, if no exception is available, the new annual 1% net worth taxation applies to “low-participated” funds and “family-owned” funds.
Contacts	 Fabrizio Acerbis +39 2 91605001 fabrizio.acerbis@it.pwc.com Daniele di Michele +39 2 91605002 daniele.di.michele@it.pwc.com

Luxembourg

UCIs Part II – FCP, SICAV, SICAF

SIF Regime – FCP, SICAV, SICAF

SICAR

Securitisation Vehicle

Luxembourg

UCIs Part II – FCP, SICAV, SICAF

Real estate Undertakings for Collective Investments (UCIs) under the so-called “Part II” of the 2002 Law offer a wide range of investment possibilities, such as direct investment in real estate properties, and can be considered the classic type of regulated real estate fund structure in Luxembourg.

Legal forms	The legal forms which publicly distributed UCIs may take are as follows: • A *Fonds Commune de Placement* (FCP) is a contractual form, equivalent to the concept of “unit trust” as known in the UK and Germany. Having no separate legal status, it must be managed by a Luxembourg management company. • A *Société d'Investissement à Capital Variable* (SICAV) is an investment company, with a variable share capital that at all times equals the Net Asset Value of the fund. It may operate either as open end or closed end fund but can only be set up as a public limited company (*Société Anonyme*). • A *Société d'Investissement à Capital Fixe* (SICAF) is a corporate structure with fixed capital that may operate either as an open end or closed end fund. A SICAF can be set up in the legal form of a public limited company (SA) or partnership limited by shares (SCA).
Tax treatment at entity level	The UCI vehicle is tax exempt. Dividends received, capital gains realised, and other income received is outside the scope of taxation.
Treatment of investors	The tax treatment of investors depends on the rules applicable in their country of residence. Some jurisdictions may treat the FCP form as tax transparent.
Withholding tax	Distributions by a Luxembourg Part II UCI, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax as a result of application of the European Savings Tax Directive.
Other taxes	Subscription tax (*taxe d'abonnement*) at a rate of 0.01% or 0.05% per annum is levied, depending on the investments made and the investor base, on the net asset value at the end of each quarter. There is no transcription tax or net wealth tax. Services rendered directly to UCIs are exempt from VAT if they qualify as “management services”. The range of services covered by this definition is broad (accounting services, computation of the NAV, investment advice services etc.). However a 12% VAT rate remains applicable for custody services provided to UCIs.
Treaty status	For the FCP form there is no access to the double tax treaty network. SICAVs and SICAFs have access to Luxembourg double tax treaties with 26 countries. For all of the legal forms, there is no access to the EC Parent Subsidiary Directive.

Luxembourg

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

Regulation	UCIs fall under the supervision of the Luxembourg financial sector regulator, the *Commission de Surveillance du Secteur Financier* (CSSF) which plays a key role by (i) authorising the vehicle and by (ii) supervising the on-going operations of the structure.
Requirements for authorisation	• The authorisation process focuses strongly on the constituting documents and offering documents. • A promoter is necessary. The “promoter” concept is not a legal requirement but is an administrative practice of the CSSF. The promoter must be an institution active in the financial sector with sufficient financial substance and adequate reputation. • A custodian bank and a central administration service provider, which is supervised by the CSSF, is required. • One or more independent property valuers are required. • A qualified auditor must audit the annual accounts of the fund.
Investment restrictions	The investment restrictions are not onerous. Some risk diversification is required; and consequently a maximum of 20% of the assets can be invested in a single investment. However, all types of investors are allowed to participate.
Minimum level of investment	The minimum asset base of a UCI is EUR 1,250,000. This amount has to be reached within six months of authorisation by the CSSF. Debt financing of up to 50% of the real estate value is possible. Publicly-distributed UCIs may have various sub-funds and can issue different classes of shares.
Pros	• A fund in one of the legal forms noted above is highly flexible, subject to expert and flexible supervision, and is well known by international investors. • Low tax leakage, and scope for tax optimisation of carried interests.
Cons	• Requirement to use a custodian bank • Subscription tax expense.

Luxembourg

SIF Regime – FCP, SICAV, SICAF

In February 2007, the Luxembourg parliament adopted a law (the "SIF Law"), to replace the 1991 Law on UCIs dedicated to institutional investors, thus formalising the concept of Specialised Investment Funds (SIFs). The main change compared to previous regulation concerns the scope of eligible investors, which has been broadened to include not only institutional investors but also professional and sophisticated investors.

Legal forms	A SIF is in essence a special regulatory regime for non-retail funds. The SIF regime is available for FCPs (*Fonds Commun de Placement)* with a management company; for SICAVs (*Société d'Investissement à Capital Variable*) and for SICAFs (*Société d'Investissement à Capital Fixe*). Both the SICAV and the SICAF may choose from a number of legal forms – the limited liability company (Sàrl), the public limited company (SA), the (commonly-used) partnership limited by shares (SCA), or the cooperative in a form of a public limited company (SCSA).
Tax treatment at entity level	The SIF vehicle is tax exempt, irrespective of its legal form. Dividends received, capital gains realised and other income received is outside the scope of taxation.
Treatment of investors	The tax treatment of investors depends on the rules applicable in their country of residence. Some jurisdictions may treat the FCP form as tax transparent.
Withholding tax	Distributions by a Luxembourg SIF, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax as a result of application of the European Savings Tax Directive.
Other taxes	Subscription tax (*taxe d'abonnement*) at a rate of 0.01% per annum is levied on the net asset value at the end of each quarter. There is no transcription tax or net wealth tax. Services rendered directly to SIFs are exempt from VAT if they qualify as "management services". The range of services covered by this definition is broad (accounting services, computation of the NAV, investment advice services etc.). However a 12% VAT rate remains applicable for custody services provided to SIFs.
Treaty status	For the FCP form, there is no access to the double tax treaty network. SICAVs and SICAFs have access to Luxembourg double tax treaties with 26 countries. For all of the legal forms, there is no access to the EC Parent Subsidiary Directive.
Regulation	The regulatory authority is the CSSF (*Commission du Surveillance de Secteur Financier*).

Luxembourg

SIF Regime – FCP, SICAV, SICAF (continued)

Requirements for authorisation	• Starting SIF activities may be undertaken without prior approval from the CSSF, although application for approval must be filed with the CSSF within one month following the creation of the SIF. • The promoter is not subject to regulatory approval; investment managers will not be subject to CSSF scrutiny; and a depositary bank, while required in Luxembourg, has fewer responsibilities. • Semi-annual non-audited reports and long form reports are not required (only an annual audited report, with more flexibility on portfolio disclosure, is needed).
Investment restrictions	The investment restrictions are not onerous. Some risk diversification is required, and consequently a maximum of 30% of the assets can be invested in a single investment. Participation in a SIF is only open to qualified investors, or high net worth individual investors who are investing at least EUR 125,000 or who can provide a bank confirmation of suitable experience.
Minimum level of investment	The minimum asset base of a SIF is EUR 1,250,000. This amount has to be reached within one year from authorisation by the CSSF. Debt financing of the real estate is not restricted. SIFs can have various sub-funds, and can issue different classes of shares. Units or shares issued by each of the sub-funds may have different values representing specific pools of assets and liabilities.
Pros	• The SIF is highly flexible and uses the well known Luxembourg fund types (FCP, SICAV). • Use of the SCA legal form allows fund managers to exercise strong influence. • Low tax leakage, and scope for tax optimisation of carried interests. • The level of regulatory supervision is low, and authorisation can be granted often in a four to six week timeframe.
Cons	• Requirement to use a custodian bank, although the duties of the custodian bank are less severe than for UCIs. • Subscription tax expense.

Luxembourg

SICAR

The SICAR Law of 15 June 2004 introduced the SICAR form of investment vehicle, which has enjoyed some popularity as a vehicle exclusively dedicated to investments in risk capital, and only available to “well-informed” investors.

Legal forms

A SICAR (*Société d’Investissement en Capital à Risque*) is an investment company in risk capital for private equity and venture capital funds. A SICAR can be set up in a transparent form (partnership form) or non-transparent form (the corporate form). Various legal forms are available

- A public limited company (SA)
- A limited liability company (Sàrl)
- A cooperative in the form of a public limited company (SCSA) (seldom used)
- A limited partnership (SCS) (seldom used).

Tax status

The limited partnership is transparent for tax purposes; consequently there is no taxation at the level of the fund. The other legal forms are fully taxable, although the income (including interest) which is connected with investments in risk bearing capital is tax exempt. All other income is subject to corporate income tax and municipal tax at an aggregate effective tax rate of 28.59% (Luxembourg City, 2010).

Treatment of investors

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

Withholding tax

Distributions (dividends or interests) by a SICAR, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax as a result of application of the European Savings Directive.

Other taxes

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

Services rendered directly to SICARs are exempt from VAT if they qualify as “management services”. The range of services covered by this definition is broad (accounting services, investment advice services etc.). However a 12% VAT rate remains applicable for custody services provided to SICARs.

Treaty status

Non transparent SICARs (SA, Sàrl, SCSA) should generally be entitled to tax treaty benefits; however this has to be reviewed on a case-by-case basis as some countries are challenging treaty access. There is no access to most tax treaties for transparent entities, and SCS-type SICARs are not differentiated.

Regulation

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

Luxembourg

SICAR (continued)

Requirements for authorisation	• The CSSF will ensure that the SICAR meets the requirement of the SICAR law. In particular, investment strategy will be a central element of the CSSF review. • A custodian bank and a central administration service provider, which is supervised by the CSSF, is required. However, in comparison with publicly-distributed UCIs, the custodian bank has a lightened scope of responsibilities; • A qualified auditor must audit the annual accounts of the fund.
Investment restrictions	SICARs are, by definition, exclusively dedicated to investments in risk capital. Thus a SICAR does not have to comply with any kind of risk diversification requirement. A SICAR may, in principle, invest 100% of its assets in only one target investment. The CSSF accepts that real estate investments are “risk” assets for SICAR purposes so long as they are held via property-owning companies and have the potential to generate significant development or exit gains (i.e. are “opportunistic” profile investments. Participation in a SIF is only open to qualified investors, or high net worth individual investors who are investing at least EUR 125,000 or who can provide a bank confirmation of suitable experience.
Minimum level of investment	The subscribed share capital must be not less than EUR 1,000,000, and must be reached within the 12 months following CSSF authorisation. The share capital must then be fully subscribed, but need only be 5% paid up. There are no requirements for legal reserves.
Pros	• The SICAR is a flexible, tax efficient and tailored lightly regulated fund. • Compared to publicly-distributed UCIs, SICARs are subject to “lighter” regulation by the CSSF.
Cons	• Some countries challenge treaty access, or withholding tax reductions under local law (although Luxembourg accepts that these apply to Luxembourg participations held by a SICAR). • Only available for “opportunistic” real estate funds. • The EU Commission has undertaken a “request for information” procedure whereby it has sent a list of technical questions relating to the SICAR regime to the Luxembourg government, which has provided a reply. The purpose of this procedure is to assess whether or not the SICAR regime constitutes an illegal state aid scheme. Under this “request for information” procedure, there is no set deadline for the EU Commission to reach a conclusion, and there have been no developments in this area made public since 2006.

Luxembourg

Securitisation Vehicle

The Luxemburg Securitisation Law of 9 March 2004 provides a flexible legal framework for workable structures at reasonable cost. Securitisation works by grouping together assets with predictable cash flows, or rights to future income streams (such as mortgages, loans), and turning them into bond-style securities that are then sold to investors.

Legal forms	Securitisation is a type of structured financing in which a pool of financial assets is transferred from an originating company to a Special Purpose Vehicle (SPV). A securitisation vehicle can be organised in corporate forms, such as a public limited company (SA), a limited liability company (Sàrl), a cooperative in the form of a public company (SCSA), or a partnership limited by shares (SCA), as well as in a purely contractual form as a securitisation fund (FCP co-ownership).
Tax status	Securitisation vehicles organised as corporate entities are fully liable to corporate income tax and municipal business tax at the effective rate of 28.59% (Luxembourg City, 2010).
Tax treatment at entity level	Dividends received, capital gains realised and other income received is taxable. However under the Securitisation Law, all commitments of a securitisation company to remunerate investors (as well as other creditors) in respect of bonds or shares qualify as interest on debts, even if paid as return on equity. Hence, all such outgoings are fully tax-deductible. The resulting tax neutrality is one of the key success factors of Luxembourg securitisation structures.
Treatment of investors	The tax treatment of investors depends on the rules applicable in their country of residence.
Withholding tax	Distributions (dividends or interests) made by a Securitisation vehicle, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax as a result of application of the European Savings Tax Directive.
Other taxes	No annual subscription tax, no net wealth tax, no registration duty and no transcription tax are levied on a securitisation vehicle. According to the Luxembourg VAT authorities, securitisation companies should apply for a “simplified VAT registration regime” and only self-assess Luxembourg VAT on goods and certain non-exempt services received from abroad pursuant to the reverse charge mechanism.
Treaty status	Generally the vehicle should be entitled to double tax treaty benefits and access to EC Directives; however this has to be reviewed on a case-by-case basis as some countries are challenging this.

Luxembourg

Securitisation Vehicle (continued)

Regulation	A securitisation vehicle is only necessarily subject to CSSF supervision if it issues securities to the public on a continuous basis.
Requirements for authorisation	Where required, the CSSF has to approve the articles of incorporation or management regulations (subject to the provisions of the Securitisation Law) of the securitisation vehicle and, if necessary, authorise the management company. Securitisation companies and management companies of securitisation funds must have an adequate organisation and adequate resources to exercise their activities. The directors of the securitisation vehicle must be of good repute and have adequate experience.
Investment restrictions	Investment in the SPV is possible for all types of investors. There are no investment restrictions or risk diversification requirements for the vehicle.
Minimum level of investment	The minimum amount of investment is the fixed capital, which depending on the legal form is EUR 12,500 or EUR 31,000. Securitisation vehicles offer the possibility of creating several compartments / classes of shares within one legal entity.
Pros	• The SPV is a tax efficient and highly flexible fund vehicle.
Cons	• The EU Commission has undertaken a “request for information” procedure whereby it has sent a list of technical questions relating to the securitisation vehicle regime to the Luxembourg government, which has provided a reply. The purpose of this procedure is to assess whether or not the securitisation vehicle regime constitutes an illegal state aid scheme. Under this “request for information” procedure, there is no set deadline for the EU Commission to reach a conclusion, and there have been no developments in this area made public since 2006.
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The Netherlands

Transparent Funds
Corporate Funds with Fiscale beleggingsinstelling (FBI) status
Corporate Funds with Vrijgestelde beleggingsinstelling (VBI) status
Taxable Corporation Funds
Co-operatives
Non-transparent FGR – CV

The Netherlands

Transparent Funds

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

The Netherlands

Corporate Funds with Fiscale beleggingsinstelling (FBI) status

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

The Netherlands

Corporate Funds with Vrijgestelde beleggingsinstelling (VBI) status

Legal forms	Certain specific Dutch and foreign entities are eligible to claim the VBI regime, so long as these entities meet a set of ongoing requirements.
Tax status	Under the special tax legislation the VBI is exempt from Dutch corporate income tax, provided that the relevant conditions, principally relating to the investors (collective investor test) and the investments made (financial instrument and portfolio investment activities), are met. VBI status must be requested from the Dutch tax authorities.
Tax treatment at entity level	Dividends received, capital gains realised, and other income received is not subject to tax.
Treatment of investors	The income of the VBI will not be directly allocated to the investors, but it must be distributed.
Withholding tax	Distributions by a VBI are not subject to withholding tax.
Treaty status	The fund itself has no access to treaty benefits, and has no access to EC Directives.
Tax filing obligations	A VBI does not have any tax return filing obligations.
Regulation	VBIs are in principle subject to regulation. Exemptions are possible if certain criteria can be met. The regulatory authority is the *Autoriteit Financiele Markten*.
Investment restrictions	VBI vehicles can only invest in financial instruments. A VBI cannot therefore invest directly in real estate. Indirect investment in real estate located in the Netherlands by a VBI is also not allowed. The investment activities must furthermore exclusively comprise portfolio investment holding.
Minimum level of investment	None.
Pros	• There is no taxation at the level of the VBI and no withholding tax on distributions made by the VBI. • Although there is a requirement that two or more investors invest in the vehicle (collective investors test), there are no other specific investor restrictions.
Cons	• The fund has no access to treaty benefits and EC Directives. • The fund may only invest in financial instruments, and not directly in real estate. • Furthermore, ownership of shares and units must be sufficiently spread (collective investor test).

The Netherlands

Taxable Corporation Funds

Legal forms	A *Naamloze Vennootschap* (NV) is a public limited company, and a *Besloten Vennootschap* (BV) is a limited company.
Tax status	NVs and BVs are not transparent. Income is subject to Dutch corporate income tax at a general rate of 25.5%. The first EUR 200,000 of income is subject to a lower rate of 20% (2010 rates).
Tax treatment at entity level	All income is in principle subject to corporate income tax. If the conditions of the participation exemption are met, dividend income and capital gains are exempt from corporate income tax.
Treatment of investors	The income of a taxable corporation will not be directly allocated to its investors – only upon distribution will tax considerations arise for investors. Investors that hold a 5% or larger interest in any class of shares of a Dutch taxable corporation may be subject to Dutch tax on dividends, capital gains and interest from that shareholding.
Withholding tax	No withholding tax is levied on interest. Dividends are subject to 15% withholding tax, but this may be reduced by double tax treaties or EC Directives.
Treaty status	The vehicle is generally entitled to treaty benefits and to the benefits of EC Directives.
Tax filing obligations	NVs and BVs are required to file an annual corporate income tax return, as well as dividend withholding tax returns for each distribution.
Regulation	Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the *Autoriteit Financiele Markten*. Exceptions and exemptions can apply in specific circumstances.
Investment restrictions	None.
Minimum level of investment	None.
Pros	• There are no investor restrictions. • There is access to treaty benefits and EC Directives.
Cons	• Income, to the extent not covered by the participation exemption, is in principle subject to taxation in the Netherlands at the normal corporate income tax rate.

The Netherlands

Co-operatives

Legal forms	A *Coöperatie* (COOP), in essence, is a corporation.
Tax status	The COOP is non transparent, and its income is subject to Dutch corporate income tax at a general rate of 25.5%. The first EUR 200,000 of income is subject to a lower rate of 20% (2010 rates).
Tax treatment at entity level	All income is in principle subject to corporate income tax. If the conditions of the participation exemption are met, dividends received and capital gains realised are exempt from corporate income tax.
Treatment of investors	The income of a COOP will not be directly allocated to its investors – only upon distribution will tax considerations arise for investors. Investors that hold a 5% or larger interest in any class of shares of a COOP may be subject to Dutch tax on dividends, capital gains and interest from that shareholding.
Withholding tax	No withholding tax is levied on interest. Distributions by the COOP are not subject to dividend withholding tax so long as the capital of the COOP is not divided into shares.
Treaty status	Similar to NVs and BVs, the COOP is entitled to treaty benefits and to certain benefits of the EC Directives.
Tax filing obligations	A COOP is required to file an annual corporate income tax return.
Regulation	Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the *Autoriteit Financiele Markten*. Exceptions and exemptions can apply in specific circumstances.
Investment restrictions	None.
Minimum level of investment	None.
Pros	• Distributions are generally not subjected to dividend withholding tax. • The civil law rules for COOPs are similar to the flexible rules applicable to partnerships. • There are no investor restrictions, except that a COOP requires at least two members on formation.
Cons	• In any case where a COOP is a fund entity, the policy of the Dutch tax authorities is not to grant any tax ruling. Therefore, the COOP is mostly used as a subsidiary holding company platform. • Income which is not covered by the participation exemption is in principle taxable.

The Netherlands

Non-transparent FGR – CV

Legal forms	A *Fonds voor Gemene Rekening* (FGR) is a Dutch fund for joint account. A *Commanditaire Vennootschap* (CV) is a Dutch limited partnership.
Tax status	The fund vehicle is not transparent for tax purposes if the transfer of units fulfils neither the UC rule nor the FRI rule (as described for transparent funds). Thus the income is subject to Dutch corporate income tax. Income is subject to Dutch corporate income tax at a general rate of 25.5%. The first EUR 200,000 of income is subject to a lower rate of 20% (2010 rates).
Tax treatment at entity level	All income is in principle subject to corporate income tax. If the conditions of the participation exemption are met, dividends received and capital gains realised are exempt from corporate income tax.
Treatment of investors	The income of the non-transparent FGR / CV will not be directly allocated to its investors – only upon distribution will tax considerations arise for investors. In general investors that hold a 5% interest in a non-transparent CV / FGR may be subject to Dutch tax on dividends, capital gains and interest from their holding.
Withholding tax	No withholding tax is levied on interest. Dividends are subject to 15% withholding tax, but this may be reduced by double tax treaties or EC Directives.
Treaty status	The non-transparent FGR / CV is in principle entitled to treaty benefits, and furthermore to certain EC Directive benefits.
Filing obligations	Non-transparent FGRs and CVs are required to file an annual corporate income tax return, as well as dividend withholding tax returns for each distribution.
Regulation	Managers of Dutch fund vehicles are in principle subject to regulation. The regulatory authority is the Autoriteit Financiele Markten. Exceptions and exemptions can apply in specific circumstances.
Investment restrictions	None.
Minimum level of investment	None.
Pros	• There are no investor restrictions. • The fund is flexible from a civil law perspective, has low costs of establishment, and can be implemented relatively quickly.
Cons	• Income, to the extent not covered by the participation exemption, is in principle subject to taxation in the Netherlands at the normal corporate income tax rate.
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Portugal

Fundo de Investimento Imobiliário (FII)

Portugal

Fundo de Investimento Imobiliário (FII)

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

Legal form	An FII is a separate and autonomous pool of assets that is jointly owned by its unit holders. FII can be open end, closed end or semi-closed end collective investment vehicles. An FII is established and managed by a management company having the legal form of a joint stock company (*sociedade anónima*) with effective head office in Portugal, having as its primary object the managing of one or more funds. Assets are entrusted to a depositary bank.
Tax status	The FII is tax neutral and hence should result in similar taxation to that pertaining to investments made and held directly by an individual investor.
Tax treatment at FII level	Dividends received from shares are taxed at a 20% flat rate, capital gains realised on the sale of real estate are subject to a flat rate tax of 12.5% (25% levied on 50% of the net capital gains). The net amount of annual capital gains on the sale of securities is subject to 10% flat rate tax. Rental income is subject to tax at a flat rate of 20%. Further maintenance and repair expenses are tax deductible. Depreciation or the deduction of interest is not allowed. Other residual income is taxed at 25%.
Treatment of investors	The treatment of investors depends on the tax status of the investors (i.e. non-resident investors or resident investors). Non-resident investors receiving income from the FII are tax exempt on both periodical distributions and redemption of units. Capital gains arising from the sale of units are also tax exempt to the extent the seller is not resident in a tax haven jurisdiction. For resident investors receiving income from the FII, this can only be tax exempt but only in the hands of individuals. A 10% tax is levied on capital gains from the sale of units when held by individuals. Further income and capital gains are taxed in the hands of companies and other entities at their applicable rates. However, all tax borne or paid by the fund can be recovered by investors.
Withholding tax	None.
Other taxes	Neither annual property tax nor property transfer tax is levied. However, there are exceptions for privately-placed closed end funds held by non-qualified investors, where the applicable rates of the above taxes are reduced by half.
Treaty status	An FII has access to treaty benefits but not to EC Directives.

Portugal

Fundo de Investimento Imobiliário (FII) (continued)

Filing obligations	Periodical financial reports are sent by the management company to the CMVM (*Comissão do Mercado de Valores Mobiliários*), the Securities' Market Commission.
Regulation	There is regulatory supervision of the FII, the regulatory authority being the CMVM. The management company is governed by the banking law, is supervised by the Bank of Portugal and is only allowed to manage regulated funds.
Requirements for authorisation	The authorisation of the FII is by the CMVM, and is granted upon the request of the management company
Investment restrictions	There are several investment restrictions for FIIs, imposed by risk diversification rules. Eligible assets are 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. Also the composition of the portfolio is subject to certain restrictions, and eligible real estate assets have to account for at least 75% of the total assets. For open ended funds, (i) projects under construction cannot exceed a maximum of 25% of the total assets; (ii) one single real estate asset cannot represent more than 20%; and (iii) the fund leverage cannot exceed a maximum of 33%. Conversely, the requirements are not so strict for closed end funds. For instance, for privately placed closed end funds with no more than five investors that are not exclusively institutional investors, or if there are more than five institutional investors, these limits do not apply.
Minimum level of investment	None.
Pros	• Privately placed closed end FIIs have a flexible portfolio composition and leveraging rules. • A favourable property tax regime.
Cons	• The FII needs a Portuguese management company. • There is taxation of rental income, and depreciation and interest expenses are not tax deductible.
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Switzerland

Swiss Collective Investment Schemes

Switzerland

Swiss Collective Investment Schemes

The legislation regarding collective investments (Collective Investment Schemes Act, *"Bundesgesetz über die kollektiven Kapitalanlagen"*) came into force on 1 January 2007. In addition, the Swiss Federal Tax Administration recently published its Circular Letters No 24 and 25 (issued in January and March 2009), providing additional information on tax questions regarding collective investment schemes. Several questions of interpretation still remain, as the practice of the Swiss Federal Tax Administration has not yet finally been defined.

Legal forms	A "collective investment scheme" is a pool of assets brought together by investors with the purpose of collective investment, managed for the account of the investors. The collective investment scheme may be an open end scheme (a contractual collective investment scheme, or an investment company with variable capital (SICAV)) or a closed end scheme (a limited partnership for collective investments, or an investment company with fixed capital (SICAF)).
Tax status	The collective investment scheme is generally transparent for tax purposes. The only exemption is a SICAF, which is regarded as a taxable entity.
Tax treatment at entity level	Generally, contractual collective investment schemes, SICAVs and limited partnerships for collective investments are disregarded for tax purposes. On the other hand a SICAF is regarded as opaque for tax purposes, and is taxed as a corporate entity. An exception to this rule occurs where a generally transparent collective investment scheme directly holds real estate. In such a case income derived from Swiss real estate is subject to corporate income tax at a preferential rate of 4.25% and to cantonal and communal taxes at a preferential rate of 9.3% (Canton Zurich), both at the level of the collective investment scheme. Dividends and capital gains not related to Swiss real estate remain outside the scope of taxation (tax transparent).
Treatment of investors	The tax treatment in the hands of investors is rather complicated. Generally, a distinction must be made between individual investors and corporate investors. For individual investors a further distinction must be made between investors holding their investment in the collective investment scheme as private assets, or as business assets. Only capital gains from investments held as private assets by individual investors are regarded as tax free capital gains. Depending on whether the collective investment scheme qualifies as an accumulating collective investment scheme or as a distributing collective investment scheme, further differentiations with regard to individual investors are necessary. Corporate investors are taxed on distributions, and on the profit realised on the sale or redemption of the fund shares or if the book value of the fund shares held has been increased (taxation following the accounting treatment).
Withholding tax	Distributions (dividends and interest) are subject to a 35% withholding tax. Distributions of capital gains are not subject to withholding tax as long as the capital gains are distributed by a separate coupon or a separately disclosed. With regard to the timing of this withholding tax obligation, a distinction must be made between accumulating and distributing collective investment schemes. Distributing funds must declare and pay the withholding tax due on distributions to investors within 30 days from the due date of the distribution. Accumulating funds must declare and pay the withholding tax due on accumulated income within 30 days from the time of its credit (accumulation). Exceptions to the above filing requirements for withholding taxes purposes can apply to funds when following the Affidavit procedure (a requirement is that income is at least 80% foreign sourced).

Switzerland

Swiss Collective Investment Schemes (continued)

Other taxes	The issuance of collective investment scheme shares is exempt from issuance stamp tax. The issuance and redemption of collective investment scheme shares is exempt from securities transfer tax. In the course of a purchase, sale or transfer of shares in a Swiss collective investment scheme (secondary market transactions) through a Swiss securities dealer (e.g. Swiss bank), a security transfer tax will be levied, which in general has to be borne equally by the seller and purchaser. Transactions in taxable securities for the account of the fund vehicle are not subject to securities transfer tax (the fund vehicle is a tax exempt party). Other taxes such as capital duty on incorporation, and wealth tax, are not levied on collective investment schemes that qualify as tax transparent. Opaque collective investments schemes, and investment schemes that hold Swiss real estate directly, are taxed as corporate entities and are hence subject to capital duty.
Treaty status	The fund vehicle has generally no access to treaty benefits. Exceptionally, a collective investment scheme may have access to treaty benefits on behalf of its Swiss investors and for the amount relating to the Swiss investors, if the collective investment scheme distributes at least 70% or more of its income, and the fund applies to the “Affidavit” procedure. There is no access to EC Directive benefits.
Filing obligations	The collective investment scheme is subject to withholding tax filing obligations. Additionally, collective investment schemes with direct holdings of real estate are subject to filing obligations with regard to income realised from the real estate.
Regulation	The regulatory authority for the collective investment scheme and the manager is the *Eidgenössische Finanzmarktaufsicht* (FINMA). With regard to anti-money laundering regulations, various rules apply, set by each of the different financial industry associations that the manager of the collective investment scheme is expected to join.
Requirements for authorisation	The authorisation of the fund vehicle is granted by FINMA, based on the fulfilment of the various conditions of CISA (Swiss Collective Investment Scheme Act) and related ordinances, as well as the code of conduct of the relevant financial industry association.
Investment restrictions	The authorisation of the fund vehicle is granted by FINMA, based on the fulfilment of the various conditions of CISA (Swiss Collective Investment Scheme Act) and related ordinances, as well as the code of conduct of the relevant financial industry association.
Minimum level of investment	CISA and/or other regulatory authorities may set a minimum investment for certain types of collective investment schemes (e.g. a self-managed SICAV requires its investors to make a capital commitment of a minimum of CHF 500,000)..
Pros	• The collective investment scheme may have a simplified approval procedure if access is limited to qualified investors.
Cons	• The set up, application and approval process may require between four and six months, depending on the complexity and experience of the management company and the attitude of the Swiss authorities.
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United Kingdom

Limited Partnership
PAIF
Unauthorised Unit Trust

United Kingdom

Limited Partnership

Legal forms	A Limited Partnership (LP) is a business organisation 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 enjoy a right to the partnership's net income and capital gains.
Tax status	The LP is transparent for UK corporate income tax purposes.
Tax treatment at entity level	There is no tax levied at the level of the LP.
Treatment of investors	Investors are allocated the net income / losses and capital gains / losses of the LP pro rata to their participation in the LP. Investors are generally taxed in their home territory (depending on any applicable double tax treaty).
Withholding tax	Withholding tax is not levied by the LP, although dividends and interest income received by the LP may suffer withholding tax depending upon the underlying territory making the payment.
Other taxes	Stamp Duty Land Tax will be payable on the purchase of UK property and land. In addition Stamp Duty Land Tax may be payable in respect of changes in partnership interests in the LP. The LP is not liable to capital duty.
Treaty status	The LP cannot generally access double tax treaties. However, limited partners may be able to access the treaties applicable to the underlying subsidiary entities. There is no access to EC 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 and Customs (HMRC). Where the LP invests in UK real estate, non-UK resident investors in the LP will be required to file non-resident landlord returns with HMRC.
Regulation	The LP isn't under any regulatory supervision or regulatory authority, although the General Partner could be subject to such regulation.
Requirements for authorisation	None.
Investment restrictions	None.
Minimum level of investment	None.
Pros	• A simple, flexible structure, which is well understood in the real estate industry as an investment fund vehicle. • Not subject to regulatory supervision. • Tax transparency gives non-UK investors the opportunity to benefit from lower tax rates available for non resident landlords and pay no UK capital gains tax. • The structure easily accommodates "carry" arrangements for the management team.
Cons	• An LP cannot be listed without prior incorporation. • The legal form is unsuited to open ended funds.

United Kingdom

PAIF

Legal forms	A Property Authorised Investment Fund (PAIF) is a Property Investment Fund, structured as an open-end Investment Company (OEIC).
Tax status	The PAIF is opaque for UK corporate income tax purposes. However, tax exemptions are available for qualifying activities.
Tax treatment at entity level	UK dividends received and capital gains realised by the PAIF should be exempt from UK tax. Property investment business income is also exempt from corporate income tax. Moreover residual income is subject to corporate taxes – however, a corresponding deduction should be available, so consequently there is effectively no taxation at the level of the fund.
Treatment of investors	Corporate investors may have to pay corporate taxes on all incomes and gains, with the exception of dividend income which may be exempt from UK tax. Individual investors pay income tax at a rate of 40% (50% from April 2010) on property income distributions and interest, 25% on dividends, and 18% on gains.
Withholding tax	Withholding tax is levied at a rate of 20% on interest distributions unless the investor is eligible to receive this income gross.
Treaty status	In principle the PAIF has access to the UK treaties, as well as to EC Directives.
Filing obligations	The fund submits a UK corporate income tax return.
Regulation	The PAIF is regulated by the UK Financial Services Authority.
Requirements for authorisation	The OEIC needs to fulfil the following conditions: • Property investment business conditions • Genuine diversity of ownership conditions • A corporate ownership condition • Loan creditor conditions • A balance of business condition, and if relevant an additional condition for property AIFs that are qualified investor schemes.
Investment restrictions	Each investment of the PAIF may not be greater than 10% of the net total assets.
Minimum level of investment	None.
Pros	• The PAIF is a regulated, onshore vehicle for UK investments, which can be exempt from UK tax. • There is no entry charge for the vehicle to enter the regime.
Cons	• The PAIF is a new vehicle, and has not been widely used. • The vehicle is fairly heavily regulated, with a number of restrictions (e.g. gearing only up to 10% of net assets, and each direct investment may not be greater than 10% of the net total assets).

United Kingdom

Unauthorised Unit Trust

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