

Andreas Oestreicher
Markus Hammer *Editors*

Taxation of Income from Domestic and Cross-border Collective Investment

A Qualitative and Quantitative Comparison



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Preface

Collective investment is a form of joint participation in shared assets. Unlike a direct investment where securities or other assets are acquired directly by the investor, in this case the investor places the funds at the disposal of an investment company or a mutual fund via a collective investment. It is the task of the investment company to invest the liquid funds received from the investor in risk-diversifying manner, for example in stocks, bonds, or real estate, according to investment principles agreed upon in advance. The form of the collective investment from the civil law perspective determines the legal relationship between the investor and the investment company and, thus, also on whose account the funds are invested by the investment company.

It therefore follows that with respect to taxation, various different levels (assets, investment property, and investor) have to be considered in this context. Special domestic tax provisions are normally in place for investment property. In particular, the possibility exists that the collective investment is treated as a company and, hence, as a tax subject where certain conditions are fulfilled but is rendered tax-free (transparent).

The investor who, as a natural or legal person, is subject to income or corporate income tax must declare his or her income from the collective investment, under special provisions if applicable. Should the facts and circumstances of the case lead to the application of the transparency principle, the investor is treated in principle as though he or she had received the income directly and without interposition of the collective investment. Both distributed and retained earnings are deemed to be taxable income. When it comes to detail, the question is which investment strategies are concerned. Typically, the differentiation in this context is between stock funds (dividends and capital gains), bonds and money market funds (interest), real estate funds (rent or lease and capital gains), speculative transaction funds, and other funds (for which special domestic treatment applies, such as favorable treatments for pension funds, for example).

Although in principle the resulting tax consequences are clear, it emerges that numerous special circumstances, which furthermore differ significantly from country to country, are to be observed in individual cases. If one seeks to determine tax advantages or to check whether there is a need for tax reforms, one quickly comes to the conclusion that a comparison of alternative investments is no easy task. Against this background, the subject of this study (which has its origins in a corresponding

request from the Ministry of Finance of Hessen) is to examine the tax treatment of investment income, including the legal framework conditions (requirements according to the legal form and regulatory provisions) in an international comparison. Here we distinguish between the tax consequences to be considered at the various taxation levels (assets, collective investment, and investor). Of particular interest is also the issue of whether collective investment vehicles as such are entitled to apply double taxation agreements in their own right or make use of corresponding double taxation agreements on behalf of their investors.

In locational terms, our comparison covers France, Germany, Italy, Ireland, Luxembourg, the Netherlands, Switzerland, the UK, one Asian country (Japan), one Scandinavian country (Denmark), and one Eastern European country (Poland). Our analysis of the relevant tax provisions, which is of primarily qualitative nature, is complemented by a quantitative comparison of the tax burden for a model investor investing assets nationally in the form of a collective investment.

If one limits one's attention to languages most widely used across Europe, it becomes clear that the information necessary in order to set up a comparison of this kind is not available in the literature in sufficient depth. In particular, such information does not exist in a uniform and comparable form for the group of countries under consideration. For this reason, we requested the international accounting firm PwC AG to support the project by providing the necessary data via its international network.

Among other things, this study is based on three degree theses (one Bachelor thesis, one Master thesis, and one diploma thesis) written by students in the tax division of the Faculty of Economic Sciences at the *University of Göttingen*. The Master thesis of *Anne Höfner* and the Bachelor thesis of *Timm Klare* deal with the differing national tax systems for taxation of income from collective investment in selected countries and give a qualitative international comparison. The thesis by *Anne Höfner* places a special focus on the cross-border context. In his Diploma thesis, *Florian Schmiedl* puts forward a quantitative comparison of the tax burden on income from investment property held domestically and across borders with respect to the selected group of countries.

In designing the concept of these theses and in their supervision, we were supported in highly constructive manner by Dr. *Reinald Koch*, who also made valuable contributions to the quantitative analysis. We are grateful to *Jens Prassel* for his work in consolidating the results and conducting parts of the analysis. He also drafted the presentations and analyses for the country chapter. In this work, he was supported by *Josip Oreskovic-Rips*, tax adviser with PwC AG. *Sebastian Bause* performed the task of processing this extremely complex and complicated material for purposes of the analysis, which is based on information from highly diverse cultures and legal systems. He also proposed a second draft and adjusted it to legal changes taking place in the meantime. *Sebastian Bause* was supported by *Dirk Stiefel* of PwC AG, who contributed a section on the "treaty entitlement" of funds. The idea behind our study was proposed by *Friedrich Brusck*, head of the tax department at the Ministry of Finance in Hessen. We are grateful to his members of staff *Matthias Schenk*, *Andreas Rolker*, *Fabian Röhrich*, and Dr. *Alexander Mann*

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List of Abbreviations

AFM	Autorité des marchés financiers (French financial supervisory authority), Autoriteit Financiële Markten (Dutch financial supervisory authority)
AIF	Authorized Investment Fund
AO	Abgabenordnung (General Tax Act)
Art.	Article
AUT	Authorized Unit Trust
BB	Betriebs-Berater (Journal)
B.V.	Besloten Vennootschap
Ch.	Chapter
CH	Confoederatio Helvetica (Switzerland)
CII	Capital Investment Institution
CIT	Corporate Income Tax
CNMV	Comision Nacional del Mercado de Valores (Spanish financial supervisory authority)
COLL	Collective Investment Schemes Sourcebook
CONSOB	Commissione Nazionale per le Società e la Borsa (Italian financial supervisory authority)
CSSF	Commission de Surveillance du Secteur Financier (French financial supervisory authority)
CV	Commanditaire vennootschap (Dutch legal form)
DB	Der Betrieb (Journal)
DBA	Doppelbesteuerungsabkommen (Double Tax Treaty)
DE	Deutschland (Germany)
DFSA	Danish Financial Supervisory Authority
DK	Dänemark (Denmark)
DKK	Dänische Krone (Danish Crown)
DStR	Deutsches Steuerrecht (Journal)
DTA	Double Tax Agreement
DTT	Double Tax Treaty (Doppelbesteuerungsabkommen)
e.g.	Exempli gratia (for example)
ed.	Editor

edn.	Edition
EFG	Entscheidungen der Finanzgerichte (Journal)
etc.	Et cetera
ES	España (Spain)
EStG	Einkommensteuergesetz (Income Tax Act)
EU	European Union
FBI	Fiscale Beleggingsinstelling (Dutch fund type)
FCP	Fonds Commun de Placement (French fund type)
FGR	Fonds voor gemene rekening (Dutch fund type)
FI	Fondo de Inversión (Spanish fund type)
FINMA	Eidgenössische Finanzmarktaufsicht (Swiss financial supervisory authority)
FR	France
FSA	Financial Services Authority (UK financial supervisory authority)
GDP	Gross Domestic Product
GewStG	Gewerbsteuergesetz (Trade Tax Act)
HBR	Herbeleggingsreserve (reserve for re-investment according to Dutch tax law comprising of retained earnings at fund level)
ICG	Informal Consultative Group
IE	Ireland
IMF	International Monetary Fund
InvG	Investmentgesetz (Investment Act)
InvStG	Investmentsteuergesetz (German Investment Tax Act)
IRPEF	Imposta sul Reddito delle Persone Fisiche (Italian regional surcharge on the tax on income of natural persons)
IStr	Internationales Steuerrecht (Journal)
IT	Italy
JP	Japan
KStG	Körperschaftsteuergesetz (Corporation Tax Act)
LU	Luxembourg
MTC	Model Convention (with respect to taxes on income and on capital)
n/a	Not applicable, not available
NL	The Netherlands
no.	(Marginal) number
N.V.	Naamloze Vennootschap (Dutch legal form)
OECD	Organisation for Economic Co-Operation and Development
OEIC	Open-end(ed) Investment Company (UK fund type)
p.	Page
PIF	Professional Investor Fund (Irish fund type)
PL	Poland
PP	Private property
QIF	Qualifying Investor Fund (Irish fund type)
QIS	Qualified Investor Scheme (UK fund type)
REITS	Real Estate Investment Trusts
RIC	Regulated Investment Company (US fund type)

S.A.	Société anonyme (French legal form)
S.A.R.L.	Société à responsabilité limitée (French legal form)
S.C.A.	Société en Commandite par Actions (French legal form)
SICAV	Société d'Investissement à Capital Variable (French fund type), Società di Investimento a Capitale Variabile (Italian fund type), Sociedad de Inversión de Capital Variable (Spanish fund type)
SIF	Specialised Investment Fund
SIT	Securities Investment Trust (Japanese fund type)
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom (Great Britain and Northern Ireland)
USA	United States of America
UT	Unit Trust (Anglo-American fund type)
VBI	Vrijgestelde Beleggingsinstelling (Dutch fund type)
VCIC	Variable Capital Investment Company (UK fund type)
Wft	Wet op het financieel toezicht (Dutch Financial Supervision Act)
WHT	Withholding tax

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List of Symbols

$C_{(F)WHT}$	Credit at fund or investor level of (foreign) withholding tax withheld at asset level
$C_{F(I)}$	Credit at investor level of withholding tax withheld at fund level
F	Separate taxation of returns at fund level
F(I)	Withholding tax on returns at fund level on the account of investor
I	Separate taxation of the investor
$T_{[country]}$	Tax rate applied by the country [country]
–	No tax consequences at the corresponding level
r_t	Profitability in year t
r	Pre-tax internal rate of return on investment in a fund
r_s	Net-of-tax internal rate of return on investment in a fund
s	Effective tax burden arising from investment in a fund

