
1.1 Motivation

Existing forms of collective investment of capital address different groups of investors and in many cases are tailored to their specific needs. These fund structures are essentially characterized by two main features. Firstly, several different structures are possible in legal terms. These vary considerably from country to country. Secondly, fund structures often display a distinctly international orientation; in many cases funds address investors around the globe and invest the capital made available in international investment assets. As a rule, the investments are not limited to the country where the funds are based. From this it follows that the fund structures result in highly complex taxation issues, raising numerous problems in detail and matters of doubt. This holds especially with respect to cross-border taxation issues. Due to the vast number of fund vehicles operating in the various countries, it is scarcely possible for an investor to determine at a glance which investment is tax optimal from his or her particular perspective.

Against this background, in conducting this study we pursue two main goals. The first is to carry out a compact and systematic comparison of the most important income tax consequences of private investments in publicly available funds operating at important fund locations in Europe, America, and Asia (details concerning the subject matter are to be found in Sect. 1.2 below) and which are structured in accordance with the European UCITS directive or are comparable to it. This comparison allows us to determine the central common features or differences between the taxation concepts of the various countries (Chap. 2). To this end, summaries in table form and diagrams are designed to facilitate accessibility of the information. Our second goal is to supply information on the country-specific taxation concepts in a targeted and user-friendly way. A brief description of the national tax system applicable to funds is provided. Moreover, the chief tax consequences are set out using a uniform table format. A presentation of the country-specific taxation concepts is given country by country in a separate chapter (Chap. 3).

The present study, therefore, features the following three specific aspects. First, the comparative analysis in Chap. 2 allows us to observe what the 13 major tax regimes have in common and where they differ when it comes to taxation of funds. To the best of our knowledge, a comparative view covering such an extensive range of countries has not been carried out up to now. Second, the comparison of national tax burdens reveals valuable indications concerning the attractiveness of investment locations for natural persons subject to unlimited income tax liability¹ and enable initial conclusions to be drawn with respect to possible reforms in fund taxation. Third, the country-specific presentation in Chap. 3 provides an overview of investment income taxation at selected important fund locations. In this way, the reader can gain quick access to information regarding main features of fund taxation in the 13 countries under consideration in this study. Hence, this chapter serves as an introduction to fund taxation in these countries.

The structure of this study is as follows. Chapter 2 is devoted to the comparative analysis. In order to achieve enhanced comprehensibility uniform terminology is used as far as possible for all countries. A brief explanation of the most important terms is given in the following Sect. 1.2. The beginning of Chap. 2 is given over to a depiction of some main principles of fund taxation. Section 2.1 provides a brief overview of the relevant taxation levels which give rise to tax consequences, a discussion of the characteristic fund types is carried out, and the question of a treaty entitlement of the various fund types is addressed. Section 2.2 considers taxation of income from investment funds. In this context, the taxation on the asset level (“asset level”), the level of the collective investment (“fund level”), and at the level of the investor (“investor level”) is considered separately, whereby a distinction is made in each case as to whether the investment is purely domestic or cross-border. Moreover, taxation of income from sale of fund units is discussed; here, too, the taxation of the purely domestic and cross-border situation is presented separately. In Sect. 2.3 the alternative and country-specific tax burdens are calculated and presented in comparative manner. This presentation of the methodological instruments applied in the study is followed by discussion of the model assumptions and calculation results. A brief summary of the most significant results of our research rounds off the analysis in Sect. 2.4. The presentation in Chap. 3 deals with fund taxation in the individual countries. A brief description is followed up by a tabular representation of current tax provisions at fund level, at investor level, and upon sale of the individual assets or fund units.

¹ For methodological reasons the groups of institutional investors and cross-border fund-structures of considerable significance in practice cannot be taken into account in the framework of the quantitative analysis.

1.2 Subject Matter of the Investigation and Definitions

The study deals with publicly traded funds meeting the requirements of the UCITS directive (for example in terms of the investment law in Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Poland, Spain, Switzerland, and the UK). In addition fund structures in Japan and the USA were given consideration, provided they are comparable with publicly traded funds corresponding to the UCITS directive.

Regarding the legal design of the collective investment, a fundamental distinction can be made between a “contract type” and a “company type”. In the case of a contract type, in return for his input of capital the investor receives a unit certificate in the collective investment, whereby the collective investment remains separate from the corporate property of the investment company; in this alternative the legal relationship is consequently defined via the investor’s contractual claims vis-à-vis the investment company. Contrastingly, in the case of a company type the investor obtains a direct share in the investment company itself. Furthermore, in this case there is no distinction between the corporate property of the investment company and the collective investment. For the safe-keeping of the assets in both cases, a depot bank independent of the investment company is generally utilized. This bank is also responsible for issue and repurchase of units/shares and exercises a control function but has no influence on the tax provisions to be applied. It can only carry out procedural functions within the taxation framework (for example, paying withholding tax to the tax authorities). These two basic forms of fund can vary in detail in their design from country to country. For example, investment funds situated in the non-mainland European countries and the Anglo-American countries are often designed using trust structures related to the “contract type”.

Up to now, the “company type” has been employed to a clearly lesser extent than the “contract type” in Germany. According to statistics published by the BaFin (“Bundesanstalt für Finanzdienstleistungsaufsicht”, German Financial Supervisory Authority) concerning admissible investment trust companies (contract type) and investment corporations with variable capital (company type), the company type makes up a proportion of only 23 % on November 15, 2011.² As far as taxation is concerned both types are treated identically in Germany. However, this is not the case in all countries investigated, nor is there always such a clear preference for one fund type as is the case in Germany. Consequently, both forms are observed in the countries concerned in the course of this study.

For purposes of our calculations at investor level only domestically resident natural persons subject to unlimited income tax liability (“retail investors”) are considered. The latter can hold their fund units/fund shares in private assets or in business assets, in as far as this distinction is relevant. Investments made by corporations are excluded from this study. The same applies for institutional

² Cf. German Financial Supervisory Authority (2012).

investors, such as insurance companies. The investigated case group is further limited by the fund's investment portfolio. We look at investments in bonds (for example fixed interest securities) and shares (for example shares in stock corporations or listed companies), so from the tax perspective the study is focused on interest, dividends, and capital gains. Therefore, in the framework of the qualitative analysis we scrutinize domestic and cross-border income taxation both at fund level and investor level and any withholding taxation, including its treatment at either fund or investor level. Non-income-dependent taxes and taxation of fund management are excluded from consideration. Our quantitative analyses are limited to the purely domestic case, the identifying feature of which is that the investment is made in a fund located in the investor's country of residence. Cross-border investment structures, however, cannot be modelled in general due to the fact that the tax consequences depend to a large extent on the individual case. The dependence prevents us from being able to achieve any reliable determination of cross-border tax burdens.

For the sake of simplification and in the interests of a comparative review, the following terms are defined and employed in the further course of this report. In the framework of our study "fund", "investment fund" and "fund vehicle" are employed as generic terms for all forms of collective capital investment that fulfill the requirements of the UCITS directive or—in the case of Japan and the USA—are comparable with these. The question of their regulatory and company law basis and the precise legal form of the vehicles or issuing companies both have no bearing on this labeling. As a consequence, both the vehicles set up as a company (company type) and those based on contract (contract type) or those in the form of a trust (trust type) are termed "funds". In line with this definition, "fund shares" or "fund units" refer to the respective shares or units in the corresponding capital investment vehicle.

"Domestic investors" are natural persons who are resident or are deemed resident in the country in whose jurisdiction the fund concerned was set up. "Foreign investors" are natural persons who are resident or deemed resident in a country other than the country in which the fund concerned was set up.

"Assets" is the term given to the investment objects in which the fund invests. We consider investments in shares and obligations, the returns on which basically give rise to income from interest, dividends and capital gains upon sale of these assets.

1.3 Approach

Our point of departure is the distinction between the purely domestic case on the one hand and the cross-border case on the other. The pure domestic case is characterized by the fact that domestic investors invest in domestic assets via domestic funds, i.e., investors, funds, and assets are subject to the same tax jurisdiction. In the cross-border set-up, the investor's country of residence is a country other than the country in which the fund is based. In this cross-border set-up

we distinguish between cross-border case 1, cross-border case 2, and the “three-country-case”. In cross-border case 1 the assets are subject to a different tax jurisdiction to that of both the fund and the investor. Cross-border case 2, however, refers to situations in which assets and fund have a common tax jurisdiction, whereas the investor is resident in another country. In the “three-country case”, assets, investment fund, and investors all fall under different tax jurisdictions.

In order to demonstrate and assess the various set-ups, it is necessary to know the tax regulations of the investment countries concerned. It was not possible in the context of this investigation to acquire the necessary information using primary source and secondary literature only. In the interests of compiling a reliable, complete and comparative data basis, we therefore found it necessary to gather information directly. This survey is based on a standardized questionnaire and was carried out with the support of the international PricewaterhouseCoopers network of tax accounting and auditing firms. Unless otherwise indicated the data presented here applies as of December 2010.³

The relevant regulations differ very considerably from country to country and cannot be presented in detail in this report. Nevertheless, we considered it necessary to provide a brief description of the taxation systems, the legal bases, and taxation at fund and investor level. This information is given in table form, ordered country by country, and can be found in Chap. 3 of this report. In addition to presenting the regulations pertaining to the purely domestic case, we also look at the special features that are significant for the cross-border case (at fund level under the heading “specific characteristics of foreign assets/investors” and at investor level “special characteristics of the foreign fund”). If several fund types are to be distinguished in any particular country we refer to them individually.

Reference

German Financial Supervisory Authority (2012) List of admissible investment trust companies and investment corporations with variable capital. http://www.bafin.de/SharedDocs/Downloads/DE/Liste/Unternehmensdatenbank/dl_li_kag_invag_zugel.xls?__blob=publicationFile&v=1. Accessed December 15, 2012

³ In principle, in the majority of countries observed no significant changes in investment taxation law relevant to the present study have since taken place. Exceptions apply in the case of Italy and the UK which is why the legal status of July 2012 is referred to here. Moreover, as far as Germany is concerned, the legal status as of March 2013 is applied due to recent changes in the taxation of dividend income accrued to publicly traded investment funds.

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