
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 Brusch*, 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*

for their constructive remarks and the discussion of this survey's design. The study could not have been accomplished without the input of PwC. In particular, we would like to thank Prof. Dr. *Dieter Endres* and Dr. *Hans-Ulrich Lauermann* for their invaluable support.

Göttingen, Germany
Frankfurt am Main, Germany
March 2013

Andreas Oestreicher
Markus Hammer

Taxation of Income from Domestic and Cross-border
Collective Investment

A Qualitative and Quantitative Comparison

Oestreicher, A.; Hammer, M. (Eds.)

2014, XX, 150 p., Hardcover

ISBN: 978-3-319-00448-8