

Analysis of the Tax Implications of UCITS IV

EFAMA / KPMG

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01

Introduction

The European funds industry and the EU Commission have both long acknowledged that tax is a significant barrier to successful implementation of UCITS IV. However, UCITS IV is a regulatory and not a tax Directive so separate changes to tax legislation are required to implement changes.

After some consideration of the tax barriers facing cross-border fund mergers, the EU Commission's White Paper stated:

*"As far as taxation of cross-border UCITS mergers is concerned, the Commission considers it preferable to build on relevant case law of the European Court of Justice. This route seems more promising than tabling proposals for tax harmonization which will require unanimous support of 27 Member States. On the basis of European Court of Justice case-law, the Commission will come forward with a Communication to clarify that national tax-arrangements should be extended to mergers involving funds domiciled in another Member State."*¹

This is the starting point for this report. Its purpose is to assess the appropriateness of this position after carrying out an extensive study of potential tax obstacles facing UCITS IV. That is to identify tax provisions that potentially prevent the EU funds industry from implementing UCITS IV in the way that it would like to and whether it is realistic to expect that evolving case law will permit the effective implementation of UCITS IV. To support the findings a survey of KPMG/EFAMA members was also carried out to gauge interest in opportunities presented by UCITS IV.

We would like to thank all those from EFAMA and KPMG who participated in the preparation of this study and we look forward to further discussions with all interested parties, for example representatives of the EU fund industry, local tax authorities and the EU Commission.

¹ EU Commission, White Paper on enhancing the Single Market Framework for Investment Funds, November 2006

02

Executive Summary

UCITS IV contains welcome amendments to the UCITS framework. Many fund managers are in the process of assessing the impact it will have on existing fund ranges and management structures. As part of this project, a survey of KPMG/EFAMA members was conducted and this shows that fund managers have a strong awareness of UCITS IV and a clear intent to take advantage of the enabling measures, i.e. to make use of the cross-border mergers, Management Company passport and Master-Feeder provisions. However, the survey also highlights concern that tax obstacles will not allow managers to make full use of these.

2.1 Changes introduced by UCITS IV

UCITS IV is designed to enhance the existing UCITS framework and contains six measures.

- > A framework for cross-border UCITS mergers under which cross-border mergers between all types of UCITS funds (contractual, corporate and unit trust) are allowed and recognized by each Member State.
- > A full passport for a UCITS Management Company which will allow a UCITS established in one EU Member State to be managed by a Management Company in another Member State.
- > The creation of cross-border Master-Feeder UCITS structures which will allow Feeder funds to invest at least 85 percent of their assets into another UCITS fund i.e. the Master fund.
- > Replacement of the Simplified Prospectus with the Key Information Document (KID) which is designed to help investors reach an informed investment decision by presenting key technical information in a concise, non-technical and easy-to-read manner.
- > A new notification procedure for the cross-border marketing of UCITS in the EU to remove administrative obstacles and delays to cross-border distribution of UCITS, with the aim of improving time to market and reducing costs.
- > Supervision measures that are aimed at improving cooperation mechanisms between national supervisors and are also designed to minimize or remove administrative obstacles and delays.

The first three measures can be described as enabling measures and the latter three as mandatory. There are no tax barriers to the KID, or improved cooperation between national supervisors. National tax processes or discrimination could affect speed to market and therefore the success of the improved cross-border notification process, but a tax comparison between investing cross-border and investing via a domestic UCITS is beyond the scope of this report. Instead this report focuses on the three enabling measures – tax will certainly influence the extent to which groups adopt these. Starting with cross-border mergers, it then moves to the Management Company passport and then Master-Feeder structures.

2.2 Cross-border Mergers

Tax continues to frustrate managers who wish to merge funds domestically and cross-border. The survey shows that 90 percent of respondents claimed that tax is a significant factor when deciding which funds to merge. The concern is more at investor level than at fund level. If a merger of funds is a tax event for investors, it is unlikely to happen despite the efficiencies and cost savings that could be derived.

Assessing which investors are affected is a challenge in itself if a fund is marketed across a number of Member States. There is a complex range of treatments. For example, the UK provides relief from capital gains tax for domestic and cross-border mergers and the provisions now cater for corporate and contractual vehicles and unit trusts. By contrast, Luxembourg residents have a taxable event irrespective of the type of merger. Other jurisdictions fall somewhere in-between and have different treatment depending on the type of vehicle or the location of the funds. In some cases, the treatment is discriminatory. In some cases, the treatment may be discriminatory although we do not expect that the problem can be solved fully through the launch of infringement procedures.

From an investor's perspective, a merger of funds should be tax neutral as the investors are not realizing their investment and they could be paying tax on an investment that may ultimately be disposed of at a loss.

Fund mergers are not happening because tax is a clear obstacle. This report recommends that an EU wide solution be pursued i.e. a UCITS tax Directive. This is the only likely way to effect consistent treatment across all Member States.

2.3 Management Company Passport

Survey respondents do intend to make use of the Management Company passport. Nearly two thirds have a Management Company in two or more Member States so there is some scope for consolidation. In addition, the passport can be used when entering markets for the first time. The majority of managers would look to locate the Management Company in one of the funds centers; a significant minority would choose the location of the fund promoter. There is therefore real interest in the Management Company passport and different groups will adopt different structures and in different locations depending on their historic position and future growth plans.

Again taxation could have a very significant impact on the decision. This is not because tax will drive the location decision. A Member State is unlikely to make the short list if it has an anti-competitive tax regime; but low corporation tax or VAT rates will not attract a Management Company to a location if that location does not have a strong reputation, the right infrastructure and access to talented people.

The problem is at fund level. In certain jurisdictions (for example, Germany and the UK) the activities of the fund Management Company could cause the UCITS itself to become tax resident in the country where the Management Company is located. The analysis differs depending on whether the UCITS is a company, a unit trust or a contractual vehicle. Broadly, if "effective management" of the UCITS is exercised in the location where the manager is resident, the UCITS could become tax resident in that location.

The consequences differ depending on the structure of the fund and country involved. For example, if a UCITS becomes tax resident in the UK, profits of a non-UK UCITS could become subject to tax at a rate of 28 percent. More generally, such a change in tax status could lead to double taxation (or double exemption) and could affect the fund's ability to qualify for benefits under Double Taxation Agreements.

Planning can prevent this outcome, for example the governance structure of the UCITS can be strengthened so that effective management remains with the UCITS. However, to the extent that this requires more substance in the home state of the UCITS than required by regulation, tax legislation is acting as a constraint to fulfilling the efficiencies of UCITS IV.

If use of the Management Company passport has the potential of influencing the tax residence of a UCITS, fund managers are unlikely to make full use of the passport. This report recommends that Member States agree to treat UCITS as tax resident where they are established so that moving the Management Company cannot affect residence of the UCITS. Again, a UCITS tax Directive would be the most effective way of achieving this.

2.4 Master-Feeder Structures

The Master-Feeder structure is a welcome tool and will be used in conjunction with fund mergers. Although not as cost effective as having a single fund platform distributed cross-border, a Master-Feeder structure enables groups to focus investment management in one location which will lead to some cost savings. Managers may choose to convert existing UCITS into Feeders or to establish new Feeders when entering new markets.

There are a number of tax considerations to take account of when establishing a Master-Feeder structure. Charges could arise on conversion of existing structures, and the ongoing tax treatment of investing via a Master fund could be less efficient than investing directly in the underlying assets.

It is important that the conversion of a UCITS into a Feeder fund does not have adverse tax consequences for the Feeder fund or the investors. For example, charges could arise in jurisdictions such as Germany which tax investors on a look-through basis.

Investing via a Master fund could give rise to additional tax charges. If a country levies withholding tax on distributions from a Master fund to a Feeder fund, or a capital gains tax when the Feeder fund disposes of shares in the Master, it is unlikely to be a popular location for Master funds. In some jurisdictions, where equivalent transactions with a local Feeder UCITS are subject to a lower rate of tax, such treatment is potentially discriminatory. It is therefore expected to be in the interest of Member States to eliminate such taxes to attract business and in some cases to pre-empt a challenge under EU law.

Capital gains tax and/or withholding tax on transactions between Master and Feeder funds could be an obstacle to UCITS IV if a fund manager wishes to establish a Master fund in a country that imposes such taxes. Further to the above calls for a UCITS tax Directive, this report recommends that such a Directive be used to remove taxes on transactions/flows between Master and Feeder funds.

2.5 Conclusion

This report reveals the full extent to which tax is an obstacle to the successful implementation of UCITS IV. Tax has the potential to obstruct the enhancing measures, fund mergers, the Management Company passport and the Master-Feeder structure.

Across Member States there are many and varied ways of treating similar transactions between similar funds. Some of these differences in approach will, no doubt, represent discrimination under EU law and may be capable of resolution through evolving case law. However this will only be the case for certain Member States and the analysis may differ depending on the precise legal form that the UCITS vehicle takes. Thus evolving case law is likely to deliver only a “patchwork” amelioration of the difficulties and that over a relatively long time scale. Therefore this report recommends that a UCITS tax Directive be given serious consideration so that mergers of UCITS and treatment of the Management Company passport becomes consistent, clear and fair across all Member States. KPMG/EFAMA therefore ask the EU Commission to revisit their conclusion in the White Paper and reconsider an approach that harmonizes the tax treatment across 27 Member States.

Until such a Directive is enforced, we urge local tax authorities to act unilaterally as successful implementation of UCITS IV is in the interests of both the fund management industry in and governments of each Member State.

03

Tax Findings

KPMG/EFAMA have analyzed the tax implications of UCITS IV at three levels:

- (i) at Management Company level;
- (ii) at fund level; and
- (iii) at investor level.

Given the complexity and the high number of cross-border combinations that are feasible under UCITS IV considering 27 EU Member States, we were forced to restrict the scope of analysis for certain EU countries. We are confident that the study remains representative of possible tax issues. For details per country please refer to appendix 5.

The views expressed in this section are those of KPMG and not necessarily those of EFAMA and/or its members.

Please also note that VAT issues have not been taken into account in the present report.

3.1 Cross-border Mergers

3.1.1 General description

The KPMG/EFAMA survey regarding the likely impact of UCITS IV on the asset management industry (see Appendix 4) shows that many promoters intend to carry out mergers to achieve economies of scale and to wind down some fund ranges. The survey also highlighted that when it comes to mergers the major obstacle was tax.

We have analyzed both (i) the tax obstacles which directly relate to the implementation of UCITS IV, i.e. the taxation of cross-border mergers, and (ii) those which already exist, such as the taxation of purely domestic and foreign mergers. This is because solutions confined to issues which arise directly out of the implementation of UCITS IV and which do not address the “wider picture” would be incomplete and could result in new distortions to competition inconsistent with the effective operation of the Single Market. As a consequence, KPMG/EFAMA has decided to outline the tax issues relating to all types of mergers, even though domestic and foreign mergers are not directly linked to the implementation of UCITS IV.

Under the UCITS IV Directive three different types of mergers are defined and each EU Member State will have to accommodate at least one of these in their local legislation, namely:

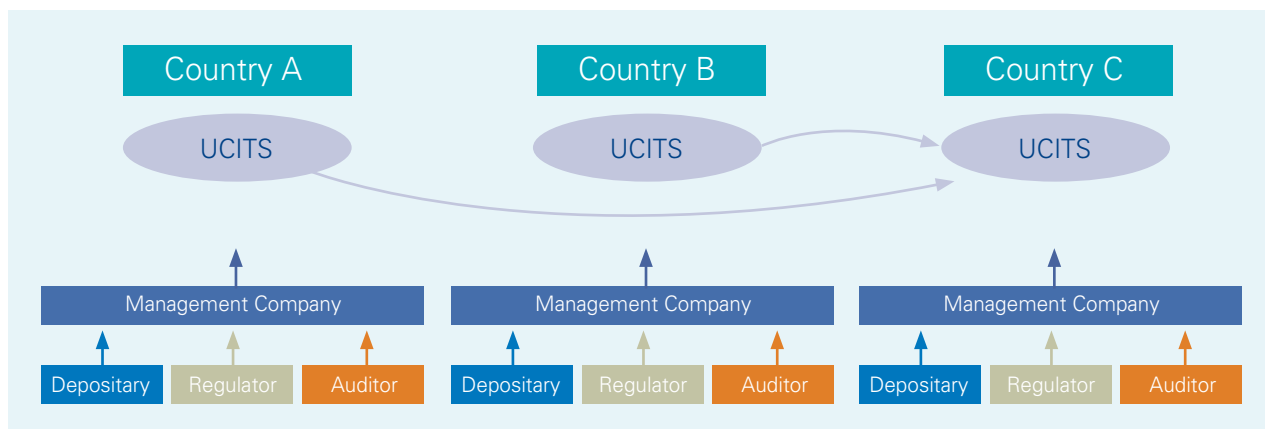
- > Merger by absorption. Under this scenario, one or more UCITS or investment compartments thereof (the “merging UCITS”), on being dissolved without going into liquidation, would transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, (the “receiving UCITS”) in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10 percent of the net asset value of those units;
- > Merger by constitution of a new UCITS. In this scenario, two or more UCITS or investment compartments thereof, (the “merging UCITS”), on being dissolved without going into liquidation, would transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof, (the “receiving UCITS”) in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10 percent of the net asset value of those units;

> Merger by scheme of amalgamation/transfer of net assets: In this scenario, one or more UCITS or investment compartments thereof, (the “merging UCITS”), which would continue to exist until liabilities have been discharged, would transfer net assets to: (i) another investment compartment of the same UCITS; (ii) to a new UCITS which they form; or (iii) to another existing UCITS or an investment compartment thereof, (the “receiving UCITS”).

Based on the existing and new strategic options available under UCITS IV, KPMG/EFAMA have identified various merger combinations that may trigger adverse tax consequences at the fund and/or investor level. In undertaking this analysis, the tax treatment of a domestic merger has been taken as the reference point. Foreign mergers and cross-border mergers have been benchmarked against the tax treatment of domestic mergers.

The analysis of cross-border mergers is particularly challenging as the implementation of UCITS IV at the national level is still pending and tax laws in certain jurisdictions do not specifically consider the various merger scenarios contained in the UCITS IV Directive. Where this is the case, the analysis has been based on general tax law principles.

The following two sections describe in detail tax considerations in respect of domestic, foreign and cross-border mergers at both the level of the fund and at the level of the investor.



Source: KPMG International, March 2010

3.1.2 Tax considerations

3.1.2.1 Tax considerations at the level of the fund

Domestic mergers

A domestic merger is where two investment funds which are located in the same jurisdiction merge. The merger can be carried out either by way of absorption, creation of a new UCITS, or by transfer of net assets as foreseen under the UCITS IV Directive.

The tax legislation for each EU Member State should cover the consequences of such a merger for those categories of fund that exist under local law.

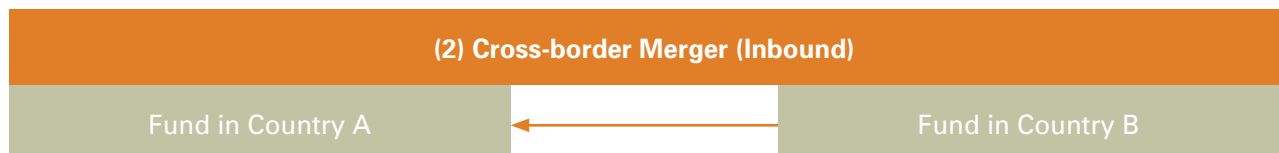
For example, according to Luxembourg law, a contractual fund, or Fonds Commun de Placement (hereafter referred to as an FCP), can be merged with a corporate fund, or a Société d'Investissement à Capital Variable (hereafter referred to as a SICAV), and vice versa. However, as Luxembourg does not have a unit trust regime, a merger between a SICAV and a unit trust is not currently catered for in Luxembourg law.



Cross-border inbound mergers

An inbound merger occurs when an already existing or a newly created fund, which is located in one EU Member State (the absorbing fund), absorbs a fund which is located in another EU Member State. When the merger is inbound, the tax consequences must be analyzed from the perspective of the absorbing fund. As a consequence, one must establish whether the legislation of the country where the absorbing fund is located provides for a tax neutral merger or not.

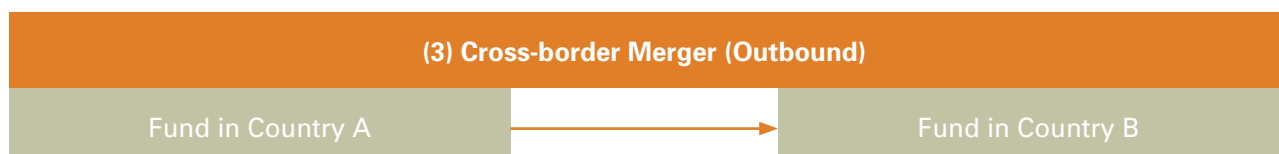
Example: A Luxembourg FCP absorbs a German Sondervermögen (i.e. contractual fund). The FCP is the absorbing fund and one will therefore have to assess whether, according to Luxembourg legislation, tax arises at the Luxembourg FCP level.



Cross-border outbound mergers

An outbound merger occurs when a fund, which is located in one EU Member State (the merged fund) merges cross-border with a new or existing fund located in another EU Member State (the absorbing fund). In contrast to the inbound merger, the tax consequences will be analyzed from the perspective of the merged fund. KPMG/EFAMA will therefore have to establish whether the legislation of the country where the merged fund is located is a tax neutral merger or not.

Example: A Finnish investment fund (corporate fund) is merged with a UK unit trust. In the case under review, the Finnish investment fund is the merged fund. The question is whether tax arises at the level of the Finnish fund.



For UCITS IV to work properly, it is important that mergers can be carried out in a tax neutral way. This can only be achieved if all types of funds, whether contractual, corporate or in unit trust form, are free to merge without suffering adverse tax consequences.

Although tax neutrality at fund level for mergers is provided in the majority of Member States considered (see table 2), the tax laws of Italy and Sweden are silent when it comes to cross-border mergers. For these jurisdictions, there is a risk that the tax neutrality of cross border mergers is at the discretion of local tax authorities. As this constitutes an obstacle to the implementation of UCITS IV, it is important that such legal uncertainties are removed.

Table 2: Does taxation arise at Fund level in the following cases?

Country	Domestic Merger	Cross-border Merger (Inbound)	Cross-border Merger (Outbound)	Tax Neutrality
Finland	NO	YES	YES	X
France	NO	NO	NO	✓
Germany	NO	NO	NO	✓
Ireland	NO	NO	NO	✓
Italy	NO	YES	YES	X
Luxembourg	NO	NO	NO	✓
Spain	NO	NO	NO	✓
Sweden	NO	YES	YES	X
UK	NO	NO	NO	✓

✓ = Generates no taxation X = Generates taxation

Source: KPMG International, March 2010

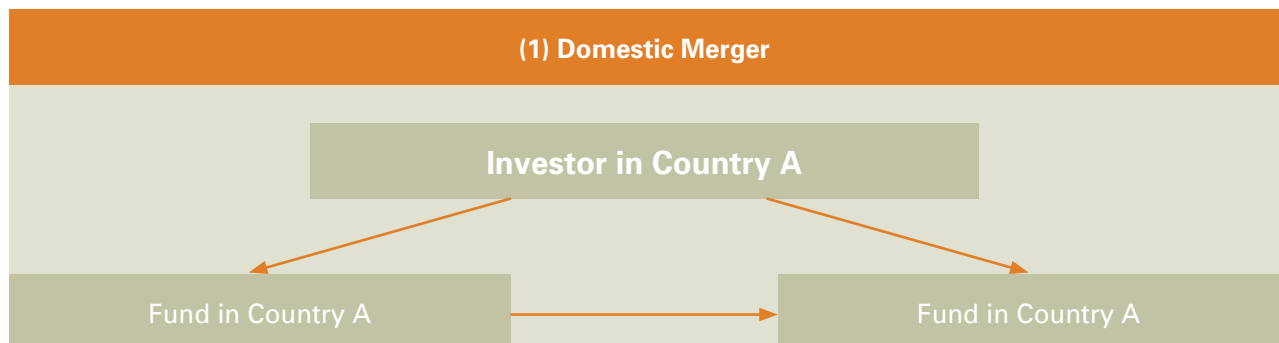
3.1.2.2 Tax considerations at the level of the investor

From the investor's perspective, we can identify four types of merger which may have a tax impact: domestic mergers; foreign mergers; and both inbound and outbound cross-border mergers.

Domestic mergers

In this report the term "domestic merger" is used if an investor resident in a specific country ("country A") holds units in a fund established and tax resident in country A which then merges with another fund established and tax resident in country A. All parties involved in the transaction are regarded for tax purposes as located in the same country. The question is whether the merger is a taxable event at the investor level.

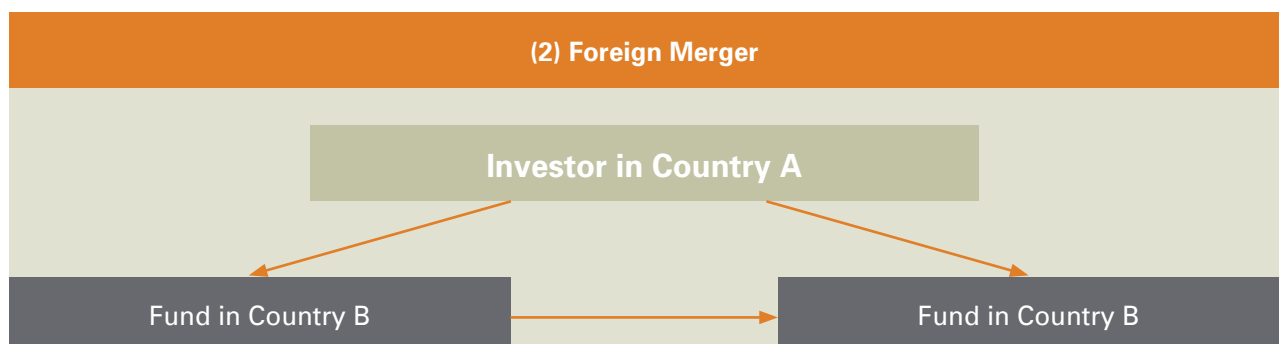
Example: An Irish investor holds units in an Irish unit trust, which will merge with another Irish unit trust. What needs to be analyzed are the tax consequences that may arise at the level of the Irish investor when the Irish unit trusts merge.



Foreign mergers

In this report, a merger is considered as a "foreign" merger if an investor resident in a specific country ("country A") holds units in a fund established and tax resident in a different country ("country B") and which then merges with another fund established in country B. In this scenario, the investor is resident in a different country to that in which the merging investment funds are located (which are in the same country). The question is whether or not the merger of foreign funds has a tax impact at the level of the domestic/local investor.

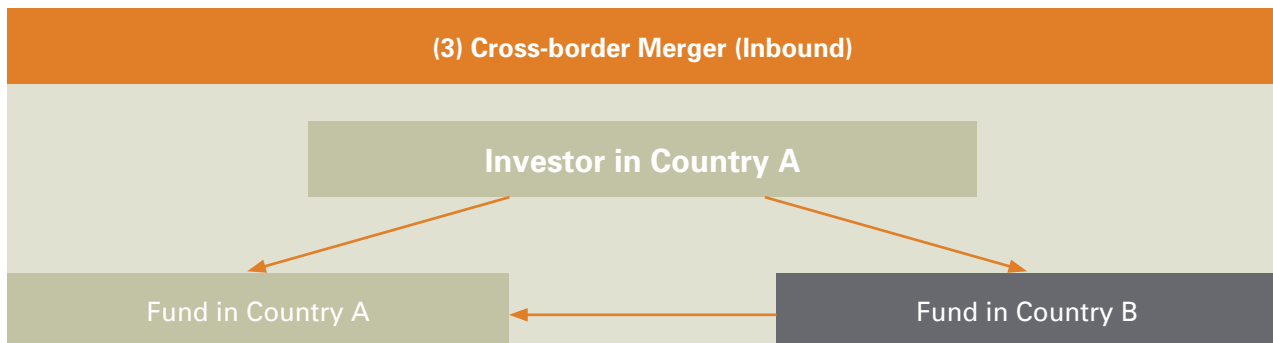
Example: An Italian investor holds units in a Spanish fund which merges with another Spanish fund. It needs to be considered whether the merger is a taxable event for the Italian investor.



Cross-border inbound mergers

In this report the term "cross-border inbound merger" is used, when an investor in one country ("country A") holds units in a fund located in country A which will then absorb a fund located in another EU Member State ("country B"). The question arises as to whether such merger triggers taxation at the level of the investor.

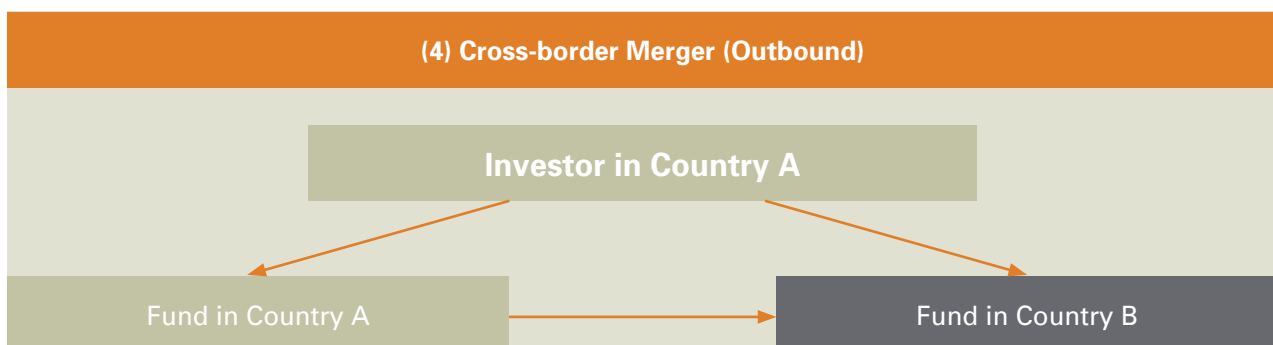
Example: A UK investor holds units in a UK unit trust, which absorbs by way of merger a Luxembourg FCP. It needs to be considered whether the merger is a taxable event for the UK investor.



Cross-border outbound mergers

In this report the term “cross-border outbound merger” is used when an investor located in one country (“country A”) holds units in a fund also located in country A that will be merged with a fund located in another EU Member State (“country B”). The question arises as to whether this cross-border merger triggers taxation at the level of the investor.

Example: A German investor holds units in a German *Sondervermögen* (i.e. a contractual fund) which is merged with a Luxembourg SICAV. It needs to be considered whether the merger is a taxable event for the German investor.



Objectives of the Directive – Tax neutrality

In its preamble, the Directive sets clear objectives that should be reached once it has been transposed into national law. For instance, the Directive underlines that “*mergers of UCITS encounter many legal and administrative difficulties in the Community. It is therefore necessary to ensure that ‘all types of UCITS’ (contractual, corporate and unit trusts) should be permitted and recognized by each Member State.*”

At investor level, the preamble considers that the interest of the unit-holders of both the merging and the receiving UCITS should be protected. In the case of mergers, unit-holders should be able to request the repurchase or redemption of their units and should not be subject to additional charges and should not pay the costs of restructuring. It is clear therefore that tax costs that arise on merger are contrary to the spirit of UCITS IV.

The current position

Most of the Member States considered do impose a tax charge on mergers of one form or another. Cyprus, France, Estonia and the UK are rare exceptions (see table 3). At the other extreme, Luxembourg considers all kind of reorganizations as a taxable exchange of units or sale of units followed by an acquisition of new units, regardless as to whether the merger is regarded as domestic, foreign, or cross-border.

Some countries provide for a tax neutral domestic reorganization, while taxing foreign and/or cross border mergers. In certain cases, this analysis will differ depending upon the legal form of the merging UCITS funds. Other jurisdictions do not provide certainty in their local tax law, so it is not possible to exclude the potential for taxation of certain merger operations.

To summarize, the central aim of the UCITS IV Directive is not achieved as in many cases mergers will trigger taxation.

Table 3: Does taxation arise at investor level in the following cases?

Country	Domestic Merger	Foreign Merger	Cross-border Merger (Inbound)	Cross-border Merger (Outbound)	Tax Neutrality
Austria	YES	YES	YES	YES	X
Belgium	YES	YES	YES	YES	X
Cyprus	NO	NO	NO	NO	✓
Czech Republic	NO	YES	YES	YES	X
Denmark	YES	YES	YES	YES	X
Estonia	NO	NO	NO	NO	✓
Finland	NO	YES	YES	YES	X
France	NO	NO	NO	NO	✓
Germany	NO	NO	YES	YES	X
Greece	NO	NO	YES	YES	X
Hungary	YES	YES	YES	YES	X
Ireland	NO	NO	YES	YES	X
Italy	NO	YES	YES	YES	X
Luxembourg	YES	YES	YES	YES	X
Malta	YES	YES	YES	YES	X
the Netherlands	YES	YES	NO	YES	X
Poland	YES	YES	YES	YES	X
Portugal	NO	YES	YES	YES	X
Romania	YES	YES	YES	YES	X
Slovakia	YES	YES	YES	YES	X
Spain	NO	YES	YES	YES	X
Sweden	NO	NO	YES	YES	X
UK	NO	NO	NO	NO	✓

✓ = Generates no taxation X = Generates taxation

Source: KPMG International, March 2010

A note on discrimination

According to ECJ case law, tax legislation may be considered as discriminatory if there is a difference in treatment between a purely domestic and a cross-border situation. In such cases, the EU Commission could, by launching an infringement procedure², urge the Member States concerned to amend their legislation to comply with the EU fundamental freedoms. Such a request is binding and, if the Member State concerned fails to act, the EU Commission could bring the case before the ECJ. For further details, please see appendix 1 “Discriminatory taxation of investors upon fund merger”.

However, it is important to point out that the launch of infringement procedures by the EU Commission is not the preferred outcome. The process is long and burdensome and not all of the obstacles are discriminatory as some Member States tax all fund mergers (domestic, foreign as well as cross-border mergers).

It is therefore of great importance that a tax merger Directive for funds is adopted that allows for tax neutrality for all types of merger (domestic, foreign and cross-border). This is the only viable way to ensure that the objectives of UCITS IV can be met.

3.1.3 Conclusion and recommendations

The tax barriers which arise when funds are reorganized leaves promoters dealing with significant uncertainty and this in turn poses a serious obstacle to the realization of an efficient single market for funds within the EU—the fundamental objective of the UCITS IV Directive. If the tax rules relating to EU fund mergers hinder or adversely impact returns to funds and/or their investors, mergers will not happen on the scale envisaged by the Directive.

UCITS IV will oblige all EU-countries to allow cross-border mergers from a legal and regulatory point of view. However, the tax treatment of mergers both at the fund and investor level varies from country to country. It is therefore essential that tax neutrality is ensured throughout Europe at fund and at investor level regardless of whether the merger is a domestic, foreign or cross-border one.

KPMG/EFAMA conclude that this objective can only be achieved by the adoption of a separate EU Directive for the taxation of fund mergers following the principle of tax neutrality laid down in the company merger Directive³. Indeed, KPMG/EFAMA takes the view that many of the objectives foreseen by the company merger Directive can be transposed to the fund industry. This especially applies to the following objectives:

- > The taxation of the income, profits and capital gains from reorganizations should be deferred and taxing rights safeguarded. (This principle should be applied at fund level as well as at investor level regardless of the type and tax status of fund involved.)
- > Obstacles to the functioning of the internal market, such as double taxation, should be eliminated.
- > The decision to reorganize the fund’s business should not be hampered by discriminatory tax rules or by restrictions, disadvantages or distortions arising from national tax legislation that is contrary to community law. This should also ensure compliance with the freedom of establishment.

² Article 258 of the Treaty on the Functioning of the European Union

³ Council Directive 90/434 of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfer of assets and exchange of shares concerning companies of different Member States and to the transfer of the registered office, of an SE or SCE, between Member States and Directive 2005/56/EC of the European Parliament and of Council of 26 October 2005 on cross-border merger of limited liability companies.

The objective is not to harmonize tax but to ensure that domestic, foreign and cross-border mergers are tax neutral on the basis that the investor keeps their investment in the fund before and after the merger⁴. The adoption of a merger Directive for funds should therefore not lead to loss of tax revenue for EU Member States. If such a Directive were adopted there would be only a tax deferral (tax should be delayed until the moment shares or units in the fund are eventually sold).

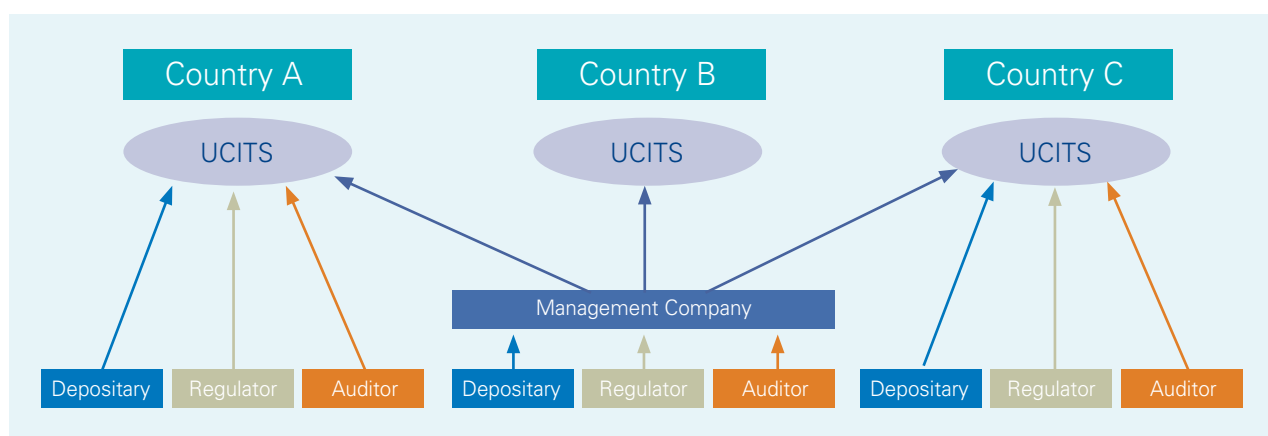
3.2 Management Company Passport

3.2.1 General description

To date it has been necessary to establish a Management Company in the same jurisdiction as UCITS funds unless they are self-managed. This has led to an alignment of the management of the fund, carried out by the Management Company, and the supervision of the fund, carried out by the local supervisory authority or regulator.

Today one of the key aims of UCITS IV is to enable a Management Company authorized in one Member State of the EU to manage, administer and market a UCITS authorized in another EU Member State jurisdiction.

The following chart illustrates this new possibility.



Source: KPMG International, March 2010

Following UCITS IV fund operators will be able to consolidate their existing business model, managing all their UCITS by one single Management Company. In order to reach this consolidated cross-border management business model of the fund, different solutions are possible.

In the event that fund operators proceed with the consolidation of existing Management companies into one single Management Company, exit taxation rules would have to be monitored. As the issues are not critical for the analysis, we have not covered these aspects in the present report. Nor have we analyzed the case of self-managed funds as these do not fall under the Management Company passport license.

⁴ This was proposed by the "the Committee on Economic and Monetary Affairs that adopted the own-initiative report by Wolf KLINZ (ALDE, DE) on asset management in response to the European Commission's white paper on enhancing the single market framework for investment funds" which invites the Commission to prepare a Directive on the taxation of fund mergers following the principle of tax neutrality set out in Directives 90/434/EEC and 2005/56/EC in 2008.

3.2.2 Tax considerations

Under the new constellation offered by the Directive, i.e. possibility to have a fund managed by a Management Company located in a country different than the one of the fund, there is a risk of attraction of the funds' tax residency to the country where the Management Company is located. This could lead to negative tax impacts at the level of the fund and the investor. Prior assessing the impact on investors and funds, it is essential to clarify which country or countries have taxing rights. We therefore analyze first of all the determination of the tax residency of funds and secondly the resulting tax impacts arising at the level of the fund and the investor should there be an attraction of the fund's tax residency in the country where the Management Company is located.

3.2.2.1 Tax residency of funds

Determination of the tax residency of the fund according to national law

Some EU Member States determine the residency of a fund based on its place of incorporation. Others determine the residence of a fund by reference to its place of effective management. Some use both a place-of-incorporation test and a place-of-effective management test, while in most cases giving the priority to the place of effective management. The UK's domestic rules do not refer to "effective management" but to "central management and control" as well as applying the place of incorporation test, but the practical application of the UK rule, in the specific circumstances of funds, is unlikely to give rise a different outcome to that of effective management and are not considered further in this report.

> Definition of the effective place of management

Effective place of management is defined in respective national laws. In addition, the OECD has given more general guidelines:

"The place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made. The place of effective management will ordinarily be the place where the most senior person or group of persons (for example a board of directors) makes its decision, the place where the actions to be taken by the entity as a whole are determined; however, no definitive rule can be given and all relevant facts and circumstances must be examined to determine the place of effective management".⁵

> Definition of the place of incorporation

A fund is treated as incorporated in a country from when it is set-up under local legislation or registered with the local regulator.

For example, a UCITS managed from the UK but incorporated in Luxembourg could be resident in both the UK and Luxembourg, if the activities of the Management Company mean that central management and control are in the UK. In such cases, it is necessary to refer to the provisions of Double Taxation Agreement provisions.

Determination of tax residency according to Double Taxation Agreements

In cases where a fund is resident in Country A (because it is incorporated in Country A), and Country B (because effective management is carried on in Country B), Double Taxation Agreements (to the extent that they apply to funds, for further details we refer to appendix 2) can assist.

⁵ Commentaries on the OECD Model Tax Convention

Based on the 2008 OECD Model Convention, and more specifically under the tie-breaker rules, an individual or company that is a resident of two contracting states is considered to be resident of only one of these states i.e. the “winning state”. For a company, generally the place of effective management takes priority. Therefore in cases where Double Taxation Agreements apply, the country of taxation is determined easily and dual residence is not possible.

Risk of attraction of fiscal residency

The legal form of the UCITS and its governance framework are important considerations.

> Corporate funds:

Some Member States such as the UK and Germany may consider a foreign corporate fund managed by a Management Company in their own country as tax resident in their own country if the activities of the Management Company mean that effective management of the fund is exercised there. As long as effective management of the fund is exercised at the place of establishment, the fact that the Management Company is established in another EU country should not lead to the creation of an additional tax residency of the funds.

> Unit trusts:

The location and activities of the trustee and/or Management Company could have a bearing on the residence of a unit trust.

> Contractual funds:

It is more likely that the residence of a contractual fund could move with the Management Company because these have a different governance framework to corporate funds.

In some Member States the place of effective management of the fund is of little importance. This is the case in Luxembourg as a Luxembourg Management Company cannot alter the tax residency of a UCITS irrespective of the latter's legal form.

A non-Irish corporate UCITS which is managed by an Irish Management Company would typically not be brought into the charge to Irish tax. To some extent, the same conclusion could be drawn for non-Irish contractual funds or unit trusts which are managed by an Irish Management Company. Indeed for Irish tax purposes a unit trust is normally considered to be resident where the trustees are tax residents and therefore the management of a foreign unit trust by an Irish Management Company should not result in the foreign unit trust becoming tax resident in Ireland.

Note that from a French tax standpoint, funds are not considered to have a tax residency. As a consequence, if a French Management Company manages a foreign fund, there is no risk of attraction of the fund's tax residency to France.

The above examples show that Double Taxation Agreements might not help in all cases.

For simplicity and for the sake of certainty, funds should be taxed where they are registered/established. To achieve this, the following options are possible:

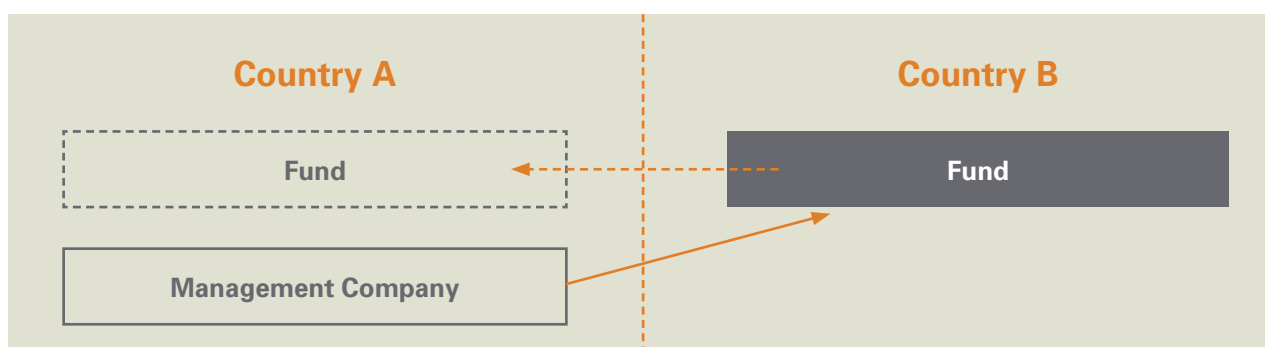
- > (1) at community level through agreement on a tax Directive for funds,
- > (2) bilaterally through Double Taxation Agreements by the adoption of a special tie-breaker rule for funds, or
- > (3) on a national basis, if necessary, by the amendment of tax residency rules.

For the sake of uniformity, simplification and legal certainty, KPMG/EFAMA is in favor of the Directive option.

Will the location of the Management Company have an impact on the tax residency of the fund?

Country	Domestic Management Company managing a foreign fund		
	Corporate Fund	Contractual Fund	Unit Trust
France	NO	NO	NO
Germany	YES	YES	YES
Ireland	NO	NO	NO
Luxembourg	NO	NO	NO
Spain	NO	YES	YES
UK	YES	YES	YES

3.2.2.2 Tax considerations at the level of the fund



In some cases the creation of an additional tax residency may not result in adverse tax consequences. For instance, in cases where the fund is exempt in its country of incorporation and where the country of fiscal attraction also provides a tax exemption, the fund benefits from a double exemption.

However, a change in the tax residency of a fund could also have broad tax implications. In particular, it may result in a fund being subject to income or subscription tax in a foreign jurisdiction (i.e. the jurisdiction where a fund's Management Company is located). In addition a change in tax residency may lead to:

- > Unexpected material taxation of income and gains;
- > Double taxation/double exemption; and
- > Limited ability to access Double Taxation Agreements.

Unexpected material taxation of income and gains

The relocation of a Management Company to a jurisdiction other than that of the fund could entail taxation of the fund in the jurisdiction of the Management Company at current full corporate income tax rates. This could be the case where the UCITS is managed by a UK or German Management Company.

In Germany, even though the fund may in this case already be regarded as tax resident in another country, current German legislation does not foresee a tax exemption for such funds. From a legal point of view, they are regarded as foreign funds which do not benefit from the domestic German tax exemption and will therefore be taxed at 15 percent corporate income tax (at current rates) plus the 5.5 percent solidarity surcharge (again at current rates). Given that funds resident in Germany are tax exempt, the taxation of foreign funds by virtue of changed tax residency constitutes an (adverse) difference in treatment, and may therefore be discriminatory.

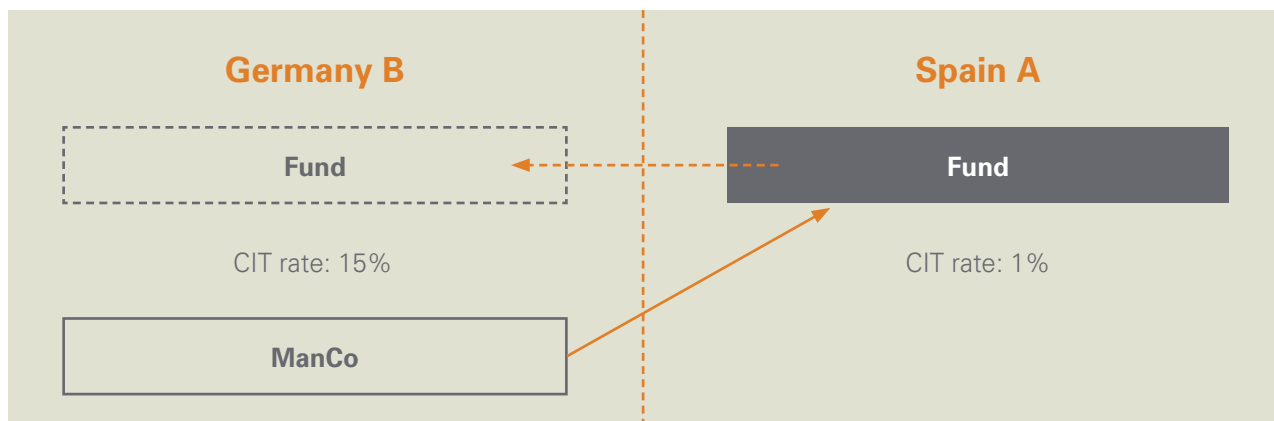
Similarly, if and to the extent that a non-UK corporate UCITS has become tax resident in the UK further to central management and control/effective management being exercised by a UK Management Company, it will become subject to UK tax as an ordinary company i.e. with income and gains subject to corporation tax at 28 percent. In contrast, UK UCITS are taxed on their income at a rate of only 20 percent (with special relieves available) and are exempt from capital gains. As foreign funds are subject to a higher tax rate than domestic funds, the UK legislation may be considered as discriminatory.

In the light of the evolving court cases (ECJ decisions in the Stauffer (C-386/04) and Aberdeen (C-303/07)) cases, it is likely that such a potential discriminatory treatment is in breach of EU law and is contrary to the spirit of UCITS IV. Above all, the potential for additional tax liabilities and the confusion caused by the transfer of a fund's own residence means that successful implementation of the Directive is unlikely unless UCITS are granted at local level clear exemption from residence rules. However, for reasons stated above, KPMG/EFAMA consider that reliance on case law is unlikely to lead to satisfactory outcomes on a pan-European level. Moreover, potential issues of double taxation on the grounds of dual residency would not in itself be a discrimination issue under EU law, and the risk of double taxation would in itself represent a powerful barrier to the efficient working of the Single Market.

Double taxation/double exemption

> Double income taxation

Double income taxation is theoretically possible where a fund located in country A (e.g. Spain) is subject to income tax in that country and, as a result of the transfer of the Management Company from Country A to Country B (e.g. Germany), the fund is dual tax resident. In the absence of tax treaty protection, the fund could be subject to income tax in both countries: corporate income tax of 1 percent in Spain and 15 percent corporate income tax plus solidarity surcharge of 5.5 percent thereon (total 15.825 percent) in Germany. Potential cases of discrimination may arise in situations where exemptions, partial exemptions, or special low tax regimes are restricted to domestic funds and are not available to foreign funds.



> A combination of income and subscription taxes

Apart from the concern that funds might suffer double taxation on income, funds could also be subject to two different taxes in two different jurisdictions. Since Spanish tax rules create uncertainty for Management Companies wishing to manage non-Spanish funds remotely, potential double income-subscription taxation arises. For example, if a Luxembourg FCP is managed by a Spanish Management Company, and effective management passes to Spain, a subscription tax in Luxembourg could apply as well as a corporate income tax at 1 percent in Spain.

> Double subscription tax

The UCITS IV Directive is expected to entail significant tax challenges. However even prior to the transposition of the Directive in different EU Member States, there are cases of double taxation of funds.

For instance both Luxembourg and Belgium have a subscription tax. On one hand, the Belgian subscription tax is levied on the fund's net assets distributed in Belgium, and on the other hand, the Luxembourg subscription tax is levied on the net assets of funds registered in Luxembourg. As a result, a fund which is registered in Luxembourg is subject to both Belgian and Luxembourg annual tax if it distributes units/shares in Belgium. No tax relief is available under current Double Taxation Agreements in respect of subscription taxes.

> Double income tax exemption

The jurisdictional separation of the Management Company and the fund could lead to double taxation or double tax exemptions at the fund level. For example, a Spanish contractual fund, having a Management Company in Luxembourg, would probably not be subject to taxation in Spain. At the same time, the fund might not be subject to any taxation (the subscription tax) in Luxembourg.

Limited ability to access Double Taxation Agreements

The jurisdictional separation of the Management Company and the fund could alter the ability of the fund to access Double Taxation Agreements. For example, France may deny the application of its Double Taxation Agreement network to a foreign fund managed by a French Management Company. On the other hand, Spain may give access to its Double Taxation Agreement network to foreign funds managed by a Spanish Management Company.

This will lead to increased complexity in assessing whether funds and their investors have access to Double Taxation Agreement benefits and impose new disproportionate administrative burden on the depositaries. Currently the latter mainly rely on information regarding the “place of establishment” of the fund instead of the “place of effective management” when determining the tax residency of the fund. This matter becomes more complex in countries like Germany, which endow fiscal residency for both effective management and/or place of establishment of a fund.

3.2.2.3 Tax considerations at the level of the investors

The potential transfer of tax residency due to the relocation of a Management Company to a jurisdiction other than that of the fund could also entail taxation at the level of the investor, i.e.

> Additional withholding tax on distributions from the fund

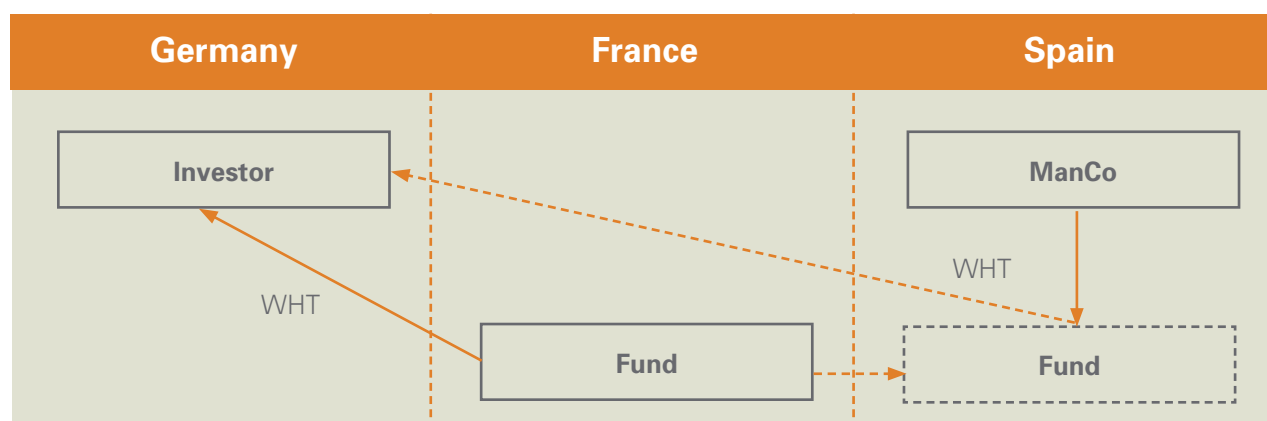
> Taxation of unrealized gains

Additional withholding tax on distributions from the fund

The separation of the Management Company and the fund could lead to withholding taxes on distributions from the fund, if the fund is attracted to the jurisdiction of the Management Company. For example, an Irish or French contractual fund managed by a Spanish Management Company might be required to pay Spanish withholding tax on its distributions.

Since distributions from a French fund to a German investor are also subject to withholding tax, the situation under review could potentially lead to a double withholding tax on the same distribution.

In particular, dividend distributions from a French located/registered fund to a foreign investor will be subject to a 25 percent withholding tax. In such a case, there should be grounds to argue that the application of the French withholding tax is discriminatory from an EU law perspective, since French tax resident funds are not liable for taxation.



Withholding tax represents a loss of revenue for the investor. Investors will not invest in a fund potentially subject to double withholding tax and this represents a risk for the fund industry. In cases where potentially up to three tax regimes could apply, it is very difficult to assess the risk of being subject to withholding tax.

In addition, since some legislation provide for a levy of withholding tax on dividend distributions to foreign investment funds, whereas under similar circumstances a dividend distribution to a domestic investment fund would not suffer withholding tax, cases of discrimination may arise.

In the light of the ECJ decisions⁶ dealing with the discriminatory taxation of outbound dividends, such withholding taxes are contrary to EU law. Member States are invited to remove these discriminatory treatments.

This would nevertheless not solve the issue as certain Member States' legislations provide for the levy of a withholding tax regardless as to whether the dividend distribution occurs in a purely domestic or cross-border context. KPMG/EFAMA are therefore in favor of a UCITS tax Directive to ensure that distributions to an eligible entity are tax neutral.

Taxation of unrealized gains

Some jurisdictions will consider the transfer of residency to be a taxable disposal and reacquisition of fund shares by the investor. This may lead to taxation of unrealized capital gains and the disclosure of hidden reserves at the level of the fund, effectively rendering such an action unattractive for fund managers and investors.

Other unexpected outcomes could arise. For example, if a UK fund becomes non-UK resident, it may have to apply for distributor or reporting fund status under the offshore funds regime to preserve investors' expected tax treatment on disposal of shares or units in the fund.

3.2.3 Conclusion and recommendations

There is a danger that the management of a fund cross-border could lead to a fund becoming tax resident in the Management Company's state of residence.

Indeed, in EU Member States where the tax residency of a fund might be attracted to the country of residency of the Management Company, specific exemption rules are needed to avoid negative consequences for the investors.

⁶ EFTA court decision in the Fokus Bank case (E-1/04); ECJ decisions in the Denkavit (170/05), Amurta (C-379/05) and Aberdeen (C-303/07) cases

For example, a change of fund residency could, apart from potential new taxation at fund level, lead to the following consequences:

- > unexpected material taxation of income and gains;
- > double taxation of the fund;
- > the investor suffering one or two layers of withholding tax on fund distributions;
- > it could adversely affect the funds ability to secure reduced withholding tax rates; and
- > it could subject investors to tax on unrealized gains and have unexpected effects on investors' eventual tax treatment.

Some of these negative consequences might amount to discrimination. Others would remain if certain EU Member States are unwilling to change tax legislation to facilitate the passporting of Management Companies.

KPMG/EFAMA recommends that a fund should only be taxable in the country where the fund is established/registered, even if effective management is elsewhere. In this respect, there is a risk that in certain Member States, the management of a fund cross border could lead to a fund becoming tax resident (and taxpayer) in the Management Company's state of residence. This attraction of the fiscal residency could imply, among others, the subjection of the fund to the taxes and withholding tax regimes applicable in the Management Company's state of residence. In these cases, specific rules are needed to avoid negative consequences for the investors and the fund. Such a rule could be agreed upon (1) at community level through the agreement on a tax Directive for funds, (2) bilaterally through Double Taxation Agreements by the adoption of a special tie-breaker rule for funds or (3) on a national basis, if necessary, by the amendment of the tax residency rules. For the sake of uniformity, simplification and legal certainty, KPMG/EFAMA is in favor of the Directive option.

3.3 Master-Feeder Structures

3.3.1 General description

There are various reasons why a UCITS manager may prefer Master-Feeder structures compared to merging funds. Such structures allow many of the benefits arising from economies of scale and other benefits associated with pooling assets without having to deal with the complexities arising from the full merger of funds. However, it is vital that managers should be in the position of opting for Master-Feeder structures because, on their specific facts, it represents the most rational way forward. If this structure is chosen in some cases simply because of the complexities and uncertainties around mergers (including tax uncertainties) the full potential benefits of UCITS IV will be frustrated.

UCITS IV allows for one or more Feeder fund(s) to invest in a single Master fund, provided each Feeder invests more than 85 percent of its assets in the Master (the Master fund holds all the marketable securities and the Feeder fund holds shares or units in the Master fund).

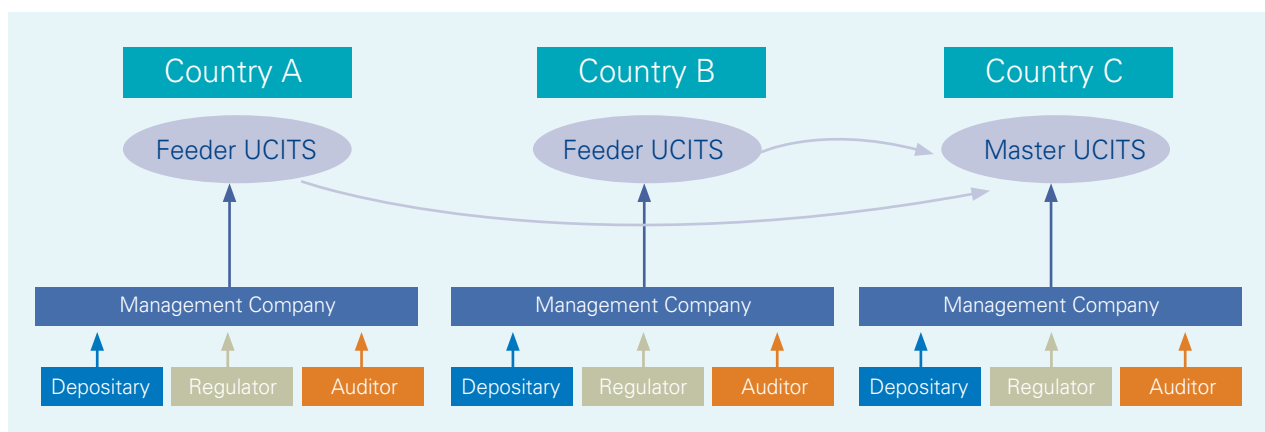
The ability to establish new Feeder UCITS (rather than new stand alone UCITS) is a significant benefit of UCITS IV. Master-Feeder structures can also potentially provide cost savings from current product ranges by converting existing UCITS to either a Master UCITS or Feeder UCITS. The taxation of UCITS and investors in UCITS is currently an impediment to the effective use of Master-Feeder structures.

There are a large number of possible permutations when considering locations for Master-Feeder UCITS, with each EU Member State being a potential location for a Master and/or Feeder UCITS. However, when considering the tax issues for any particular EU Member State the permutations to be considered are:

- > 1 Local Master with Local Feeder;
- > 2 Local Master with foreign Feeder; and
- > 3 Local Feeder with foreign Master.

In addition, for existing UCITS it is necessary to consider the consequences of converting into a Master or Feeder.

The following chart illustrates these combinations.



Source: KPMG International, March 2010

Transformation of a UCITS into a Feeder fund

Where an existing UCITS converts into a Feeder fund, either it will sell its existing investments and acquire shares or units in the Master UCITS, or more likely it will make an in specie subscription for shares or units in the Master (i.e. contribute its existing investments to the Master fund in exchange for the issue of shares or units by the Master).

In order for the conversion of an existing UCITS into a Feeder fund to be feasible from a tax perspective, it will be important that the conversion does not result in a taxable event for the fund and/or the investor. It would be difficult to envisage a UCITS converting into a Feeder where the in specie subscription referred to above resulted in a disposal for tax purposes.

Transformation of a UCITS into a Master fund

In many ways a Master UCITS is very similar to a "normal" UCITS, the main difference being that a Master UCITS will have other UCITS as potentially significant investors. As a result it is not expected that such a conversion will have any significant tax consequences at the level of the fund and at the level of the investor.

3.3.2 Tax considerations

3.3.2.1 Tax considerations at the level of the fund

Application of withholding tax on payments from a Master fund to a Feeder fund

Some EU Member States including Spain, France, Germany and Finland currently apply withholding tax on distributions to UCITS located in other EU Member States. The issue of discriminatory withholding taxes on outbound dividends is well-known, since the EFTA court decision in the Fokus Bank case⁷ (E-1/04) was issued on 23rd November 2004. Within the fund industry, such problems first appeared in relation with fund of fund structures, where dividend distributions between the two funds could, under certain circumstances, be subject to a discriminatory withholding tax (lowering the return on investment). Implementation of cross-border Master-Feeder structures under UCITS IV could highlight the problem further.

In order to assess possible discrimination, where withholding tax is applied, it is important to compare the treatment of distributions to local and non-resident UCITS Feeder funds. UCITS IV enables the establishment of Master-Feeder structures without cross-border restrictions – if tax is an impediment to investment in non-domestic Master funds it will therefore go against the intentions of UCITS IV. The following examples show how tax could act as such an impediment:

	Domestic Master-Feeder	Cross-border Master-Feeder
At the level of the German distributing company		
Gross dividend	100,00	100,00
German 26,375% WHT	26,38	26,38
At the level of the Master fund		
Dividend received	73,62	73,62
Refund of WHT because of tax exemption from Federal Tax Office	26,38	26,38
Total dividend received	100,00	100,00
German 26,375% WHT	26,38	26,38
At the level of the Feeder fund		
Dividend received	73,62	73,62
Refund because of Double Taxation Agreement	N/A	11,38 (1)
Refund WHT because of tax exemption from Federal Tax Office	26,38	N/A
Total dividend received	100,00	85,00

(1) Foreign Feeder fund may receive a refund of 11,38% from the Federal Tax Office (assumption: Double Taxation Agreement rate = 15%)

⁷ The Fokus Bank case was the first decision related to the discriminatory treatment of outbound dividend distributions.

In a similar case, where a French Feeder fund, which invests in a French Master fund carrying out French investments, a dividend distribution received from the investment in the underlying French company (via the Master and Feeder funds) would not be subject to withholding tax. By comparison, if the Feeder fund had been located in Luxembourg, the same French investor would have suffered a 25 percent withholding tax levied on the dividend distribution from the French Master to the Luxembourg Feeder.

The comparative tax impact of both transactions is illustrated in the table below:

	Domestic Master-Feeder	Cross-border Master-Feeder
At the level of the French distributing company		
Gross dividend	100	100
French 25% WHT	N/A	N/A
At the level of the Master fund		
Dividend received	100	100
WHT	N/A	25
At the level of the Feeder fund		
Dividend received	100	75

Similarly, in Finland, a dividend distribution from a Finnish Master to a Finnish Feeder would suffer no withholding tax whereas, under comparable circumstances, a dividend distribution from a Finnish Master to a Luxembourg Feeder would be subject to the levy of a 28 percent withholding tax.

	Domestic Master-Feeder	Cross-border Master-Feeder
At the level of the Finnish distributing company		
Gross dividend	100	100
Finnish WHT	N/A	N/A
At the level of the Master fund		
Dividend received	100	100
WHT	N/A	28 (1)
At the level of the Feeder fund		
Dividend received	100	72

(1) Double Taxation Agreements may reduce the withholding tax rate if available

As the German, French and Finnish examples underline, there is a significant difference in the tax burden for investors depending on whether they invest via a domestic or cross-border Master-Feeder structure. In the given examples, the differences range from 15 percent to 28 percent.

Based on the ECJ decision in the Aberdeen case (C-303/07), such a difference in treatment may be considered as a restriction on the freedom of establishment or free movement of capital under EU law. As a consequence, Feeder funds could ask for a refund of the unduly paid taxes, but the administrative burden and cash deferral disadvantage would still remain.



The table below summarizes whether selected countries impose withholding tax on payment from Master UCITS to Feeder UCITS.

Country	From a domestic Master fund to a domestic Feeder fund	From a domestic Master fund to foreign Feeder fund	Discriminatory
France	NO	YES	YES
Germany	NO	YES	YES
Ireland	NO	NO	NO
Luxembourg	NO	NO	NO
Spain	NO	YES*	NO
UK	NO	NO	NO

(*) Outbound dividend distributions are subject to 19% WHT, with the possibility to apply for a reimbursement of 18%. Foreign funds consequently suffer 1% taxation as this is the case for Spanish funds.

As mentioned above, the removal of all potential discriminatory tax legislations is not sufficient. Indeed, in some jurisdictions, there is a burdensome levy of withholding tax regardless as to whether the latter occurs in a purely domestic or cross-border situation. KPMG/EFAMA therefore takes the view that a UCITS tax directive should be adopted allowing tax neutrality of all cash-flows between the Master and the Feeder funds.

Stamp duty

Ireland and the UK normally impose stamp duty on transfers of shares in Irish and UK companies respectively. This can impact on the in specie transfer of Irish and/or UK shares on conversion of a UCITS to a Feeder. However, the charge is normally based on the nature of the investment, rather than on the location of the transferor or transferee. As a result, the application of stamp duty is unlikely to be discriminatory. Relieves may be available for in specie subscriptions and it will be important to ensure that any such relieves are available to local and non resident UCITS.

Capital gains on redemption of units

Feeder funds will need to redeem or otherwise dispose of shares or units in the Master fund as investors redeem from the Feeder fund. Such redemptions can give rise to capital gains tax liabilities. Some EU Member States, such as Luxembourg, have specific capital gains tax provisions on the sale of substantial holdings in domestic companies by non-resident taxpayers (for further details see the Luxembourg country report). These rules are typically overridden by Double Taxation Agreements, but unfortunately, investment funds often fall within a grey area as far as Double Taxation Agreements are concerned, so potential tax burdens could still arise (for a discussion on the eligibility of funds to Double Taxation Agreements please see appendix 2).

Again, to ensure that redemptions of units are tax neutral at the level of the Feeder fund, KPMG/EFAMA considers that a UCITS tax Directive should be implemented and that capital gains should be within the scope of such a Directive.

Impact at fund level of transformation of fund into Master or Feeder

Transformation into Feeder

Taxation at fund level upon transformation could especially arise in Member States that subject UCITS to taxation.

Transformation into Master

KPMG/EFAMA has not found any legislation triggering significant tax consequences at fund level upon conversion of a fund into a Master.

3.3.2.2 Tax considerations at the level of investors

Transformation into a Feeder

The conversion of a UCITS into a Feeder fund could also create tax issues for investors in the converting UCITS. This may arise where investors in local UCITS are taxed based on the underlying investments of the UCITS. Where this is the case, a gain could arise on the disposal of the investments by the UCITS in the process of converting to a Feeder fund, whether by way of sale or in specie transfer to the Master fund.

According to German tax law a tax liability could arise for German tax resident investors. As the transformation into a Feeder would involve transferring the fund's assets to the Master and realization at the level of the transferring fund, some of these capital gains would be passed on to the investor and consequently lead to taxation.

In comparison, other EU Member States, such as Ireland, tax investors in UCITS on the same basis irrespective of whether the UCITS is a Feeder, a Master or a “normal” UCITS. Roll-over provisions often exist when restructuring funds under national law, but not always if the assets are transferred to a Master fund domiciled in another EU Member State. A French investor may be able to benefit from roll-over provisions, depending on clearance from the French tax authorities even if the Master is to be set-up in another country.

Transformation into a Master fund

Where the investors in the UCITS remain investors in the UCITS Master following conversion one would not normally expect any tax issues at the level of the investor. Where the conversion of a UCITS into a Master resulted in the investors hold different shares/units or share/units in a different UCITS this may be considered a disposal by the investor for tax purposes in some EU Member States.

If a UCITS is transformed into a Master fund, German law would regard the German investor as having sold its units in the UCITS and having acquired units in the Feeder (if they held the Feeder units instead of the UCITS/Master units they held before). As the transformation of existing UCITS into Feeder funds would be at market value, gains not yet crystallized at the level of the investor could become taxable in Germany.

3.3.3 Conclusion and recommendations

Our survey shows that management groups are keen to establish Master-Feeder structures. However, it is of key importance that necessary restructuring operations can be carried out without adverse tax consequences. Member States should therefore amend their legislation so that the transformation of a fund into a Feeder or Master does not trigger taxation. In some cases, such rules may constitute a major obstacle to the adoption of Master-Feeder structures.

For Master-Feeder structures to work properly once established, it is essential to ensure the tax neutrality of cash flows between the Master and the Feeder funds. Some countries will levy a withholding tax on cross-border dividend distributions from a local Master to a foreign Feeder. As such differences in treatment may, in the light of the ECJ decision in the Aberdeen case, constitute a restriction on the freedom of establishment and/or free movement of capital, it is the EU Commission’s role to tackle those discriminatory legislations by launching infringement procedures against the Member States concerned. This would however not be sufficient as certain Member States levy withholding taxes on dividend distributions to funds irrespective of their country of residence. KPMG/EFAMA therefore take the view that this issue can only be solved through a UCITS tax Directive.

It is also crucial to make sure that capital gains taxations upon redemption of the Feeder’s shares/units in the Master is removed. Again, this report considers that a UCITS tax Directive would be the most effective way to achieve this.

Appendix 1

Discriminatory Taxation of Investors upon Fund Mergers

Introduction

The following section seeks to show that a Member State's legislation that favors domestic group reorganizations in comparison to cross-border ones may, according to the ECJ case-law, be considered as discriminatory. For instance, where capital gains are taxed upon a cross-border merger while no taxation would arise in a purely domestic context, such a difference in treatment could be considered as a restriction on the freedom of establishment. On such a basis the EU Commission could launch infringement procedures against Member States providing for non-EU compliant merger legislations.

At this stage, it is nevertheless important to reiterate that the launch of infringement procedures by the EU Commission would not completely solve the problem, as this is a long and burdensome process, which would not provide the necessary legal certainty to the fund industry. Above all, certain countries consider all kinds of fund mergers as a taxable event, regardless as to whether the latter take place in a domestic or cross-border context. Taking into account that, as described under section 3.1.2. of the report, the main objective of UCITS IV is to ensure tax neutrality for all type of merger transactions, KPMG/EFAMA takes the view that such goal can only be achieved through the adoption of a separate merger Directive for funds providing for a tax deferral (until the moment the capital gain has effectively been realized).

ECJ case law related to group reorganizations

As a first step, we will briefly clarify the notion of discrimination and, secondly, describe to what extent the ECJ has applied such definition to cases involving group reorganizations.

According to ECJ case law, the rules regarding equality of treatment as provided in the EC Treaty may under certain circumstances not only aim at precluding overt discrimination based on nationality but also covert forms of discrimination which, by the application of other criteria of differentiation, may in fact lead to the same result. Therefore, even if a measure applies irrespective of the nationality of the taxpayer concerned, if such measure grants tax benefits only to residents of an EU Member State and not to non-residents (who are foreigners in the majority of the cases), it may potentially be seen as discriminatory⁸.

In the Schumacher⁹ case, the ECJ came to a standard formula of what discrimination may be. "Discrimination can arise only through the application of different rules to comparable situations or the application of the same rule to different situations." This definition has been used in all subsequent ECJ case law.

In order to define discrimination, the ECJ alternatively refers to the notion of "restriction on a fundamental freedom"¹⁰. In the Thin Cap Group litigation case (C-524/04), the ECJ mentioned that "for a legislation to be regarded as restriction on the freedom of establishment, it is sufficient that it be capable of restricting the exercise of that freedom in a Member State by companies established in another Member State, without there being any need to establish that the legislation in question has actually had the effect of leading some of those companies to refrain from acquiring, creating or maintaining a subsidiary in the first Member State."

⁸ ECJ decision in the Commerzbank case (C-330/91)

⁹ C-279/93, Finanzamt Köln-Altstadt v Schumacher, judgment of 14 February 1995.

¹⁰ If discriminatory tax treatments arise upon merger, the freedom of establishment should in principle apply as this could hinder investment funds from establishing themselves abroad. However, according to Article 43 in relation with 48 of the EC Treaty, the freedom of establishment applies *inter alia* to "companies and firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law." Based on that definition it is questionable whether contractual funds or certain types of unit trusts having *per se* no legal personality fall under the scope of the freedom of establishment. Therefore, when mergers involve contractual funds, or unit trusts (without legal personality), it is likely that the free movement of capital would apply. Consequently, and in order to take into account all type of UCITS funds, our analysis will refer to both the freedom of establishment and the free movement of capital.

Moreover, in the *Daily Mail* case (C-81/87) the ECJ specified that the provisions concerning the freedom of establishment are not only directed to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, but they also prohibit the Member State of origin from hindering the establishment in another Member State of a company incorporated under its legislation¹¹. This broadly confirms that all fundamental freedoms apply to inbound and outbound cases.

In a series of decisions¹² the ECJ also addressed discriminatory tax legislations regarding group reorganizations. From these decisions it may be concluded that where a legislation of a Member State treats transfer of shares, or other assets in whatever form (sale, contribution, exchange), to a domestic taxpayer more favorably than the transfer to a foreign taxpayer, such difference in treatment may constitute a restriction on the freedom of establishment or the free movement of capital.

Based on the above mentioned case law (and taking into account that no specific case law on cross-border fund merger currently exists), in the case of fund mergers the definition of discrimination/restriction of a fundamental freedom could be applied as follows:

- > Two comparable situations should not be treated differently;
- > When investment funds merge, resident and non-resident investment funds should be in a comparable situation. Therefore, foreign or cross-border mergers (involving non-resident investment funds) should be treated the same way as domestic mergers (involving only resident funds); and
- > It is always difficult to know precisely when a situation can be regarded as truly comparable, but if a difference does arise, then *prima facie* it would appear to be discriminatory.

At the product level, differences in treatment between domestic, foreign and cross-border scenarios are mainly applied by EU Member States on the grounds that the legal form of the foreign fund and, under certain circumstances, its tax regime are different to that provided for in national law. Therefore, foreign funds were not considered by Member States as being comparable to domestic funds and, on that basis, EU Member States could argue that such difference in treatment was justified.

However, it is doubtful whether in the light of the ECJ case law and to a certain extent under the decision in the *Aberdeen* case (C-303/07), such arguments are still valid. The latter decision concerns a dividend distribution from a Finnish company to a Luxembourg SICAV. In *Aberdeen*, the ECJ considered that a SICAV, being a Luxembourg corporate fund, was in a comparable situation to that of Finnish shareholders irrespective of whether:

- > Under Finnish law, there is no company type with a legal form identical to that of a SICAV, since EU Member States' company law has not been fully harmonized at EU level and the freedom of establishment would otherwise be deprived of all effectiveness; and
- > The SICAV's income is not taxed in Luxembourg.

¹¹ This principle has been confirmed in many subsequent ECJ cases, relating to the freedom of establishment as well as to the freedom to provide services and the free movement of workers, e.g. *ICI* (C-264/96), *Baars* (C-251/98), *X&Y* (C-200/98), *Amid* (C-141/99), *Kohll* (C-158/98), *Decker* (C-120/95; reimbursement of medical expenses), *De Lasteyrie* (C-9/02).

¹² ECJ decision in the *Halliburton* case (C-1/93); ECJ decision in the *X&Y* case (C-200/98), ECJ decision in the *X&Y* case (C-436/00) and in the *Sevic* case (C-411/03)

Consequently, one may possibly argue that domestic mergers should have the same tax impact as foreign or cross-border mergers regardless of:

- > The type of fund involved (corporate, contractual or unit trust); and
- > The fact whether, in case of a cross-border merger, the merged fund would as a consequence subsequently be subject to tax or not¹³.

Cases of discrimination identified for fund mergers

On the basis of the above criteria, it may be possible to identify three main categories of potential discriminatory mergers which currently exist under the legislation of the respective EU Member States. The first one would only refer to an existing situation whereas the two last ones may arise once UCITS IV is implemented:

1 Based on tax residency (place of location of the funds)

This type of discrimination may well be illustrated by the Italian tax treatment of mergers.

The Italian legislation provides, under certain conditions, for tax neutrality for domestic mergers. By contrast, it cannot be excluded that a foreign merger triggers taxation for Italian investors. Since taxation only arises when the merging funds are located in a different country to the investor's country of residence, the tax treatment of the merger is dependent upon the tax residency of the fund (place of incorporation of the fund).

2 Cases of discrimination based on the legal form of the fund

Not every form of investment fund (corporate, contractual and unit trust) is recognized by the legislation of the respective EU Member States. In certain countries at the investor level no taxable event arises when fund reorganizations are limited to domestic and foreign funds that have a specific legal form.

For instance Spain only recognizes corporate and contractual forms, which has an impact on its tax treatment of mergers. Domestic mergers which by law involve only corporate and contractual funds can be achieved with a tax neutral result. This result may not be achieved at the investor level if a unit trust is involved.

Finally, in a purely domestic context, Finnish law provides for tax neutral mergers to the extent that Finnish business income tax act rules are fulfilled. However, at the investor level there are currently no express rules in Finnish tax law that would provide tax neutrality of mergers of foreign funds. Nevertheless, a Finnish court decided that a merger of two Luxembourg SICAVs can be carried out tax neutrally from a Finnish investor point of view.

As no decision has been taken by Finnish courts regarding the mergers of other foreign fund types, it is therefore uncertain whether, from a Finnish investor's point of view, outbound or inbound mergers involving unit trust or contractual funds can be carried out in a tax neutral manner.

The above examples illustrate the point that tax neutrality is not granted for foreign or cross-border mergers involving fund types which are unknown under domestic legislation.

This difference in treatment may be seen as a form of discrimination, based on the legal form of the funds.

¹³ ECJ decision in the Aberdeen case (C-303/07), par. 52 and 53

3 Cases of discrimination based on the transaction nature (i.e. cross-border)

This potential discrimination needs to be distinguished because it relates to a situation that is currently only possible once UCITS IV is implemented. Most of the EU Member States do not provide for clear tax rules when it comes to cross-border mergers, which may entail the risk of legal uncertainty. In this respect, only Spain, Germany and the UK foresee clear tax rules at investor level.

For instance, Spanish domestic mergers can be tax neutral. However, Spanish law does not provide tax neutrality on cross-border mergers involving unit trusts or contractual funds.

While under certain conditions domestic mergers and foreign mergers within the same country are tax neutral from a German tax perspective, German law views cross-border mergers in all cases as an exchange of fund shares/units, which leads to taxation of a capital gain in the hands of the investor.

In the UK, as already highlighted, domestic, foreign and cross-border mergers are treated the same provided they fall within the scope of the UK scheme of reconstruction tax provisions.

In Italy, Sweden, Ireland and Finland, the lack of legal rules regarding cross-border mergers means there is a risk of taxation at investor level, whereas for domestic mergers the legislation of the respective countries clearly provides for tax neutrality.

Appendix 2

Eligibility of Investment Funds to Double Taxation Agreements

Criteria foreseen by Double Taxation Agreements

A part of the application of reduced withholding taxes on investments, the eligibility of investment funds to Double Taxation Agreements is of importance for the assessment of a possible double taxation of investment funds in case the transfer of a Management Company to another Member State than the fund's country of establishment attracts the residency of the fund to that other Member State. Indeed, while some EU Member States determine the residence of the fund based on its place of incorporation, others determine the residence of the fund by reference to its place of effective management leading, under certain circumstances, to a dual tax residence of the fund. In such a case, the fund may suffer higher taxation/double taxation unless a Double Taxation Agreement determines (tie-breaker rule) in which Member State the fund is tax resident and should therefore be taxed.

Before determining where the fund is tax resident based on the application of a Double Taxation Agreement, attention should first be paid to whether funds are entitled to protection under Double Taxation Agreements.

In May 2010 The OECD Committee of Fiscal Affairs (CFA) released its report on "the Granting of Treaty Benefits with respect to the Income of Collective Investment Vehicles" (the CFA Report) which contained proposed changes to the Commentary on the OECD Model Tax convention dealing with the question of the extent to which either collective investment vehicles (CIVs) or their investors are entitled to Double Taxation Agreement benefits on income received by the CIVs. This report is a modified version of the Report "Granting of Double Taxation Agreement benefits with respect to the Income of Collective Investment Vehicles" of the Informal Consultative Group of Collective Investment Vehicles and Procedures for Tax Relief for Cross-Border Investors (ICG) which was released in December 2009. The CFA report can be found at:

http://www.oecd.org/document/26/0,3343,en_2649_33747_45359706_1_1_1_1,00.html

This report was limited to collective investment vehicles that are both widely-held and subject to investor protection regulation, analyses whether a fund should be considered as a "person" that is a "resident of a Contracting State" and the "beneficial owner" of the income it receives. This is to clarify the application of Double Taxation Agreements with no specific provision dealing with funds.

> Treatment of the investment vehicle as a "person"

Determining whether an investment fund should be treated as a "person" for purposes of Double Taxation Agreements will depend upon the legal form of the fund (i.e. corporate fund, trust and contractual fund).

In the view of the CFA, corporate funds are clearly persons. This view is in line with paragraph 2 of the commentary on Article 3 of the OECD Model Convention which states that the definition of the term "person" is not exhaustive and should be given a broad sense.

With regard to an investment vehicle structured as a trust, the CFAI is of the opinion that when the country in which such a trust is established treats it as a taxpayer, it should also be treated as a person for Double Taxation Agreement purposes.

The treatment of a contractual fund such as a Fonds Commun de Placement is particularly problematic. In some jurisdictions there is no statutory framework, or body of case law, to address such funds, and the domestic law analysis may be unclear. Because a contractual fund may not have a distinct legal personality it is very likely that there would be no remedy under a relevant Double Taxation Agreement. It is however possible that this position may improve under the proposals in the CFA report. The CFA Report states at the bottom of Page 8:

“Accordingly, for purposes of the residence test, the legal form of the CIV is relevant only to the extent that it affects the taxation of the CIV in the Contracting State in which it is established. So, for example, with respect to those countries that, for tax purposes, treat all CIVs in the same manner, regardless of legal form, all CIVs established in that country should be treated as residents, or none of them should, for Double Taxation Agreement purposes.”

On balance it seems more likely that the CFA report will not result in a radical change of approach in respect of contractual funds when future Double Taxation Agreements are negotiated. Although the proposed narrative and changes to the Model Convention can be read as allowing a contractual fund, if and to the extent it is considered as a person under its country's tax legislation, to be treated as a person having a tax residence for Double Taxation Agreement purposes, the drafting of the report when it deals with contractual funds, read as a whole, is very tentative and ambiguous on this point, reflecting it is understood the serious concerns that some members of the ICG raised during the production of the earlier IGC produced version of the document about allowing contractual funds to be treated as distinct persons for Double Taxation Agreement purposes.

> Treatment of the investment vehicle as a “resident” of a Contracting State

The report states that the tax treatment of the investment vehicle in the Contracting State (i.e. whether the home State regards the fund as opaque or transparent) indicates whether an investment vehicle that qualifies as a person is a ‘resident’ for Double Taxation Agreement purposes.

In other words, in the view of the CFA, an investment vehicle treated as opaque in the Contracting State in which it is established should be treated as a resident of that Contracting State even if part of the income it receives is exempt from taxation (or is subject to a lower rate of tax).

In cases where an opaque investment fund is unconditionally exempt from tax, the CFA supports the view that the fund should not qualify as a resident for Double Taxation Agreement purposes. In addition, an investment vehicle that is treated as a transparent entity for tax purposes should not be treated as a resident for Double Taxation Agreement purposes.

> Treatment of the investment vehicle as the ‘beneficial owner’ of the income it receives

A large majority of the ICG, endorsed by the subsequent CFA report, concluded that a widely held investment vehicle that meets the criteria to be considered as a “person” and a “resident” should also be treated as beneficial owner of the income it receives. This is provided that the manager of the investment fund manages the assets on behalf of fund participants on a discretionary basis. A consistent approach by Member States in accepting this conclusion would facilitate the implementation of UCITS IV.

Thus, before considering the application of Double Taxation Agreements to UCITS, the Double Taxation Agreement status or residence of the UCITS must be understood and this is influenced by its legal structure and local tax treatment. According to the report, Double Taxation Agreements are not always applicable to UCITS.

Effect of Double Taxation Agreements on dual-resident funds

In cases where a fund is resident in Country A (because it is incorporated in Country A), and Country B (because effective management is carried on in Country B), Double Taxation Agreements can assist.

> If Double Taxation Agreements apply – tie-breaker rule

Based on the 2008 OECD Model Convention, and more specifically under the tie-breaker rules, an individual or company that is a resident of two contracting states is considered to be resident of only one of these states i.e. the winning state. Generally the place of effective management takes priority. Therefore in cases where Double Taxation Agreements apply, the country of taxation is determined easily and dual residence is not possible.

> If Double Taxation Agreements do not apply

If a Double Taxation Agreement does not apply, a fund could be resident in more than one jurisdiction. In principle, dual tax residency could attract double taxation as well as other tax difficulties.

Appendix 3

Different Types of Funds Existing in the EU Member States Based on the Categories Stated under UCITS IV

Different types of funds existing in the EU Member States based on the categories stated under UCITS IV

Country	Type of funds		
	Corporate funfs	Contractual funds	Unit trusts
Austria		✓	
Belgium	✓	✓	
Bulgaria	✓	✓	
Cyprus	✓	✓	✓
Czech Republic		✓	
Denmark	✓		
Estonia	✓	✓	
Finland		✓	
France	✓	✓	
Germany	✓	✓	
Greece	✓	✓	
Hungary	✓		
Ireland	✓	✓	✓
Italy	✓	✓	
Lithuania	✓	✓	✓
Luxembourg	✓	✓	
Malta	✓	✓	
the Netherlands	✓	✓	
Poland	✓		
Portugal	✓	✓	
Romania	✓	✓	
Slovakia		✓	
Slovenia	✓	✓	
Spain	✓	✓	
Sweden		✓	
UK	✓		✓

Appendix 4

KPMG/EFAMA UCITS IV Survey

Introduction

KPMG/EFAMA undertook a survey to assess the likely impact of UCITS IV on the asset management industry. The purpose was to see how market participants intend to move and what are the main hurdles or constraints to this repositioning within the industry.

The survey was also designed to gain a better understanding of the intentions of the industry in capitalizing on the evolving regulatory framework and ultimately to ascertain if tax issues within the current framework need to be addressed. To that end the survey has tried to explore the extent to which asset managers will use its key components.

The findings suggest that UCITS IV has already started to generate a high level of interest and activity among the asset management industry, and our survey reveals important insights.

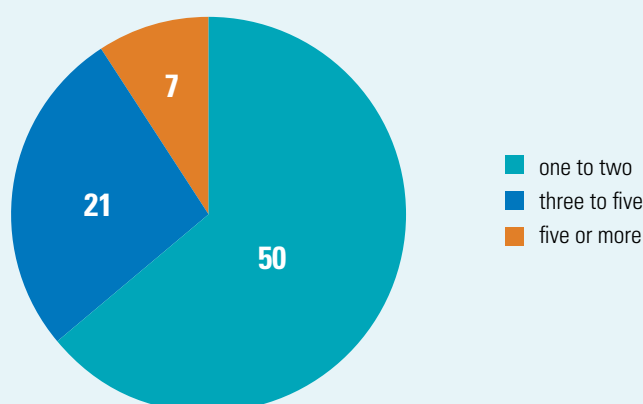
Methodology

This reports' findings are based on a 13-questions survey that was sent to EFAMA members during the summer and autumn of 2009. The survey had a total of 77 respondents.

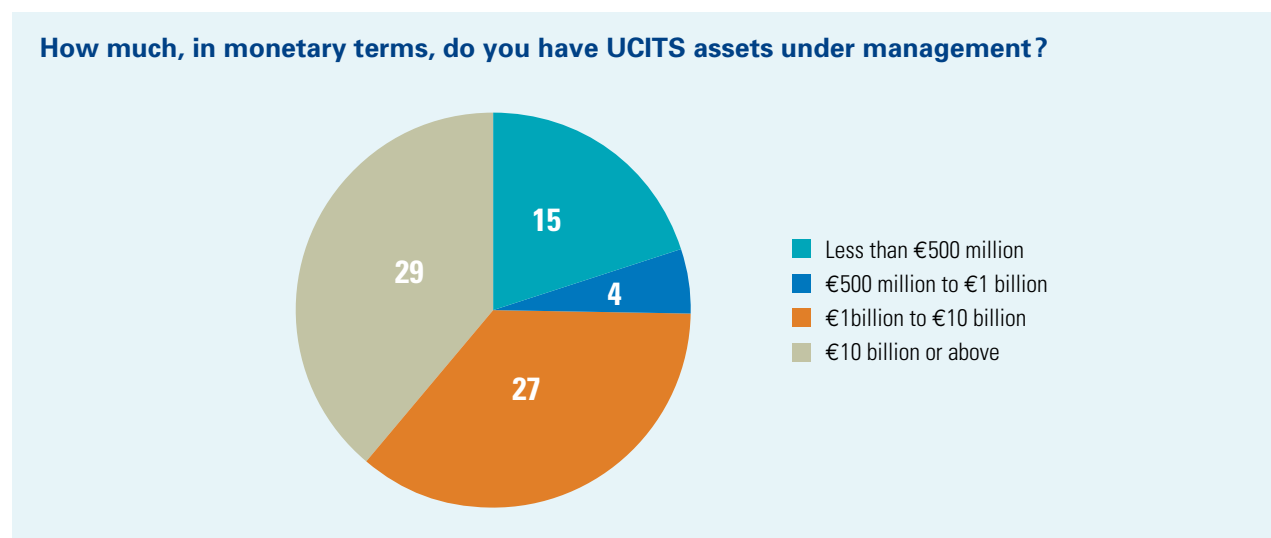
Profile of participants

The survey population was made up of 26 asset managers with UCITS funds established in three or more jurisdictions in the EU. There were a considerable number of participants (50) who had UCITS funds in only one or two EU Member States. Many respondents (21) also had UCITS products based in more than one EU country. The profile of the respondents varied across all the functions from Tax, Product Development, Compliance, Operations and others. A significant percentage of the respondents claimed that they were from the Product Development function.

In how many countries do you have UCITS domiciled?



Respondents came from all the major EU jurisdictions. Nearly 40 percent of the respondents (29 in total) had at least €10 billion of assets under management.



Cross-border distribution

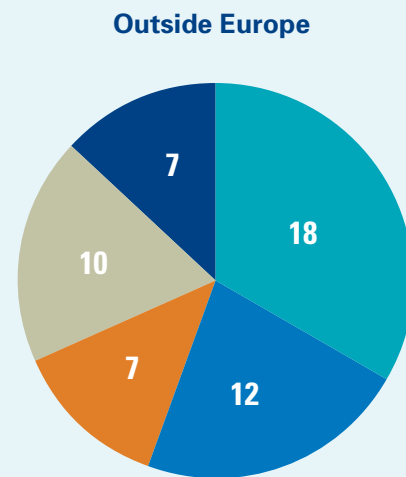
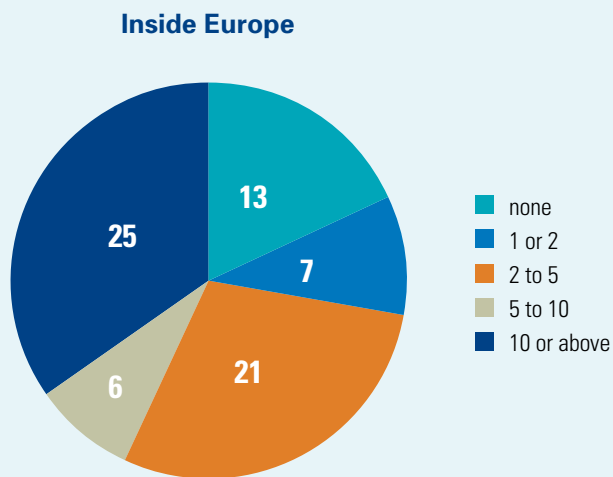
The survey broke down cross-border distribution into those that distributed UCITS within the EU and those that distributed outside the EU. It also questioned how many countries in these geographical areas the respondents' group distributed into.

Of the 74 that answered the question of "Inside Europe", only 13 (17 percent) said that they did not distribute on a cross border basis within the EU. In contrast 25 (35 percent) claimed to distribute to 10 or more countries with over nearly three quarters distributing to two or more countries.

Of those that answered the question on distributing "Outside Europe" (54), 18 respondents, or one third, claimed not to distribute outside Europe. In contrast 24 (44 percent) stated that they distribute to two or more non EU jurisdictions.

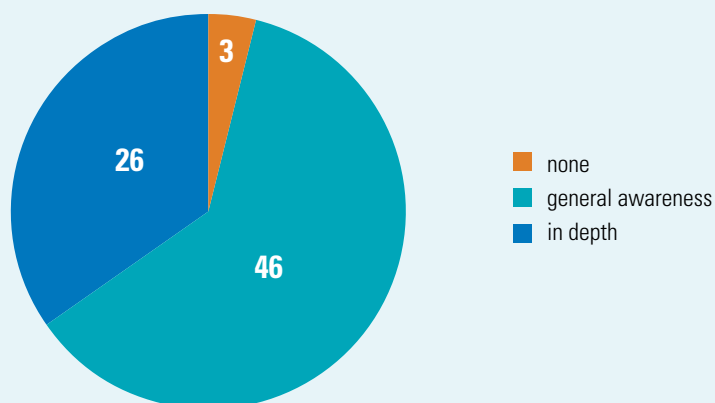
The findings indicate that the UCITS product is extensively distributed on a cross-border basis and offers the possibility of getting the product to market in a more efficient manner.

How many countries do you distribute UCITS cross border into?

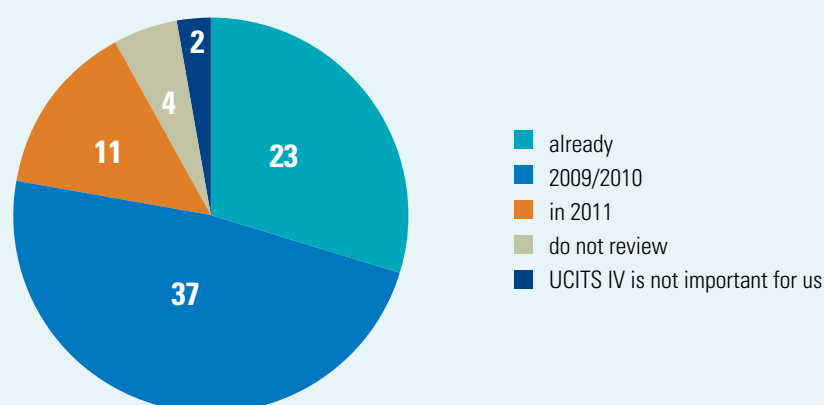


Timeframe for impact analysis and strategic planning

Survey participants were asked the level of research and analysis they had undertaken on UCITS IV. Results show that their level of understanding and research was good with 26 (34 percent) stating that they had an in depth knowledge of the subject. Only three responded that they had no awareness of the subject.



What is the level of analysis and research that your group has conducted on UCITS IV?



Preparations for UCITS seem to have begun. Indeed, nearly 23 (29 percent) had already started working on developing their strategy under UCITS IV and 60 (77 percent) said that they will have started the process by the end of 2010. Only 11 (13 percent) said that they intended to wait until 2011 for such an analysis to be undertaken.

Interestingly, only 6 (7 percent) said they did not expect have defined strategic options for UCITS IV either because they did not intend to review it strategically or that they did not see it as strategically important.

Priorities for UCITS IV

Ranking: 1- 6, 1 being most important.

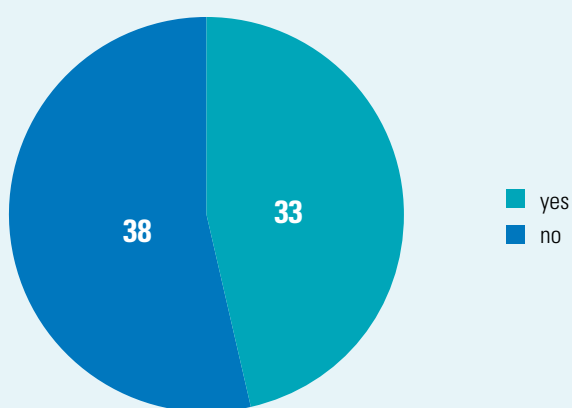
	1	2	3	4	5	6
Key Investor Information	27	10	10	8	10	5
Cross-Border Notification	19	20	12	14	2	2
Management Company Passport	14	7	16	14	9	6
Master-Feeder Structure	13	13	10	8	14	8
Cross-Border Mergers	9	7	8	10	14	17
Regulatory Supervision	8	11	8	8	12	21

Both the Key Investor Information (KII) and the Cross Border Notification provisions are considered high priorities for companies that distribute UCITS with 27 and 19 respondents respectively indicating this as their number one priority. The Management Company Passport, Master-Feeder Structure and Cross Border Mergers are all more or less equal with regard to the restructuring opportunities. Regulatory supervision does not seem to be on organizations' radar at this point.

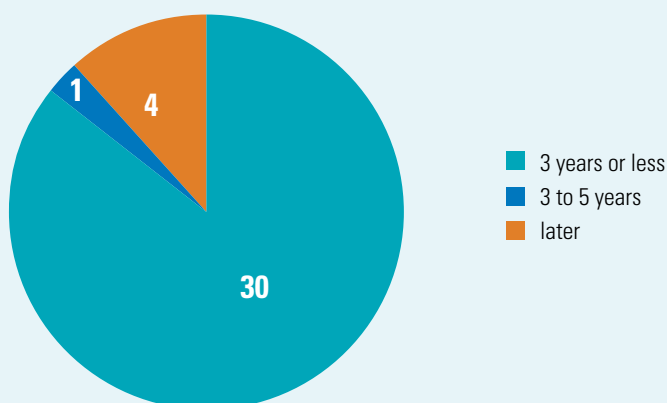
Cross-border Mergers

With fund rationalization and consolidation a growing theme in Europe, 33 (46 percent) of survey respondents revealed that they intended to carry out cross-border mergers to achieve economies of scale and to wind down some fund ranges.

Do you intend to merge funds under UCITS IV?



Within what time frame do you believe that your organization will merge its funds?



Of the 30 respondents that intend to merge their funds survey results show that they do not anticipate waiting for UCITS IV to be implemented to do so and that rationalization of fund ranges is expected to commence soon.

How significant are the following obstacles to a cross-border merger under UCITS IV?

	Very significant	Significant	Moderate	Slightly significant	Not significant
Tax	44	19	6	1	1
Regulatory	15	34	17	3	1
Investor Preference	13	20	22	9	5
Operational	5	29	24	9	3
Cost	17	33	16	3	1

Taxation

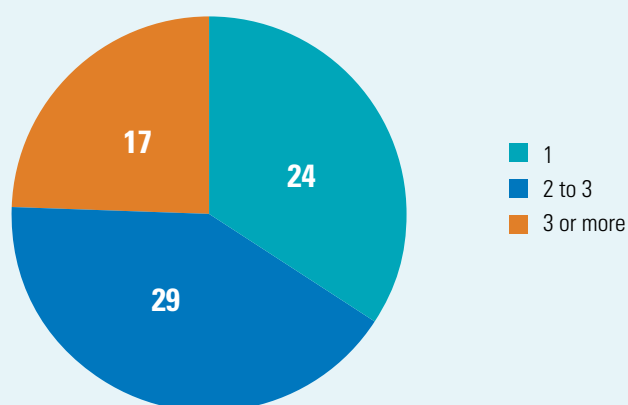
The survey demonstrates that tax is the major obstacle to cross-border mergers. The lack of a tax framework remains a key issue for fund managers and a stumbling block to rapid implementation of these opportunities.

Each fund merger will require an analysis of the tax implications at both fund and investor levels. In certain jurisdictions cross-border mergers are subject to tax while domestic mergers are not, giving rise, in particular, to issues regarding capital gains and investment transfer tax.

Considering that nearly 90 percent of the respondents, representing 63 of 71 respondents, claimed that tax was either very significant or significant and that they will therefore adopt a 'wait-and-see approach' – to see if some legislative measures on the taxation of cross-border mergers will be pursued at an EU level, or others may go ahead and obtain tax rulings from tax authorities on a bilateral basis.

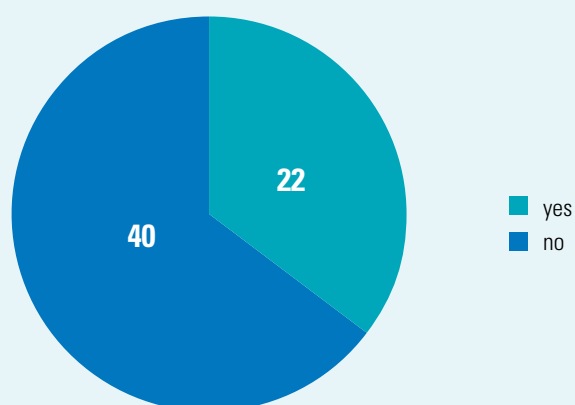
The Management Company Passport (MCP)

How many jurisdictions in the EU does your company currently have a Management Company located in?



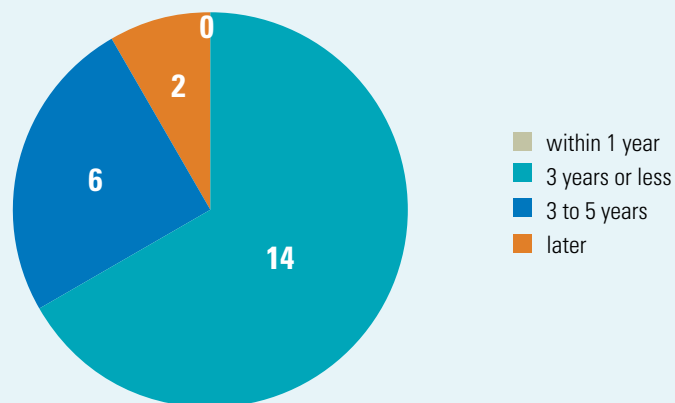
With 17 (24 percent) participants out of a total of 70 indicating that they have a Management Company in three or more jurisdictions it would seem that there are ample opportunities for consolidation. This is further confirmed when considering that 46 (64 percent) stated that they have more than two or more Management Companies across Europe.

Do you intend to consolidate your Management Companies under UCITS IV?



Consolidation of the Management Company is something that the respondents were keen on, with 22 (33 percent) indicating that they intended to consolidate going forward.

Within what time frame do you believe your organization will begin to consolidate its Management Companies?

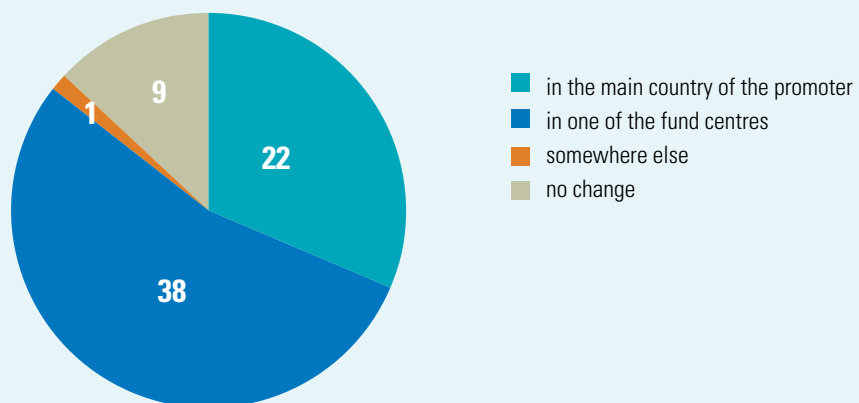


Some asset management groups do not expect to wait long before consolidating with 14 stating that they intend to re-organize their Management Companies within the next three years. 20 in total intend to consolidate within the next five years.

Where to locate?

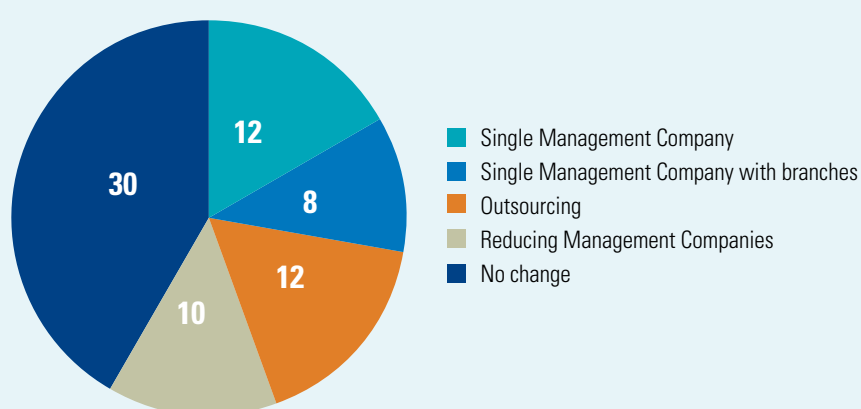
The MCP potentially introduces a new degree of flexibility for asset managers with respect to where to locate their Management Companies. While individual factors are of key importance, most asset managers will ultimately assess and balance a range of factors before deciding on their optimal Management Company centre(s).

Where do you think that most market players will choose to locate their Management Companies?



The majority of respondents (54 percent) see the existing fund centers of Luxembourg and Ireland as the location where most market players will locate their Management Companies. One-third believes that there will be movement towards the home country of the promoter. Only nine (12 percent) believe that the status quo will be maintained.

To what extent do you intend to consolidate your operations?



Although respondents appear to believe that there will be considerable market consolidation at the Management Company level, interestingly they do not regard their own organization as falling within this category. Thirty (41 percent) stated that they do not expect consolidation of their operations. However, 10 (16 percent) do see rationalization occurring within their organization with a 12 (16 percent) stating that they expect to have single Management Companies going forward.

How significant are the following in deciding whether your group is going to consolidate its Management Companies?

	Very significant	Significant	Moderate	Slightly significant	Not significant
Proximity to AM	2	8	13	9	8
Tax efficiency	16	16	6	2	0
Operational	12	19	9	0	0
Regulatory	14	18	8	1	0
Master fund location	4	7	16	8	3
Local infrastructure	10	20	7	2	0
Costs	19	17	5	0	0

Costs are a key consideration when looking to consolidate, with 36 indicating costs as either significant or very significant. This is not surprising, as reducing costs was an intended aim of the UCITS Directive to allow for a more efficient UCITS product that could compete in an ever challenging industry. Tax efficiency and operational factors also were noted as important considerations, as was local infrastructure, with 20 respondents stating that it was a significant factor in deciding the location of the Management Companies.

Taxation

Of the top three factors asset managers considered when determining the location of their Management Companies, tax efficiency was equal to cost considerations. This is not perhaps surprising, given that tax is simply another component of the cost base. Asset managers are understandably keen to secure the most tax efficient arrangements possible for their Management Companies. VAT efficiency will be particularly important as the actual scope of the VAT exemption on management fees levied on funds may vary from country to country, particularly in relation to outsourced activities. This issue is currently being addressed as part of the EU review of the VAT treatment of financial services (see proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services as well as the proposal for a council regulation) so we do not consider further here in this report. However it is crucial that whatever the formal outcome of that review that it should be applied consistently in each Member State in order to prevent any further distortions to competition.

The impact of distribution in non-EU Markets on the preferred Management Company location

Many UCITS products are currently sold in non-EU countries (particularly Asia, the Middle East and Latin America). A change in the location of the Management Company of a UCITS might require explanations and discussions with these third country regulators.

The future of the Management Company

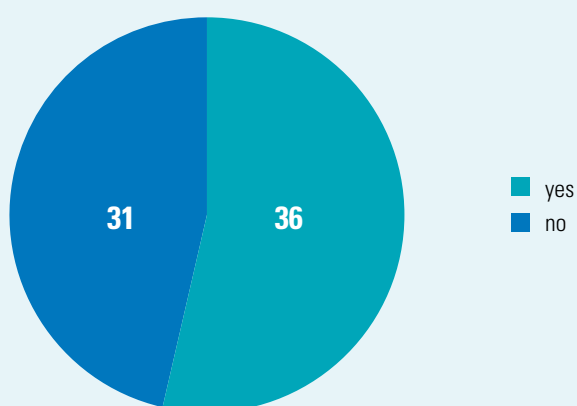
The overall strategy adopted by asset managers towards the Management Company will depend on a number of factors, including: the tax impact; the regulatory framework; reputational and distribution issues; target markets and preferred/existing locations; and organizational structure of the asset manager concerned. Some asset managers will centralize and consolidate whilst others may not. It also remains to be seen whether asset managers will decide to merge their local and foreign management companies, liquidate some Management Companies, maintain a local branch in their preferred UCITS domicile, retain the status quo or adopt a different approach.

Differing local accounting rules and policies, financial reporting and regulation, not to mention the various rules on investment valuation across the EU, will present a number of challenges for companies using the MCP facility. Nevertheless, its creation will undoubtedly create new options for asset managers, and may have a significant impact in reshaping at least some parts of their UCITS business.

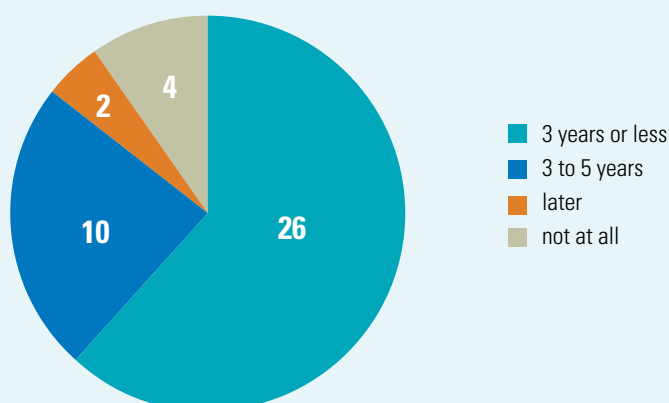
Master-Feeder Structures

53 percent of respondents said they intended to take advantage of the Master-Feeder structure available under UCITS IV.

Do you intend to create a Master-Feeder structure under UCITS IV?



Within what time frame do you believe that you will create a Master-Feeder structure under UCITS IV?



Given the popularity of the Master-Feeder structure with survey respondents, it is not surprising to see that asset managers plan to take a proactive approach to this new opportunity, with 26 (61 percent) of respondents indicating that they intend to have such structures in place within three years, and a further 10 (23 percent) stating that they will follow the lead within three to five years.

What are the main drivers for considering a Master-Feeder Structure under UCITS IV?

	Very significant	Significant	Moderate	Slightly significant	Not significant
Tax	16	21	20	3	3
Regulatory	8	24	21	8	1
Investor Preference	22	21	16	3	1
Operational	23	19	18	3	1
Costs	30	18	12	1	1

In terms of costs and efficiency, some investors tend to regard the Feeder fund as an expensive option. This point is not lost on asset managers, with cost savings being specifically noted as a driver for the Master-Feeder structure. At the same time since investor preference will be an equally important consideration. It will be necessary to consider fully the operational aspects of a Master-Feeder structure, such as how will it impact fund administrators and custodian banks which support the day-to-day activities of the funds. Once again tax is seen as being either a very significant (16) or significant (21) driver when considering a Master-Feeder structure.

Whichever options asset managers decide to adopt, it is clear that the Master-Feeder set-up offers interesting opportunities. However it is equally clear that there are detailed issues to be resolved.

Conclusion: UCITS IV and the absence of a tax framework

Taxation poses a number of significant questions in the context of the UCITS IV efficiency measures. This survey shows that tax considerations were left aside and that taxation remains one of the key barriers amongst others to cross-border fund mergers. Therefore more work must be done to achieve transparency on this issue. At this stage, asset managers will need to consider carefully the tax consequences of any option.

There is a need to give certainty to the industry on the tax issues surrounding the location of the Management Company and its impact on the tax residency of the funds it manages on a cross-border basis. In addition and as already stated, the VAT treatment of outsourced management services will need to be more consistently applied across the EU jurisdictions. The survey results indicate that Master-Feeder structures will be a popular development for investment managers but there are operational, investor preferences, and tax issues that need to be addressed before UCITS IV can deliver on this opportunity. It seems that unless many of the tax uncertainties which arise can be resolved then some of the major benefits of UCITS IV will probably not be realized.

Appendix 5

Country Reports

The country reports seek to summarize the tax implications of UCITS IV. Under UCITS IV, numerous new business combinations are theoretically now possible.

The country reports below consider the tax obstacles to fund mergers, the Management Company passport and the Master-Feeder structure i.e. measures that influence managers' ability to take advantage of the enabling measures.

KPMG/EFAMA have analyzed the tax implications at three levels:

(i) at Management Company level;

(ii) at fund level; and

(iii) at investor level.

For all three levels, studies were prepared across Tier I countries (i.e. France, Germany, Ireland, Luxembourg, Spain and the United Kingdom (UK)). For Tier II countries (i.e. Finland, Italy and Sweden) we have studied the tax effects at fund and investor level. Finally, for Tier III countries (i.e. all EU countries) we have studied the tax effects at investor level.

The views expressed in this section are those of KPMG and not necessarily those of EFAMA and/or its members.

Tier I Countries

France, Germany, Ireland, Luxembourg, Spain and United Kingdom

Tier II Countries

Finland, Italy and Sweden

Tier III Countries

Austria, Belgium, Cyprus, Czech republic, Denmark, Estonia, Greece, Hungary, Malta, Poland, Portugal, Romania, Slovakia and The Netherlands

UCITS IV report – France

The present report expands on the tax consequences in France upon the set up of a Single Management Company, the merger of funds and the creation of Master-Feeder schemes. We also took the position that the units of the funds would be subscribed by investors that would be resident in France through a distribution channel located in France (i.e. a French bank or a French broker). The consequence is that payments to the investors would be done locally (and not cross-border), so that no EU Savings Directive would apply.

I) Cross-border Mergers

A. Fund level

1. Domestic Merger

From a French regulatory point of view, French funds (FCPs or SICAVs) can be merged with other French funds (FCPs or SICAVs). In principle, no French tax issues should arise from such a transaction, at the level of the involved funds, insofar as funds are tax exempt in France.

2. Inbound Merger

No French tax issues

3. Outbound Merger

No French tax issues

4. Conclusion

Domestic and cross-border should not entail any specific French tax consequences at the level of the funds.

B. Investor level

1. Domestic Merger

At the level of the investor, the domestic mergers subject to the approval of French regulator can benefit from tax deferral provided by Article 150-0B of FTC. In case of cash payment (*soulte*) the tax deferral is granted only where the cash payment does not exceed 10 percent of exchange value of the shares/UCITS received which has been determined by taking into account the share value (*valeur liquidative*) as fixed for the purpose of the operation.

> The investor is an individual

Mergers of FCPs or SICAVs into other FCPs or SICAVs, which have been approved by the French Regulator, benefit from a tax deferral regime where the cash payment does not exceed the above threshold (10 percent of the exchange value of UCITS received).

Under such a regime, the investor will only be taxed at the time of the subsequent transfer of the units/shares received in exchange for the units/shares of the absorbed fund.

- > The investor is a company liable for French CIT

The French Tax Law also provides for a tax deferral regime when FCPs or SICAVs merge into other FCPs or SICAVs, subject to the following conditions:

- > The obtaining of the approval from the French Regulator;
- > The cash payment (if any) does not exceed the above threshold (10 percent of the exchange value of UCITS received).

2. Inbound Merger

An inbound merger should not trigger income taxation in France for a French investor (in so far as the tax deferral may apply in the same conditions as indicated for domestic mergers).

3. Outbound Merger

The French tax deferral regime may also be obtained provided that:

- > The transaction is realized in accordance with the applicable Regulatory Law and obtain the approval of the competent Regulator,
- > The cash payment (if any) does not exceed 10 percent of the exchange value of the units/shares received in exchange (as indicated B-1 above).
- > The merger involves EU funds which have the same characteristics as the French funds.

II) Management Company Passport

A. Management Company level

1. Inbound

If a Management Company is transferred to France, no taxation takes place in France upon the transfer (inbound situation). In case the Management Company is transferred to France leaving a branch in the departing country, the profits of said branch are not subject to tax in France given the strict French territoriality rules.

2. Outbound

The transfer of a French Management Company outside France gives rise to taxation, notably on the capital gains realized upon the transfer. However, such an operation can be placed under a tax deferral regime, subject to certain conditions (i.e. approval of the French Tax Authorities, commitment to assign French Management Company's assets and liabilities to a French permanent establishment, etc.).

B. Fund level

1. Inbound/Outbound

The location of the Management Company should in principle have no effect as regards the fund taxation and tax residency, from a French viewpoint.

Indeed, from a French tax point of view, French funds are exempt from tax whatever their form and are generally not regarded as residents for tax purposes.

Consequently, to the extent that funds are not considered as having a tax residency from a French tax standpoint, the transfer of a Management Company should not give rise to potential tax residence issues in France.

On the contrary, when the Fund is considered as having a tax residence in the State where the new single Management Company is located, the situation is likely to entail complex tax issues which could lead to double taxations. Indeed, if a fund is located in country A, has a Management Company in country B and invests in country C, there is a risk that the income paid from country C may be subject, on one hand, to a domestic withholding tax with no possibility to apply Double Taxation Agreement's provisions (unless the country of source of the income considers the fund as residing in the country of the Management Company) and, on the other hand, (ii) to an income taxation in country B.

C. Investor level

1. Inbound/Outbound

In principle, the change in the location of a Management Company (i.e. from/to France) would not imply the disposal of the shares/units at the level of the investors. In consequence, no disclosure of unrealised gains should arise.

However, please note that the dividend distributions from a French located/registered fund to a foreign investor will be subject to a 25 percent withholding tax or to a reduced Double Taxation Agreement withholding tax when applicable. In such a case, there should be grounds to consider that the application of the French withholding tax is discriminatory from a EU Law perspective, since French tax resident Funds are not liable for taxation.

Lastly, please note that where the income paid by the French located/registered fund came from abroad and as such was subject to a foreign withholding tax, the French tax regulations allow for offsetting the tax credit corresponding to the foreign withholding tax against the French withholding tax.

III) Master-Feeder Structures

In France, Master funds and Feeder funds are both tax exempt. They are generally not considered as tax residents and consequently are generally not eligible for the Double Taxation Agreements' provisions.

A. Feeder

1. Transformation of a fund into a Feeder

a. Impact at fund level

No tax consequences at the level of the fund.

b. Impact at investor level

According to the French Tax Authorities Guidelines, the conversion of an existing French fund into a Feeder fund is in principle eligible for the French tax deferral regime as described above, provided that all the assets of the existing French fund are contributed to the Master fund. At the end of the conversion of the French fund into a Feeder fund, the Feeder fund's assets must consist of units of the Master fund and incidentally in cash.

2. Ongoing taxation

a. Impact at fund level

If the Master fund and Feeder fund are both located in France, there should be no detrimental tax effect for the French investors.

b. The Master fund is located in France and the Feeder fund is located in a EU country

When a Master fund is located in France and the Feeder fund is located in an EU country, payments made by the Master fund to the Feeder fund are in principle subject to French withholding tax.

Indeed, dividend distributions from the French Master fund to a Feeder fund located in another Member State should be subject to a 25 percent withholding tax or to the reduced Double Taxation Agreement withholding tax when applicable. In such a case, there should be grounds to consider that the application of the French withholding tax is discriminatory from a EU Law perspective, since French tax resident Funds are not liable for taxation.

In the case where the income paid by the French Master fund came from abroad and as such was subject to a foreign withholding tax, the French tax regulations allow for offsetting the tax credit corresponding to the foreign withholding tax against the French withholding tax. The application of the French withholding tax could be discriminatory since French tax resident Funds are not liable for taxation.

c. The Feeder fund is located in France and the Master fund is located in an EU country.

Such a scenario is likely to trigger tax consequences in France in certain circumstances.

Indeed, if the EU Master fund invests in France, payments of French source income to the EU Master fund should be subject to a French withholding tax or to the Double Taxation Agreement reduced withholding tax when applicable. However, there should be grounds to consider that the application of the French withholding tax is discriminatory from a EU Law perspective, since French tax resident Funds are not liable for taxation.

Other potential tax issues can also arise during the payment of income from the Master fund to the Feeder fund. It would be necessary to check whether the country of location of the Master fund provides for a withholding tax on the payments of income made to the French Feeder fund and whether the country of location of the Master fund allows for offsetting the potential withholding tax paid at source on the foreign source income.

However, the French Tax Authorities are currently examining the possibility to exempt from WHT distributions from a French Master fund to EU (UCITS) Feeder funds. Such exemption would make the use of a French Master fund more attractive.

B. Master

Transformation of a fund into a Master

1. Impact at fund level

No tax consequences at the level of the fund.

2. Impact at investor level

To date, the tax consequences of the conversion of a French fund into a Master fund have not been commented by the French Tax Authorities.

3. Ongoing taxation

Please refer to III.A.3.

UCITS IV report – Germany

For the purpose of the present report, we assume that the relevant fund units are acquired by German resident investors through a distribution channel located in Germany (e.g. a German bank or a German broker), so that the payments to the investors would be done locally (and not cross-border) and the EU Savings Directive would not apply.

Funds with a place of establishment in Germany ("German fund") and which are managed by a German Management Company are regarded as "subject to tax" in Germany for Double Taxation Agreement purposes. However, they are tax exempt by law.

I) Cross-border Mergers

A. Fund level

1. Domestic/Inbound/Outbound merger

There is no impact at the level of the fund as funds are tax exempt in Germany.

B. Investor level

1. Domestic merger

The German legislation provides for tax free domestic mergers at the investor level provided the conditions of § 14 InvStG (Investment Tax Act) are met. Specifically, if the target fund is absorbed at book value by the continuing fund, there is no realization of capital gains. Otherwise, the merger would be treated as an exchange of fund units at the level of the investor. This implies redemption of the old and acquisition of the corresponding new fund units and leads to the realization of capital gains and to taxation.

2. Foreign merger

Similar to the case of domestic mergers, the German legislation provides for tax free foreign mergers at the level of the investors provided that the conditions of § 17a InvStG are met. Specifically, if a merger between funds resident in the same country is performed as an absorption at book value, there is no realization of capital gains for German tax purposes. Otherwise, the merger would be treated as a taxable exchange of fund units at the level of the investor (see above).

3. Inbound/Outbound merger

At the level of the investor, all cross-border mergers are currently considered as an exchange of fund units, which leads to realization and taxation of any capital gains.

II) Management Company Passport

A. Fund level

1. Inbound (German Management Company managing a foreign fund)

A fund with its place of establishment in another Member State that is effectively managed by a German Management Company will have its place of effective management in Germany. Due to its effective place of management the fund will become tax resident in Germany (according to the tie-breaker rule in the Double Taxation Agreement the place of effective management is decisive). Even though the fund may, in such a case, be already tax resident in the other country, the current German legislation does not foresee a tax exemption for such funds, as from a legal point of view they are foreign funds. The fund itself will therefore become subject to taxation in Germany consisting of 15 percent corporate income tax plus 5.5 percent solidarity surcharge. Thus, the cross-border management of the fund might lead to a higher taxation of the fund than in a purely domestic arrangement (i.e. if the fund's Management Company would reside in the same country).

2. Outbound (Foreign Management Company managing a German fund)

A German fund managed by a Management Company resident in another EU Member State remains tax resident in Germany due to its place of establishment in Germany. There would be no additional tax consequences from a German tax point of view – the fund would remain tax exempt. However, the overall taxation of the fund might be affected by a foreign tax risk, given that the fund may also become tax resident in the other EU Member State due to its effective place of management located in that other EU Member State.

B. Investor level

1. Inbound

As a foreign fund with effective management in Germany will become subject to tax in Germany, the supplementary tax burden would be passed on to the investor (as cost).

2. Outbound

The cross-border management of a German fund does not affect the taxation at the investor level as seen from a purely German tax point of view. However, as a German fund with effective management in an other EU Member State may become subject to tax and suffer taxation in that other Member State, the supplementary tax burden would be passed on to the investor (as cost).

III) Master-Feeder Structures

A. German Feeder

1. Transformation of a German fund into a German Feeder

a. Impact at the fund level

There is no impact at the level of the fund as funds are tax exempt in Germany.

b. Impact at the investor level

The transformation of a fund into a Feeder implies transferring the fund's assets to the Master and consequently a realization of capital gains at the level of the transferring fund. Some of these capital gains are passed on to the investor at distribution/deemed distribution – leading to taxation.

2. Ongoing taxation of a German Feeder

a. General

There will be no taxation at the level of the fund as funds are tax exempt in Germany.

The ongoing taxation at the investor level is as one would expect from a "normal" (i.e. non-Feeder) fund. Income distributions and accumulations will be taxed according to the general rules of investment taxation.

b. Redemption

There is no taxation at the fund level as funds are tax exempt in Germany. The redemption of fund units held by the Feeder in the Master implies a realization of capital gains at the level of the fund. If these capital gains are passed to the investor at distribution, they become taxable at the investor level.

The taxation at the investor level is again as one would expect. The redemption of fund units held by the investor in the Feeder implies a realization of capital gains at the investor level and leads to taxation.

c. Stamp duties

No stamp duties are applicable in Germany. The implementation of a financial transaction tax is currently under discussion.

B. German Master

1. Transformation of a German fund into a German Master

a. Impact at fund level

There is no impact at the level of the fund as the funds are tax exempt in Germany.

b. Impact at investor level

The transformation of a fund into a Master would imply that the investor redeems all fund units and receives new units in a Feeder. This would be regarded as a taxable exchange of fund units.

2. Ongoing taxation of a German Master

a. General

There will be no taxation at the fund level, given that funds are tax exempt in Germany.

b. Withholding tax

In contrast to a pure domestic Master-Feeder arrangement, in a cross-border arrangement the German Master fund has to withhold tax on such payments to the foreign Feeder fund deriving from German dividends. And even though the suffered withholding tax can be reduced due to a Double Taxation Agreement and/or a tax credit, there remains a clear liquidity disadvantage for foreign Feeder funds, as shown by the following calculation:

	Domestic scenario	Cross-border scenario
German distributing company		
Gross dividend	100,00	100,00
German 26,375% WHT	26,38	26,38
German Master fund		
Dividend received	73,62	73,62
Refund WHT due to tax exemption	26,38	26,38
Total dividend received	100,00	100,00
German 26,375% WHT	26,38	26,38
Feeder fund		
	German Feeder	Foreign Feeder
Dividend received	73,62	73,62
Refund WHT due to tax exemption	26,38	N/A
Refund due to Double Taxation Agreements (1)	N/A	11,38
Total dividend received	100,00	85,00

(1) Assumption: Double Taxation Agreement rate = 15%.

c. Redemption

The redemption of fund units held by a foreign Feeder in a German Master would not trigger German tax on the capital gain for the foreign Feeder fund.

d. Access to Double Taxation Agreement benefits

From a German tax administration point of view German funds are treated as resident persons due to the fact that they are subject to tax according to the German Investment Tax Act. Therefore, both corporate and contractual funds with German tax residency should benefit from Double Taxation Agreements. However, it remains a question of bilateral agreement whether this view is shared by all jurisdictions.

e. Stamp duties

No stamp duties are applicable in Germany (Status on 1. June 2010). The implementation of a financial transaction tax is currently under discussion.

UCITS IV Report – Ireland

This report considers the tax consequences in Ireland on the establishment of a Single Management Company, the merger of UCITS and the creation of Master-Feeder schemes.

I) Cross-border Mergers

A merger would typically be affected under Irish law as a transfer of business (assets and liabilities) in return for shares issued to the investors followed by a liquidation of the fund and resulting cancellation of the existing shares. References below to a merger relate to the current treatment of how mergers in Ireland are typically affected.

A. Fund level

1. Domestic merger

At the level of the UCITS, a domestic merger is specifically exempt from Irish taxation in accordance with the provisions of Section 739H Taxes Consolidation Act 1997.

2. Inbound merger

An inbound merger of a non Irish UCITS with an Irish UCITS should also be exempt from Irish taxation in accordance with the provisions of Section 739D(8D) Taxes Consolidation Act 1997.

3. Outbound merger

In relation to an outbound merger, where an Irish UCITS merges with a non Irish UCITS this should not give rise to a liability to Irish tax at the level of the Irish UCITS.

4. Conclusion

The tax treatment of mergers at the level of the fund is not discriminatory.

B. Investor level

1. Domestic merger

Section 739H Taxes Consolidation Act 1997 provides that the merger of two Irish UCITS is not considered a disposal by the Irish investor of his units in the Irish UCITS for Irish tax purposes.

Therefore a liability to tax does not arise for an Irish tax resident investor.

2. Foreign merger

Section 747F Taxes Consolidation Act 1997 provides that the merger of two non Irish UCITS (whether based in the same jurisdiction as each other or not) is also not considered a disposal by the Irish investor of his units in the Irish UCITS for Irish tax purposes. Therefore a liability to tax does not arise for an Irish tax resident investor.

3. Inbound merger

There are no specific provisions dealing with the taxation of Irish tax resident investors in a non Irish UCITS which merges with an Irish UCITS (an inbound merger). However, general reorganization and merger provisions may provide that the merger does not give rise to a disposal by the Irish investor (in which case a liability to tax does not arise for an Irish tax resident investor).

4. Outbound merger

Similar to the treatment of an inbound merger, there are no specific provisions dealing with the taxation of Irish tax resident investors in an Irish UCITS which merges with a non Irish UCITS. However, as for inbound mergers general reorganization and merger provisions may provide that the merger does not give rise to a disposal by the Irish investor (in which case a liability to tax does not arise for an Irish tax resident investor).

5. Conclusion

There is potential discrimination in relation to the Irish treatment of cross-border mergers.

II) Management Company Passport

A. Management Company level

1. Inbound

Where a UCITS Management Company transfers to Ireland and becomes Irish tax resident, no taxation takes place in Ireland upon transfer (inbound situation).

Should the Management Company be transferred to Ireland leaving a branch in the departing EU member state, this branch may be considered a permanent establishment ("PE") under the terms of the Double Taxation Agreement in place between Ireland and the other EU member state where the branch is located.

The profits of a foreign PE are subject to tax in Ireland with credit available for foreign tax suffered on those profits (which normally results in no additional Irish tax given Ireland's corporation tax rate of 12.5 percent on trading profits).

Ireland has concluded Double Taxation Agreements with all EU Member States.

2. Outbound

The transfer (full or partial) of an existing Management Company from Ireland to another Member State (outbound situation) may trigger exit taxation on unrealised capital gains.

However, where the Management Company maintains an Irish branch continuing the activity of the Management Company an exit charge should not arise.

B. Fund level

1. Inbound

The centralisation of UCITS Management Companies in Ireland should not normally impact on the tax residence of corporate UCITS from an Irish tax perspective (provided the directors of the corporate UCITS exercise the management and control of the corporate UCITS in the jurisdiction where the corporate UCITS is incorporated).

A non-Irish UCITS which is managed by a Management Company in Ireland would typically not be brought into the charge to Irish tax. There is a specific exemption (investment manager exemption) confirming that the activities of a regulated Management Company in Ireland would not create a permanent establishment for an unconnected non-Irish fund. The only exception in this regard is where the fund is a trading fund and the activities of the manager constitute a trade being carried on in Ireland which is not likely to be applicable to UCITS.

The question arises however on the management of contractual UCITS and unit trusts and their effective place of management.

For Irish tax purposes a unit trust is normally considered to be resident where the trustees are tax resident and therefore the management of a non Irish unit trust by an Irish Management Company should not normally result in the non Irish unit trust becoming Irish tax resident.

Contractual UCITS are normally considered transparent for Irish tax purposes and therefore they do not have a tax residence per se. As a result where a non Irish contractual UCITS had an Irish Management Company, this should not give rise to a charge to Irish taxation for the non Irish contractual UCITS.

2. Outbound

Where an Irish UCITS had a Management Company tax resident in another EU member state, an Irish corporate UCITS would remain Irish tax resident unless a Double Taxation Agreement determined that the Irish UCITS was resident elsewhere.

In the case of an Irish unit trust the tax residence would normally follow the tax residence of the trustee.

For an Irish Common Contractual Fund, it is considered tax transparent for Irish tax purposes and therefore it is not considered Irish tax resident per se.

C. Investor level

1. Inbound/Outbound

The transfer of the Management Company would not typically have any tax implications for Irish tax resident investors unless it resulted in a transfer of residence of an Irish fund outside of Ireland. Even in such a situation, there should be no significant Irish tax implications for the investors. Irish investors would remain subject to tax at the same rates on income and gains received from the UCITS albeit that in the case of a non Irish fund the tax would be administered under self assessment.

III) Master-Feeder Structures

A. Feeder

1. Transformation of a fund into a Feeder

a. Impact at fund level

The Irish taxation regime for UCITS at fund and investor level is determined based on their regulatory status and is not connected to the investment strategy. This means that the Irish tax treatment for a UCITS should be the same as irrespective of whether it is a Master, a Feeder or a normal UCITS.

b. Impact at investor level

As above

2. Ongoing taxation

a. General

An Irish investor is subject to tax only on an exit event and thus should not be impacted where an Irish fund becomes a Feeder as the investors' position is not impacted. The Feeder should also not be taxable on distributions from the foreign Master as it is essentially exempt from tax.

b. Subscription tax

Ireland does not levy subscription tax on Irish UCITS.

c. Redemption

The Irish tax treatment for a UCITS should be the same as irrespective of whether it is a Master, a Feeder or a normal UCITS.

d. Stamp duties

No stamp duties are applicable to units of Irish UCITS.

e. Others

There are no other tax considerations to be taken into account in Ireland.

B. Master

1. Transformation of a fund into a Master

a. Impact at fund level

Similar to the transformation of a UCITS into a Feeder as discussed above, the Irish tax treatment for a UCITS should be the same as irrespective of whether it is a Master, a Feeder or a normal UCITS.

b. Impact at investor level

See details under Feeder above.

2. Ongoing taxation

a. General

See details under Feeder above.

b. Subscription tax

See details under Feeder above.

c. Withholding tax

See details under Feeder above.

d. Taxation of non-resident Feeders

A non-resident Feeder fund in an Irish Master should not suffer any Irish taxation where it has provided a declaration of non Irish tax residence.

e. Access to Double Taxation Agreement benefits

When considering the applicability of Double Taxation Agreements to Irish funds, different treatments apply contractual, unit trust and corporate funds.

Contractual funds are generally seen as tax transparent and therefore, based on Irish tax principles, the Double Taxation Agreement (if available) should apply between the investment country and the investor country.

Irish unit trusts are considered tax transparent by some jurisdictions. In addition Irish unit trust may not be considered the beneficial owners of the income they receive by other jurisdictions.

The position of the Irish tax authorities is that Irish unit trusts and Irish corporate funds should be entitled to access the benefits of Ireland's Double Taxation Agreements. However, in practice Irish investment funds are excluded from the Double Taxation Agreement benefits by certain jurisdictions.

f. Stamp duties

No stamp duties are applicable to units of Irish UCITS.

g. Other tax considerations

The change of residency of the Master may impact the withholding tax levied in the country of investment.

UCITS IV Report – Luxembourg

The present report expands on the tax consequences in Luxembourg upon the set up of a Single Management Company, the merger of funds and the creation of Master-Feeder schemes. We also took the position that the units of the funds would be subscribed by investors that would be resident in Luxembourg through a distribution channel located in Luxembourg (i.e. a Luxembourg bank or a Luxembourg broker). The consequence is that payments to the investors would be done locally (and not cross-border), so that no EU Savings Directive would apply.

I) Cross-border Mergers

A. Fund level

1. Domestic merger

At the level of the Fund, a domestic merger should not trigger taxation (i.e. in relation to unrealized capital gains) as the funds are not subject to income tax in Luxembourg (art. 161 al.10 LIR in connection with art. 127 al. 1 of the law dated 20th December 2002).

2. Inbound merger

An inbound merger should not trigger income taxation in Luxembourg. The net assets of the merged fund become subject to subscription tax (varying from 0.01 percent to 0.05 percent depending on the status of the investors) per annum and levied on the net assets of the fund on the last day of each quarter. The subscription tax is levied based on art 129 of the law dated 20th December 2002. This law refers to UCITS funds set-up under Luxembourg law.

3. Outbound merger

As regard to an outbound merger, if the Luxembourg fund merges with a foreign fund, it would not pay any subscription tax anymore. The Fund would indeed cease being subject to the Law dated 20th December 2002.

4. Conclusion

The tax treatment of mergers at the level of the fund is not discriminatory.

B. Investor level

1. Domestic merger

At the level of the investor, the merger should be considered as a sale of share followed by an acquisition of new shares/units, which may trigger taxation (art. 99 and 102 LIR).

2. Foreign merger

The same conclusion as for the domestic merger applies.

3. Inbound merger

The same conclusion as for the domestic merger applies.

4. Outbound merger

The same conclusion as for the domestic merger applies.

5. Conclusion

There should be no tax discrimination upon cross-border mergers.

II) Management Company Passport

A. Management Company level

1. Inbound

If a Management Company is transferred to Luxembourg, no taxation takes place in Luxembourg upon transfer (inbound situation). In case the Management Company is transferred to Luxembourg leaving a branch in the departing country, this branch may qualify as a permanent establishment ("PE") for Luxembourg tax purposes. In principle, the profits of a foreign PE are subject to tax in Luxembourg, with the possibility under domestic law to credit tax paid abroad. However, if Luxembourg has concluded a Double Taxation Agreement with the country in which the PE is located providing for the exemption method, the PE will be taxed in that country (art. 134 Luxembourg income tax law (hereafter "LIR")). Please note that Luxembourg has Double Taxation Agreements with most EU countries.

2. Outbound

The transfer of a Management Company abroad will not lead to exit taxation on hidden reserves and unrealized capital gains provided that a branch continuing the activity of the Management Company is left in Luxembourg (to ensure taxation in Luxembourg in the future – art. 171 LIR).

The transfer (full or partial) of an existing Management Company from Luxembourg to another Member State (outbound situation) triggers exit taxation (art. 169 LIR) on the hidden reserves and latent capital gains.

B. Fund level

1. Inbound (Luxembourg Management Company managing a foreign fund)

In the following, two cases are differentiated. Firstly, the analysis in case the UCITS is incorporated (corporate fund), and secondly, the UCITS is contractual (contractual fund) or is organized as unit trust.

The localization of the Management Company in Luxembourg does not have an impact from a Luxembourg tax perspective on the residence of a foreign corporate UCITS as long as the corporate governance (e.g. shareholder and board meetings) is organized by the directors of the corporate UCITS in the fund's country of location. The fact that a company located in another country than the fund advises on the asset management does not transfer the effective place of management to that location under Luxembourg tax rules.

However, in case the UCITS is organized as contractual fund or unit trust, the analysis has to be done according to different tax principles. Based on § 11 StAnpG (loi d'adaptation fiscale), the legal owner is in general the beneficial owner. Only in cases where legal ownership and economic control of an asset clearly differ, the assets are attributed to the beneficial owner. This rule should also be applied to Management Companies and funds. As the Management Company only manages the assets of the fund on behalf of the fund and for the benefit of the fund, beneficial ownership should not be shifted to the Luxembourg Management Company but should remain with the unitholders of the fund. Therefore, the tax residency of the fund located outside Luxembourg should not be attracted to Luxembourg if the Management Company is located in Luxembourg.

As a consequence, from a Luxembourg tax perspective, there is no changed tax residency further to a Luxembourg Management Company managing a foreign UCITS irrespective of the latter's legal form.

2. Outbound (Foreign Management Company managing a Luxembourg fund)

Further to the place of effective management doctrine, there is a potential changed tax residency of the fund triggering foreign tax liability even though Luxembourg funds are out of scope of Luxembourg income tax law (art. 161 al.10 LIR in connection with art. 127 al. 1 of the law dated 20th December 2002).

The impact on the fund therefore depends on the jurisdiction where the Management Company will be located (e.g. if the attraction of the fund takes place due to the transfer of a Management Company to that country). Luxembourg would still consider the fund as liable to the *taxe d'abonnement*, because the fund is set up under the laws and the supervision of Luxembourg.

As a consequence, depending on the jurisdiction where the Management Company will be located, the Luxembourg UCITS could suffer an expected foreign tax liability leading to potential double taxation.

C. Investor level

1. Inbound/Outbound

On the investor level there should be no disclosure of unrealized gains as long as the potential change in tax residency of the UCITS would not imply the disposal of the shares/units (art. 99-102 and 108 LIR).

III) Master-Feeder Structures

A. Feeder

1. Transformation of a fund into a Feeder

a. Impact at fund level

If a fund is transformed into a Feeder, no income taxes will be due at the level of the fund as all forms of funds are not subject to income tax.

b. Impact at investor level

At the level of the investor, no disclosure of unrealized gains may arise as long as the transformation of the existing UCITS in a Feeder fund would not imply the disposal of the shares/units.

2. Ongoing taxation

a. General

The Feeder fund is income tax exempt.

b. Subscription tax

In case a Luxembourg Feeder fund invests cross-border into a Master fund set-up in another EU country, the Luxembourg Feeder fund will be subject to a subscription tax (art. 129 (3)(a) of the law of December 20th 2002). By contrast, in case a Luxembourg Feeder invests in a Luxembourg Master, no subscription tax is due at the level of the Luxembourg Feeder fund.

c. Redemption

There is no withholding tax upon redemption.

d. Stamp duties

No stamp duties are applicable in Luxembourg.

e. Others

There are no other tax considerations to be taken into account in Luxembourg. The move of assets from an existing fund to a Master fund may result in changes to the withholding tax withheld in the country of the investment.

B. Master

1. Transformation of a fund into a Master

a. Impact at fund level

If a fund is transformed into a Master, no income taxes will be due as all forms of funds are not subject to income tax.

b. Impact at investor level

At the level of the investor, no disclosure of unrealized gains may arise as long as the potential change of the UCITS fund into a Feeder fund would not imply the disposal of the shares/units.

2. Ongoing taxation

a. General

The Master fund is income tax exempt.

b. Subscription tax

Master funds are subject to subscription tax. For the share classes or subfunds dedicated to Feeder funds, the subscription tax at the level of the Master fund should be of 0.01 percent instead of 0.05 percent (art. 129 al. 2 (d) of the law dated 20th December 2002).

c. Withholding tax

In case the Master fund is located in Luxembourg and the Feeder fund is located abroad, there would be no withholding tax on payments made by the Master fund to the foreign Feeder fund. The same rule applies for domestic Feeder funds (art. 127 al. 2 of the law dated 20th December 2002).

d. Taxation of non-resident Feeders

If a non-resident Feeder fund which has a participation of more than 10 percent in a Luxembourg Master fund realizes, less than 6 months after the acquisition, a capital gain on the sale of its participation, such fund will be taxed in Luxembourg (so-called 'speculation' gain). The participation of 10 percent can be held at any moment in the five years before the date of sale. Currently there are some discussions with the Luxembourg government to change that rule (art. 156.8 LIR).

e. Access to Double Taxation Agreement benefits

Regarding the applicability of Double Taxation Agreements to Luxembourg funds, it has to be distinguished between contractual and corporate funds. Contractual funds are generally seen as transparent and therefore, based on Luxembourg tax administration doctrine, the Double Taxation Agreements (if available) should apply between the investment country and the investor country (i.e. the Feeder country). Luxembourg corporate funds benefit from a large number of Double Taxation Agreements that Luxembourg concluded. In certain cases investment funds are excluded from the Double Taxation Agreement benefits.

f. Stamp duties

No stamp duties are applicable in Luxembourg.

g. Other tax considerations

The change of residency of the Master may impact the withholding tax levied in the country of investment.

UCITS IV - Report Spain

The present report considers the tax consequences in Spain upon the set up of a Single Management Company, the merger of funds and the creation of Master-Feeder schemes. We have assumed that the units of the funds would be subscribed by investors that would be resident in Spain through a distribution channel located in Spain. Thus, payments to the investors would be done locally (and not cross-border).

I) Cross-border Mergers

A. Fund level

1. Domestic merger

From a Spanish regulatory and mercantile point of view, Spanish funds are able to be merged both with funds or sub-funds provided merged funds corresponds to the same class (financial/non financial). Normally no Spanish tax issues arise for the fund, as long as the funds are typically taxed at a 1 percent rate on the income determined according to their applicable accounting rules (Art. 10 CIT Law) (therefore on a mark-to-market basis), and thus, upon a merger there would not be, in principle, unrealized capital gains or hidden reserves. In any case, it is possible to implement the integration from a tax perspective by means applying a tax neutrality regime (Merger Directive 90/434/ EEC). Applying the tax neutral regime would ensure the transfer of potential tax losses to the acquiring fund (Art. 83-96 CIT Law)

2. Inbound merger

An inbound merger “per se” should not trigger income taxation in Spain neither for the foreign acquired fund transferring the assets nor for the Spanish UCITS acquiring the assets.

3. Outbound merger

In the event of Outbound Mergers, it will be relevant whether the merger is carried out between entities adopting a legal form listed in the annex of the Merger Directive 90/434/ EEC. Certain restructuring operations (Contractual Fund-Contractual Fund or Corporate Fund-Contractual Fund) might not currently achieve tax neutrality. However as commented under the section of Domestic mergers above, the Spanish UCITS merged into a foreign UCITS would have already been taxed on a mark-to-market basis and thus, upon a merger there would not be, in principle, unrealized capital gains or hidden reserves to be taxed in Spain.

4. Conclusion

Although there might be some cross-border outbound transactions not covered by the Spanish tax neutrality regime, in practice, the mergers would not likely trigger any Spanish taxation. Thus, the tax treatment of mergers at the level of the fund would not be discriminatory from a practical perspective.

B. Investor level

In respect of the investor, the tax implications would depend on whether or not the merger can be carried out for tax purposes under a transaction covered by the Spanish tax neutrality regime or not:

- (i) Under the Spanish tax neutrality regime no tax will be triggered at the investor's level. In this regard shares/units received would keep for tax purposes the acquisition date and value of the shares/units transferred. (Art. 88 CIT Law)
- (ii) If the transaction is not covered by the neutrality regime, the investors will be taxed for transfer of the shares/units in Spain for the difference between the acquisition cost of the shares/units and its present market value (i.e. embedded capital gains will be taxed). Art. 94 of Personal Income tax Law (PIT).

1. Domestic merger

In the event of Domestic Mergers, merger of funds or subfunds belonging to different funds are tax neutral for the investor (Art. 83-96 CIT Law). However, in case of subfund mergers, please note that the Tax Authorities criterion is to consider only as qualified transactions, mergers of subfunds belonging to different funds. Mergers of subfunds belonging to the same fund will not be entitled to apply the regime to the extent that they do not have an independent character for tax purposes. In this sense, this transaction does not fall under the scope of the Merger Directive, and thus the special tax regime would not be applicable in Spain.

2. Foreign merger

In the event of Foreign Mergers, it will be relevant whether the merger is carried out between entities adopting a legal form listed in the annex of the Merger Directive 90/434/EEC. Certain restructuring operations (Contractual Fund-Contractual Fund or Corporate Fund-Contractual Fund) might not currently achieve tax neutrality. In those cases taxation would arise for a Spanish investor holding shares/units of the merged fund. This could be discriminatory as long as merger of Spanish funds are generally tax neutral for the investor.

3. Inbound merger

The same conclusion as for the foreign merger applies.

4. Outbound merger

The same conclusion as for the foreign merger applies.

5. Conclusion

There is potential tax discrimination in relation to the Spanish treatment of certain cross-border mergers.

II) Management Company Passport

A. Management Company level

1. Inbound

If a Management Company is transferred to Spain, no taxation takes place in Spain upon transfer (inbound situation). In case the Management Company is transferred to Spain leaving a branch in the departing country, this branch may qualify as a permanent establishment ("PE") under the terms of the Double Taxation Agreement in place between Spain and the other EU member state where the branch is located as well as for Spanish tax purposes. In principle, under Spanish tax Law (art. 22 of Corporate Income Tax "CIT" Law), under certain requirements the profits of a foreign PE are exempt to tax in Spain. Alternatively the tax payer may opt to credit tax paid abroad. Please note that Spain has concluded Double Taxation Agreement with most EU countries.

2. Outbound

The transfer (full or partial) of an existing Management Company outside Spain could give rise to taxation unless the assets and liabilities remain assigned to a permanent establishment (i.e. the difference between the normal market value assets -intangible assets, goodwill- and its book value would be taxed at a 30 percent rate) Art. 17 CIT Law.

B. Fund level

1. Inbound

Under Spanish legislation (Art. 8 CIT Law), an entity is deemed to be considered tax resident in Spain for CIT purposes if, among other criteria, its place of effective management is located in Spain.

The localization of the Management Company should have no impact from a Spanish tax perspective on the residence of corporate UCITS as long as the decisions are taken by the directors of the corporate UCITS in the country of location of the corporate fund. The fact that a company located in Spain advises on the asset management does not transfer 'per se' the effective place of management to that location under Spanish tax rules.

The question arises however on the management of contractual UCITS and unit trusts and their effective place of management.

Under the absence of specific Spanish tax rules applicable for contractual UCITS or unit trusts, the transfer of a Managing Company from another EU State to Spain managing a foreign contractual UCITS or unit trust could give rise to potential tax residence issues. Considering that a contractual UCITS or unit trust cannot be self-managed and all the decision making process is carried out by the Management Company, a Spanish Management Company could make the non Spanish UCITS tax resident in Spain.

2. Outbound

Where a Spanish UCITS had a Management Company tax resident in another EU member state, a Spanish UCITS would remain Spanish tax resident unless a Double Taxation Agreement determined that the Spanish UCITS (corporate or contractual UCITS) was resident elsewhere.

If the applicable Double Taxation Agreement determines that the Spanish UCITS is not resident in Spain for CIT purposes it would not be under the scope of Spanish CIT.

C. Investor level

1. Inbound/Outbound

The transfer of a UCITS Management Company would in principle have no tax implications for investors. In this regard, no disclosure of unrealized gains at investor's level may arise as long as the potential change in the tax residency of the UCITS fund would not imply, in principle, the disposal of the shares/units.

III) Master-Feeder Structures

A. Feeder

1. Transformation of a fund into a Feeder

a. Impact at fund level

According to Spanish CIT Law Master and Feeder funds are taxed under the same special tax regime as normal resident funds (i.e. are taxed at a 1 percent rate), provided that the requirements established in Law 35/2003 in order to be considered as undertaking for collective investments are met (specifically both funds shall have at least 100 or more shareholder/unit holders). Thus no there would be no impact on the transformation of a fund into a Feeder fund since both are taxed in the same way.

b. Impact at investor level

No taxation will be triggered in Spain at investor's level as long as the transformation of the existing UCITS in a Feeder fund would not imply the disposal of the shares/units of Fund (the Feeder fund) by the investor. Thus, the change of the investment policy will not be, in principle, relevant for Spanish Tax purposes.

2. Ongoing taxation

a. General

The Feeder fund will be taxed at 1 percent CIT rate on any income determined according to the GAAP applicable to Spanish Funds under the same rules as other Spanish UCITS.

b. Subscription tax

Spain does not levy subscription tax on UCITS.

c. Stamp Duties

No Stamp Duty Applicable.

d. Withholding tax on payments made to investors

The Spanish tax treatment for a UCITS should be the same as irrespective of whether it is a Master, a Feeder or a normal UCITS. Thus, the Spanish investors on the Feeder would be taxed on any distribution made by the Feeder or upon any redemption/transfer of units/shares under same rules applicable to other Spanish UCITS.

e. Others

There are no other tax considerations to be taken into account in Spain.

B. Master

1. Transformation of a fund into a Master

a. Impact at fund level

Similar to the transformation of a UCITS into a Feeder as discussed above, the Spanish tax treatment for a UCITS should be the same as irrespective of whether it is a Master, a Feeder or a normal UCITS provided that the requirements established in Law 35/2003 in order to be considered as undertaking for collective investments are met (specifically to have at least 100 or more shareholder/unit holders).

b. Impact at investor level

See details under Feeder above.

2. Ongoing taxation

a. General

See details under Feeder above.

b. Subscription tax

See details under Feeder above.

c. Withholding tax on payments made to investors

See details under Feeder above.

d. Taxation of non-resident Feeders

Distributions from the Spanish Master fund to a Feeder fund located in another Member State will be subject to 1 percent withholding tax on net basis. Standard 19 percent withholding tax will be applied at source and the foreign Feeder will have to claim a refund from the Spanish tax authorities by filing the relevant claim forms. Redemptions/ transfers will generally be exempt from withholding tax in Spain. However, uncertainty on the application of the exemption exist in case of a non treaty FCP holding participations in the Spanish Master for 25 percent or more.

e. Access to Double Taxation Agreement benefits

The position of the Spanish tax authorities is that Spanish UCITS (whether corporate or contractual) should be entitled to access the benefits of Spain's Double Taxation Agreements. Spanish tax authorities issue certificates of tax residence within the meaning of the relevant Double Taxation Agreement for Spanish UCITS.

f. Stamp duties

No stamp duties are applicable to UCITS.

g. Other tax considerations

The change of residency of the Master may impact the withholding tax levied in the country of investment.

UCITS IV - Report United Kingdom

I) Cross-border Mergers

A. Fund level

1. Domestic mergers

Any gains arising on transfer of assets by a UK fund to another UK fund should not be subject to UK corporation tax on any chargeable gains. This is on the basis that UK funds are not subject to UK tax on chargeable gains arising out of non-trading transactions.

To the extent that UK equities are transferred from the discontinuing to continuing fund, a scheme of arrangement ought to qualify for relief from UK stamp duty and stamp duty reserve tax ("SDRT"). A merger of UK funds should qualify for such relief.

2. Inbound mergers

A non-UK fund should not be subject to UK capital gains tax on any gains arising on transfer of its assets to a UK fund.

An approach to HMRC is recommended for relief from UK stamp duty and SDRT on underlying UK equities.

3. Outbound mergers

Any gains arising on transfer of assets by a UK fund to a non-UK fund should not be subject to UK corporation tax on any chargeable gains. This is on the basis that UK funds are not subject to UK tax on chargeable gains arising out of non-trading transactions.

An approach to HMRC is recommended for relief from UK stamp duty and SDRT on underlying UK equities.

4. Conclusion

The UK tax regime should not be discriminatory at the fund level with respect to cross-border mergers. However, not all cross-border scenarios have been tested.

B. Investor level

1. Domestic merger

Non-UK residents are generally not subject to UK tax on capital gains so there should be no UK capital gains tax implications for such investors.

UK resident investors are normally taxed on their capital gains at a rate of 18 or 28 percent but there are established rules providing relief from capital gains tax when corporate funds or unit trusts merge. This relief is available to "schemes of reconstruction".

Mergers of UK funds (either unit trusts or open-ended investment companies) are typically carried out as Financial Services Authority ("FSA") 'schemes of arrangement' and these generally qualify as schemes of reconstruction. (scheme of reconstruction is a tax definition, whereas scheme of arrangement is a regulatory term.) The main criteria to meet to fall within the scheme of reconstruction tax definition are¹⁴:

- > The scheme involves the issue of ordinary share capital (or units in a unit trust);
- > Investors are equally entitled to shares/units in the successor fund;
- > There is a continuity of business i.e. the business or substantially the whole of the business of the discontinuing fund is carried on by one or more successor funds.

In addition, the merger must be for bona fide commercial purposes to enable those with a greater than 5 percent holding in the discontinuing fund to qualify for this treatment. It is common practice to seek clearance from HM Revenue and Customs that this is the case and generally FSA approved schemes of arrangement (or non-UK equivalent schemes) ought to qualify. Provided that the merger qualifies as a "scheme of reconstruction" a tax charge or loss is not crystallized on merger for UK investors.

2. Foreign merger

If a foreign merger is to be tax neutral for investors, the merger must meet existing reliefs, principally the scheme of reconstruction definition as described above. It is as yet unknown whether the scheme of reconstruction is broad enough to encompass all styles of UCITS merger.

The continuing and discontinuing UCITS are likely to seek reporting status¹⁵ to help ensure that UK investors are subject to capital gains rather than income tax.

- > If the discontinuing fund does not have a reporting status but the continuing fund does, an income tax charge is crystallized.
- > If the discontinuing fund has a reporting status but the continuing fund does not or if both the funds have a reporting status, a capital gains tax charge may crystallize unless the scheme qualifies as a scheme of reconstruction.
- > If both the funds do not have a reporting status, the UK investor may be able to obtain roll-over relief on the gains.

3. Inbound merger

If the event is to be tax neutral for UK investors in the foreign fund, the merger must meet existing reliefs, principally the scheme of reconstruction definition as described above. Following changes that take effect from 1 December 2009, the analysis for companies and unit trusts should broadly apply to contractual funds (there are no UK contractual funds).

The discontinuing UCITS is likely to seek reporting status to help ensure that UK investors are subject to capital gains rather than income tax when they realize their investment. If the discontinuing fund does not have reporting status, an income tax charge may be crystallized upon realization.

¹⁴ Section 135, TCGA 92

¹⁵ UCITS available to the UK market typically apply for reporting status ('distributor status' before 1 December 2009), which is an optional regime that puts non-UK UCITS in a similar position to UK UCITS on the basis that they report whole of their income each year and comply with other requirements.

4. Outbound merger

The ongoing tax treatment must be considered – the treatment of UK investors in non-UK UCITS ought to be broadly equivalent to that of UK investors in a UK UCITS provided that the non-UK UCITS qualifies for distributor status. In broad terms, UK retail investors are not accustomed to investing in contractual funds, which are treated as transparent as far as income is concerned and are used to receiving composite dividends rather than streamed information.

If the event is to be tax neutral for the investors, the merger must meet existing reliefs, principally the scheme of reconstruction definition as described above. The continuing UCITS is likely to seek reporting status to help ensure that UK investors are subject to capital gains rather than income tax when they realize their investment. If the continuing fund does not have reporting status, a capital gains tax charge is crystallized upon realization.

5. Conclusion

The UK tax regime should not be discriminatory at the fund level with respect to cross-border mergers. However, not all cross-border scenarios have been tested.

II) Management Company Passport

A. Management Company level

The transfer of an existing Management Company out of the UK could give rise to taxation on gains unless the assets and liabilities remain assigned to a UK permanent establishment (PE)¹⁶. UK based management companies are subject to corporation tax at a 28 percent rate.

B. Fund level

1. Inbound

The UK taxation rules create uncertainty for management companies wishing to manage non-UK funds remotely. There is a risk that the transfer of an existing Management Company into the UK may result in UK taxation of non-UK funds. A UCITS that takes the form of a company could become tax resident in the UK if its “central management and control” is exercised from the UK or, in cases where a Double Taxation Agreement applies to decide between two potential countries of residence, its place of ‘effective management’ is in the UK.

The case law concept of “central management and control” is, in broad terms, directed at the highest level of control of the business of the company. It is to be distinguished from the place where the main operations of a business are to be found, though these two places may often coincide.

A body of case law exists on the meaning of the concepts of “central management and control” and established principles are followed by non-UK companies to help ensure that central management and control and “effective management”, are exercised from outside of the UK. Statement of Practice 1/90 sets out HMRC’s position.

A UCITS that is not incorporated in the UK can therefore manage its affairs such that it does not become UK resident.

¹⁶ Section 185, Taxation of Chargeable Gains Act 1992 (TCGA 92)

For example, central management and control can be exercised by a Board of the UCITS outside the UK or by a non-UK branch of the Management Company. However, retaining such substance in the home domicile of the UCITS may offset the benefits of using the Management Company passport in the first place.

The consequences of subjecting non-UK UCITS to UK taxation are likely to be significant as they would be subject to tax as ordinary companies i.e. with income and gains subject to corporation tax at 28 percent. By contrast, UK UCITS are taxed on their income at a rate of only 20 percent and are exempt from capital gains.

The position of unit trusts is less clear as, although they are deemed to be companies for the purposes of TCGA 92¹⁷, they have a very different legal and governance structure.

The position for contractual funds is particularly unclear as the funds themselves have no legal personality and the UK does not have a complete tax, regulatory or legal regime for contractual funds. As the UK tax authorities typically regard contractual funds as transparent, the direct tax and VAT effects of having a UK Management Company for foreign funds are potentially complicated.

Non-UK funds may be subject to tax in the UK if they carry out trading activities in the UK through a UK PE. Trading funds (the presumption is that most UCITS funds do not carry on trading activities) have a risk that management from the UK could create a PE of the fund. There is an established safe harbor, the Investment Manager Exemption¹⁸, which applies provided that the manager and the fund are independent of one another. Where this exemption does not apply, a corporate UCITS is likely to be subject to tax as an ordinary company i.e. with income and gains subject to corporation tax at 28 percent.

2. Outbound

The transfer of an existing Management Company to outside the UK could result in the UK fund being subject to tax in the jurisdiction of the Management Company if effective management is outside of the UK. UK open-ended investment companies could become dual resident in such cases as they would still be resident in the UK as this is the country of incorporation. Double Taxation Agreements to the extent they apply generally regard place of effective management as the place of residence.

In addition, moving the Management Company of a UK fund to another European jurisdiction could create a PE of the fund in the other jurisdiction depending upon their rules.

C. Investor level

The transfer of the Management Company would not typically have any tax implications for UK investors unless it resulted in a transfer of residence of a UK fund outside of UK in which case consideration of the UK's offshore fund rules (Schedule 22 FA 2009) would be needed.

3. Conclusion

The UK rules are potentially discriminatory because if an offshore fund becomes UK tax resident then the applicable tax rate would be 28 percent on income and gains whereas UK UCITS are taxed at 20 percent on income but are exempt from capital gains tax.

¹⁷ Section 91, TCGA 92

¹⁸ Para 3, Schedule 26, Finance Act 2003

III) Master-Feeder Structures

A. Feeder

1. Transformation of a fund into a Feeder

a. Impact at fund level

There should not be material concerns other than potential transfer taxes (e.g UK Stamp Duty) which apply to funds in all countries.

b. Impact at investor level

A UK Feeder should not give rise to new tax concerns at investor level.

2. Ongoing taxation

If a UK UCITS is used as a Feeder fund it is important that the non-UK Master fund is tax transparent or is able to qualify for reporting status to ensure that the gains are not taxed at Feeder fund level. If this is not the case, gains on disposal of shares or units in the Master fund could be subject to corporation at 20 percent at Feeder fund level.

The effect of the SDRT regime which applies to UK-based UCITS should be considered. Holdings in other UCITS are only exempt from this charge if the other UCITS can only hold exempt assets and the trust deed, instrument of incorporation or prospectus provides for such a restriction. UK Feeder UCITS would be subject to a disproportionate SDRT charge unless a special provision in the legislation is introduced. For example, if a UK UCITS holds Japanese equities directly it does not incur SDRT charge. However, if the UK UCITS were to become a UK Feeder into a Japanese-equity Luxembourg SICAV, the holding of shares in the Luxembourg SICAV would become a non-exempt asset for the purposes of Schedule 19 Finance Act 1999 leading to a potential SDRT charge at Feeder fund level.

Feeder funds could present a reporting challenge to the UK funds industry. As the UK Statement of Recommended Practice is silent on whether or not Feeder funds should consolidate the results of Master funds, additional reporting will be required to enable UK Feeder funds holding units in tax transparent Master funds to complete their corporation tax returns.

B. Master

1. Transformation of a fund into a Master

a. Impact at fund level

HMRC should confirm that a look-through approach can be taken in applying the Genuine Diversity of Ownership condition. This is a relatively new test and affects UK UCITS that seek Tax Elected Fund status or that seek comfort that they will not be subject to tax on trading profits. To benefit from these regimes, a UK UCITS must demonstrate that it is diversely owned. If a UK Master fund only has small number of Feeder funds it could struggle to meet this test even if the Feeder funds are diversely owned. Therefore, it would be useful to introduce a look through principle so that the diversified ownership of the Feeder funds can be taken into account by the Master fund.

b. Investor level

As noted in relation to mergers, there should not be any material considerations provided there is a scheme of reconstruction. Share for share exchange provisions may also apply¹⁹.

2. Ongoing taxation

As far as the ongoing position is concerned, the preferred Master funds are likely to be tax transparent so that they do not distort the withholding tax analysis of the Feeder funds. For example, if the Feeder funds are resident in treaty countries and the Master fund is resident in a non-treaty country, a higher rate of withholding tax is likely to be applied by some countries of investment. UK funds can be sensitive to this, as they tend to qualify for Double Taxation Agreement benefits.

The UK does not have an appropriate transparent UCITS vehicle. However, if transparency is not important, authorized unit trusts or open-ended investment companies could give a favorable outcome. As above, they tend to qualify for Double Taxation Agreement benefits and do not impose withholding tax on distributions to corporate Feeder funds or unit trusts.

As contractual funds are generally regarded as tax transparent by HMRC, interest distributions from a UK Master fund that meets the bond fund test (i.e. more than 60 percent of its assets comprise debt and debt-like securities) to a contractual Feeder fund, will be subject to a withholding tax of 20 percent at Master fund level unless the participants of the contractual Feeder fund certify that they are not UK resident.

¹⁹ Section 135, TCGA 92

UCITS IV Report – Finland

The present report expands on the tax consequences in Finland upon the set up of a Single Management Company, the merger of funds and the creation of Master-Feeder schemes. We also took the position that the units of the funds would be subscribed by investors that would be resident in Finland through a distribution channel located in Finland (i.e. a Finnish bank or a Finnish broker). The consequence is that payments to the investors would be done locally (and not cross-border), so that no EU Savings Directive would apply.

I) Cross-border Mergers

A. Fund level

1. Domestic merger

At the level of the fund, a domestic merger should not trigger taxation as the funds are not subject to income tax in Finland.

2. Inbound merger

Legally, Finnish funds cannot currently merge cross-border. As the merger would not be regarded as a merger from legal point of view, Finnish transfer tax would be due on the transfer of Finnish shares. Merger should not trigger corporate income taxation in Finland.

3. Outbound merger

Legally, Finnish funds cannot currently merge cross-border. As the merger would not be regarded as a merger from legal point of view, Finnish transfer tax would be due on the transfer of Finnish shares. Merger should not trigger corporate income taxation as the funds are not subject to income tax in Finland.

4. Conclusion

The tax treatment of mergers at the level of the fund is discriminatory.

B. Investor level

1. Domestic merger

The merger of the Funds does not trigger taxation at the investor's level if carried out in accordance with Finnish Business Income Tax Act. These special provisions apply to a merger in which one or more Finnish companies are dissolved without liquidation and all of the assets and liabilities of the dissolved company are transferred to another Finnish company. The dissolved company's shareholders, who may be residents or non-residents, must receive shares in the receiving company as compensation in proportion to their shareholding. A small part of the compensation, corresponding to no more than 10 percent of the nominal value of the shares received as compensation, may consist of a cash payment. The part of transaction possibly compensated as a cash payment to a Finnish unit holder is taxable for the unit holder.

2. Foreign merger

According to Finnish court practice, a merger of two Luxembourg SICAVs can be carried out tax neutrally from Finnish investor point of view. However, there are currently no express rules in Finnish tax law which would provide tax neutrality of mergers of foreign funds in taxation of Finnish investors.

3. Inbound merger

A cross-border fund merger has not yet been tested in Finland as legally, Finnish funds cannot currently merge cross-border. Currently, there is no tax legislation which would guarantee that cross-border merger could be carried out tax neutrally for Finnish investors. However, according to Finnish court practice, merger of two SICAVs can be carried out tax neutrally from Finnish investor point of view. Thus, it could be expected that corporate and unit trust mergers could be tax neutral at the investor level if carried out in a way that corresponds with the merger described in Finnish Business Income Tax Act, but this is uncertain. It is even more uncertain whether a merger of contractual funds can be tax neutral from a Finnish investor's point of view.

4. Outbound merger

See inbound merger above.

5. Conclusion

There may be tax discrimination upon cross-border mergers.

II) Management Company Passport

A. Management Company level

1. Inbound

If a Management Company is transferred to Finland through a cross-border merger, no taxation takes place in Finland upon transfer (inbound situation). In case the Management Company is transferred to Finland leaving a branch in the departing country, this branch may qualify as a permanent establishment ("PE") for Finnish tax purposes. In principle, the profits of a foreign PE are subject to tax in Finland, with the possibility under domestic law to credit tax paid abroad. However, if Finland has concluded a Double Taxation Agreements with the country in which the PE is located providing for the exemption method, the PE will be taxed only in that country. Please note that Finland has Double Taxation Agreements with most EU countries.

2. Outbound

The transfer of a Management Company abroad through a cross-border merger will not lead to exit taxation on hidden reserves and unrealized capital gains provided that a branch continuing the activity of the Management Company is left in Finland (to ensure taxation in Finland in the future) and other prerequisites for tax neutral merger are met.

If the prerequisites are not met, the transfer of a Management Company from Finland to another Member State (outbound situation) triggers exit taxation on the hidden reserves and latent capital gains.

B. Fund level

1. Inbound (Finnish Management Company managing a foreign fund)

The localization of the Management Company in Finland should not have an impact from a Finnish tax perspective on the residence of a foreign fund. Thus, the tax residency of the fund located outside Finland should not be attracted to Finland if the Management Company is located in Finland.

As a consequence, from a Finnish tax perspective, there is no changed tax residency further to a Finnish Management Company managing a foreign fund irrespective of the latter's legal form.

2. Outbound (Foreign Management Company managing a Finnish fund)

In an outbound merger of Management Company or conversion of a Management Company into a branch, it is possible that the fund will be regarded as non-resident for Double Taxation Agreement purposes after the merger in cases where the applicable Double Taxation Agreement resolves possible dual residency conflicts on the basis of effective place of management. Thus, there is a potential changed tax residency of the fund triggering foreign tax liability even though Finnish funds are out of scope of Finnish income tax law. The impact on the fund therefore depends on the jurisdiction where the Management Company will be located (e.g. if the attraction of the fund takes place due to the transfer of a Management Company to that country).

As a consequence, depending on the jurisdiction where the Management Company will be located, the Finnish based fund could suffer an unexpected foreign tax liability. In case such foreign tax liability would arise, its level and materiality will depend on the applicable foreign tax provisions (mainly if they could benefit or not from the same exemptions than the domestic investment funds).

C. Investor level

1. Inbound/Outbound

On the investor level there should be no disclosure of unrealized capital gains as long as the potential change in tax residency of the UCITS would not imply the disposal of the shares/units.

III) Master-Feeder Structures

A. Feeder

1. Transformation of a Finnish based fund into a Feeder fund

a. Impact at fund level

If a Finnish based fund is transformed into a Feeder, no income taxes will be due at the level of the fund as funds are not subject to income tax.

b. Impact at investor level

At the level of the investor, no disclosure of unrealized gains may arise as long as the transformation of the existing UCITS in a Feeder fund would not imply the disposal of the shares/units.

2. Ongoing taxation

a. General

A Finnish based Feeder fund is income tax exempt.

b. Redemption

There is no withholding tax upon redemption.

c. Stamp duties

No stamp duties are applicable in Finland.

d. Others

There are no other tax considerations to be taken into account in Finland. The move of assets from an existing fund to a Master fund may raise changes in the withholding tax withheld in the country of the investment. Transfer tax of 1.6 percent may be levied on transfer of Finnish shares.

B. Master

1. Transformation of a Finnish based fund into a Master fund

a. Impact at fund level

If a Finnish based fund is transformed into a Master fund, no income taxes will be due as funds are not subject to income tax.

b. Impact at investor level

At the level of the investor, no disclosure of unrealized gains may arise as long as the potential change of the Finnish UCITS fund into Master fund would not imply the disposal of the shares/units.

2. Ongoing taxation

a. General

A Finnish based Master fund is income tax exempt.

b. Withholding tax

In the case where the Master fund is located in Finland and the Feeder fund is located abroad, there would be a withholding tax when distributions are made from a domestic (Finnish) Master fund to a foreign Feeder fund. If the foreign Feeder is eligible to Double Taxation Agreement benefits, the Double Taxation Agreement may prevent this. Also, no withholding tax is levied in case the domestic Master fund redeems its units. However, withholding tax might be levied when the Master fund makes distributions (distribute profits).

The financial consequences can be seen in the following cases for distributing funds:

Case 1:

- > A Finnish individual invests in a Finnish Feeder fund;
- > The Finnish Feeder fund invests in a Finnish Master fund;
- > The Finnish Master fund invests in shares from a Finnish company.
- > The Finnish company pays a €100 gross dividend

Case 2:

- > A Finnish individual invests in a Foreign Feeder fund;
- > The Foreign Feeder fund invests in a Finnish Master fund;
- > The Finnish Master fund invests in shares from a Finnish company.
- > The Finnish company pays a € 100 gross dividend

Example

c. Taxation of non-resident Feeders

	Case 1	Case 2
At the level of the Finnish distributing company		
Gross dividend	100	100
Finnish WHT	N/A	N/A
At the level of the Master fund		
Dividend received	100	100
WHT	N/A	28 (1)
At the level of the Feeder fund		
Dividend received	100	72
Finnish WHT	N/A	N/A
At the level of the Finnish investor		
Net dividend received	100	72
Personal income tax	YES	YES

(1) Double Taxation Agreement, if any, may reduce the withholding tax rate

A non-resident Feeder fund is not liable to tax in Finland (but see above withholding tax).

d. Access to Double Taxation Agreement benefits

Finnish funds benefit from a large number of Double Taxation Agreements that Finland concluded. In certain cases investment funds are excluded from the Double Taxation Agreement benefits.

e. Stamp duties

No stamp duties are applicable in Finland.

f. Other tax considerations

None.

UCITS IV Report – Italy

This report specifies the tax consequences in Italy of setting up a Single Management Company, merging funds and creating Master-Feeder schemes.

I) Cross-border Mergers

A. Fund level

1. Domestic merger

Current Italian tax rules do not cover mergers between investment funds (SICAVs and contractual funds). However, according to the tax authorities' interpretations and the guidelines issued by the association of investment management companies, mergers between Italian funds (managed by the same Management Company) are tax neutral for the fund and the investors if and to the extent that (i) the assets and liabilities of the merged fund are transferred to the merging fund without any interruption of the management by the fund manager and (ii) for the investors the merger implies only an exchange of units in the merged fund against units in the merging fund, and does not trigger a taxable event.

2. Inbound merger

There are no guidelines regarding cross-border mergers between investment funds. It is unlikely that an inbound merger would trigger taxation in Italy; the net assets of the merged fund would be included in the net assets of the Italian fund when applying the Italian substitute tax at a rate of 12.5 percent.

However, there are no rules regarding the initial value of the assets of the merged fund to be considered for tax purposes.

3. Outbound merger

There are no guidelines regarding cross-border mergers between investment funds. There is a potential risk of taxation at fund level.

Regarding the initial value of the assets of the Italian merged fund, the evaluation of these assets should not consider the "virtual tax credit" accrued by the fund itself. In particular, according to the Italian tax regime a domestic investment fund is subject to a 12.5 percent substitute tax on its 'operating income' accrued during the year. If the fund's operating income for a tax period is negative, a 'virtual tax credit' of 12.5 percent – which can be deducted against operating income accrued in the future tax periods by the fund itself or by other funds managed by the same Management Company – is recorded as an asset of the fund.

In the case of an outbound merger, this "virtual tax credit" should not be considered among the assets of the Italian merged fund because it would not be realizable by the foreign fund resulting from the merger, representing the right of the Italian merged fund to pay less taxes (the Italian substitute tax) in the future fiscal periods. As a consequence, there would be a devaluation of the Italian fund units at the merger.

4. Conclusion

The tax treatment of cross-border mergers at fund level could be discriminatory since mergers between Italian funds are tax neutral.

B. Investor level

1. Domestic merger

If the conditions described above are met, the merger between Italian funds is tax neutral for the investors.

2. Foreign merger

There are no guidelines regarding foreign mergers between investment funds. However, it cannot be excluded that the tax authorities could assume the merger as a taxable event similar to the disposal of units.

3. Inbound merger

Even though there are no tax rules granting the tax neutrality of a merger of a non-resident fund into an Italian fund, it cannot be excluded that the tax authorities could consider the merger as a taxable event similar to the disposal of units.

4. Outbound merger

See point 3 'Inbound merger' above.

5. Conclusion

The tax treatment of cross-border mergers at the investors' level could be discriminatory since mergers between Italian funds are tax neutral.

II) Management Company Passport

A. Management Company level

1. Outbound

The transfer of a Management Company abroad will not lead to exit taxation provided that a permanent establishment (the "PE") continuing the activity of the Management Company remains in Italy – in accordance with Article 166 of the Italian Tax Law – and all assets and liabilities of the Management Company are allocated to the PE.

B. Fund level

1. Inbound (Italian Management Company managing a foreign fund)

The Italian provision (Art. 10-ter of Law n. 77/1983) regarding the tax regime of foreign collective investment vehicles does not seem to consider as subject to Italian taxes collective investment vehicles which are not governed by Italian law, irrespective of the place where the Management Company is resident. The same rule provides for the application of a withholding tax on the entire amount of the revenues deriving from participation in those vehicles on the assumption that their income is not subject to Italian taxes.

Therefore, collective investment vehicles ruled by a foreign law could not be considered resident in Italy, even if they are managed by an Italian Management Company.

2. Outbound (Foreign Management Company managing an Italian fund)

Even if there are no specific rules on the tax residency of investment funds in Italian legislation, according to Article 9 of Law n. 77/1983, regarding the tax regime of Italian open-ended investment funds, only collective investment vehicles ruled by Italian law are subject to the 12.50 percent substitute tax. Therefore, collective investment vehicles ruled by Italian law should be subject to Italian taxes even if they are managed by a foreign Management Company; for the same reason, the transfer of the tax residence of the Management Company out of Italy would not prevent a collective investment vehicle ruled by Italian law to be subject to the Italian 12.50 percent substitute tax. In other words, according to the Italian tax regime, the liability to Italian taxes of collective investment vehicles seems to be attached to the country whose laws are governed by, so that country should remain the same even if the location of the Management Company is moved.

C. Investor level

1. Inbound

As mentioned above, the Italian legislation does not seem to consider collective investment vehicles ruled by a foreign law subject to Italian taxes, even if they're managed by an Italian Management Company. Therefore, the transfer of a Management Company to Italy should not impact on the tax regime applicable to the foreign fund and, consequently, to the investors.

2. Outbound

As collective investment vehicles are subject to Italian taxes only if they are ruled by Italian law, irrespective of the country where the Management Company is located, the tax regime applicable to the fund ruled by Italian law and to its investors should remain the same even if the location of the Management Company is moved abroad.

III) Master-Feeder Structures

A. Feeder

1. Transformation of an Italian-based fund into a Feeder fund

a. Impact at fund level

The Italian taxation regime for UCITS funds is not connected to the investment strategy. This means that the Italian tax treatment for a Master fund should be the same as that for a Feeder fund. Therefore, under both scenarios, corporate and contractual funds are subject to a 12.5 percent substitute tax (27 percent under certain conditions) which applies to the result of the management activity at year-end.

b. Impact at investor level

At the level of the investor, no disclosure of unrealized gains may arise as long as the transformation of the existing UCITS in a Feeder fund does not imply the disposal of the shares/units.

2. Ongoing taxation

a. Withholding tax on payments (distributions or redemption) made to investors

No Italian withholding tax should be levied on income derived from an Italian Feeder investing in an EU Master UCITS ("if governed by EU Directives"). Such income is included in the overall result of the management activity, subject to a 12.5 percent substitute tax.

b. Stamp duty

No stamp duty is applicable in Italy.

c. Withholding tax at the level of the investors

No Italian withholding tax should be levied at the level of the investors.

d. Others

The fund is subject to a 12.5 percent substitute tax (27 percent under certain conditions) which is applied to the result of the management activity at year-end.

B. Master

1. Transformation of an Italian-based fund into a Master fund

a. Impact at fund level

See point III.A.1 a) above.

b. Impact at investor level

See point III.A.1 b) above.

2. Ongoing taxation

a. Withholding tax on payments (distribution or redemption) made to the Feeder

No Italian withholding tax should be levied on payments (distribution or redemption) made from Italian Master funds to Italian Feeder funds.

Such payments are taxed at the level of Italian Master funds, and consequently, from an Italian tax perspective, such payments are not included in the overall result of the management activity of the Italian Feeder funds and, therefore, not subject to any taxation.

With reference to payments to non-resident Feeders, no Italian withholding tax should be levied on payments made to EU Feeder funds. If these latter are ruled by the law of a country, included in a list ('white list'), that allows an adequate exchange of information with Italy, the EU Feeder funds are also entitled to receive a refund, equal to 15 percent of income distributed by the domestic Master fund, or realized upon redemption of the units. At present among Member States only Cyprus and Latvia are not included in the above-mentioned list.

Moreover, if all the investors in the Italian Master fund are non resident investors, the fund is exempt from the Italian alternative tax rate due on its operating income accrued during the year. In this case, the EU Feeder fund that is ruled by the law of a country included in the above-mentioned "white list" is exempt from any withholding taxes on payments (distribution or redemption) from the Italian Master fund.

b. Stamp duty

No stamp duty is applicable in Italy.

c. Access to Double Taxation Agreement benefits at the level of the Master

In the case where the Master is resident in Italy and it has investments abroad, the access to Double Taxation Agreement benefits would depend on the source Country of the investments. There are sufficient grounds to support the contention that Italian funds are liable to Italian tax and, therefore, can be considered resident in Italy, for Double Taxation Agreement purposes. In this respect, it is worth observing that, under a practical perspective, Italian tax authorities usually issue residence certificates to Italian investment vehicles.

In the case where the Master is resident in an EU Country and it has investments in Italy, the Double Taxation Agreement benefits would depend on the nature of the fund and, in particular, on the fact that the fund could be considered as resident for Double Taxation Agreement purposes (i.e. resident and "liable to tax" in its State of organization). In this case, the Double Taxation Agreement in force with the fund's Country is applicable. A certificate issued by the foreign tax authorities is required, stating that the fund is resident and liable to tax, in compliance with the relevant Double Taxation Agreement. If this certificate is not provided, the fund is not entitled to the Double Taxation Agreement benefits.

However, in the case of tax transparent funds, subject to certain conditions (clarified by circular letters issued by the Italian Tax Authorities), the Double Taxation Agreement in force with the investor's Country might be applicable.

UCITS IV Report – Sweden

As a consequence of the UCITS IV Directive, the Swedish Ministry of Finance in August 2009 appointed a committee with the assignment to analyze the possibilities to transfer the taxation of funds to investor level and to propose necessary changes to the law. The committee has accounted for its work in January 2010 and its proposal is now being discussed. Further changes may be required. Please note that the comments below are based on current legislation as of 1 January 2010.

Only contractual funds are currently allowed in Sweden.

I) Cross-border Mergers

There are no Swedish tax rules on cross-border fund mergers. The current tax rules only cover mergers between Swedish funds only or foreign UCITS funds only.

A. Fund level

1. Domestic merger

A merger between Swedish funds does not entail any Swedish tax consequences for the funds.

2. Inbound merger

There are no Swedish tax rules on cross-border fund mergers. However, an inbound merger should in our view probably not trigger any taxation for the Swedish fund.

3. Outbound merger

There are no Swedish tax rules on cross-border fund mergers. In case of an outbound merger there is in our view a risk that the merger may trigger exit taxation for the Swedish fund.

4. Conclusion

The tax treatment of mergers at the level of the fund is potentially discriminatory.

B. Investor level

1. Domestic merger

A merger between Swedish funds does not entail any Swedish tax consequences for Swedish investors.

2. Foreign merger

A merger between foreign EU domiciled funds that are UCITS does not entail any Swedish tax consequences for the Swedish investors, provided that the merger is in line with the legislation in the foreign country.

3. Inbound merger

There are no Swedish tax rules on cross-border fund mergers. An inbound merger should, in our view not trigger taxation as regards the Swedish investors' units in the Swedish fund but may trigger taxation as regards the Swedish investors' units/shares in the foreign fund, if any.

4. Outbound merger

There are no Swedish tax rules on cross-border fund mergers. An outbound merger may, in our view trigger taxation as regards the Swedish investors' units in the Swedish fund but should not trigger taxation as regards the Swedish investors' units/shares in the foreign fund, if any.

5. Conclusion

The tax treatment of mergers at the level of the investors is potentially discriminatory.

II) Management Company Passport

A. Fund level

1. Inbound (Swedish Management Company managing a foreign fund)

In the following, two cases are differentiated. Firstly, the analysis in case the foreign fund is incorporated (corporate fund) and secondly, in case the foreign fund is a contractual fund or is organized as a unit trust.

Sweden has no internal rules on "effective management" that could have an impact on the tax residency of the foreign fund. However, the rules regarding 'permanent establishment' may apply, in which case the foreign fund would be liable to Swedish tax on its Swedish related income.

In our view, the rules on permanent establishments should only be applicable to corporate funds. It is not likely that the rules would apply to unit trusts or contractual funds, provided those funds are not legal persons. Nor is it likely that the rules would apply to the beneficial owners of such funds.

E.g. the following may constitute a Swedish permanent establishment for a foreign corporate fund:

- > the corporate governance (e.g. shareholder and board meetings) is organized by the directors of the fund in Sweden, and/or
- > the Swedish Management Company is authorized to conclude agreements on behalf of the fund.

2. Outbound (Foreign Management Company managing a Swedish fund)

The tax residency of the Management Company should not influence the Swedish tax residency of the fund. Since Swedish investment funds are contractual there is however a small risk that a fund would be seen as tax resident

in the country of its “effective management”, i.e. where the Management Company is tax resident. This would also depend on the laws in the jurisdiction of the Management Company. As a consequence the Swedish fund could suffer an unexpected foreign tax liability which could lead to a double taxation. Such double taxation can however normally be eliminated or reduced under internal tax law.

B. Investor level

1. Inbound/Outbound

At the investor level there should be no disclosure of unrealized capital gains as long as the potential change in tax residency of the UCITS would not imply the disposal of the shares/units.

III) Master-Feeder Structures

A. Feeder

1. Transformation of a Swedish fund into a Feeder fund

a. Impact at fund level

A transformation of a Swedish fund into a Swedish Feeder fund may trigger exit taxation for the fund.

b. Impact at investor level

No taxation will be triggered in Sweden at investor level provided that the investor keeps the units of the same fund. In case however that the investor receives an additional cash amount as mentioned in the Directive, there may be a taxation risk.

2. Ongoing taxation

a. Redemption at the level of the Feeder

A redemption of a Swedish Feeder's units in a Swedish or foreign Master (UCITS) will not trigger taxation for the Swedish Feeder.

b. Stamp duties

There are no stamp duties.

c. Withholding tax on payments made to investors

There is Swedish withholding tax on dividend payments to foreign investors that are private individuals and to certain foreign legal entities

A Swedish Feeder would also be obliged to withhold preliminary tax on dividend payments to Swedish tax resident private individual investors.

d. Others

Potential CFC rules may also be applicable in case a Swedish Feeder would invest in certain foreign Masters, if the holding is more than 25 percent.

B. Master

1. Transformation of a Swedish fund into a Master

a. Impact at fund level

A transformation of a Swedish fund into a Swedish Master may be tax exempt but could trigger exit taxation for the fund, e.g. in case of disposal of its investments.

b. Impact at investor level

No taxation will be triggered in Sweden at investor level provided that the investor keeps the units of the same fund. In case however that the investor receives an additional cash amount as mentioned in the Directive, there may be a taxation risk.

2. Ongoing taxation

a. Redemption at the level of the Master

A redemption of units in a Swedish Master will not trigger taxation for a foreign Feeder.

b. Stamp duties

There are no stamp duties.

c. Withholding tax on payments made to the Feeder

In case of a Swedish Master and a Swedish Feeder there is no withholding tax. In case of a foreign Feeder that is a foreign legal entity there would be Swedish withholding tax on dividend payments to the Feeder.

d. Others

3. Access to Double Taxation Agreement benefits at the level of the Master

Swedish investment funds normally have access to Double Taxation Agreement benefits (from a Swedish tax perspective) but are excluded from some Double Taxation Agreements.

UCITS IV Report – Austria

I) Cross-border Mergers

A merger of funds is considered a deemed distribution at the level of the investor and is thus taxable in the hands of that investor. A merger should have no adverse tax consequences in relation to undisclosed capital gains at the level of the investor. The above consequences do apply to all legal forms of funds and both in a domestic and cross-border scenario.

II) Management Company Passport

Austrian funds are tax transparent. According to the general principle of equal treatment of domestic and foreign funds there should be no tax impact on either the fund or the investors in case of a merger of Management Companies. The same should apply in case of the conversion of a Management Company into a branch of another Management Company.

III) Master-Feeder Structures

A Master-Feeder structure is not possible yet under Austrian law. A conversion of funds into Master and/or Feeder funds could lead to adverse tax consequences in Austria especially when the assets of UCITS funds transforming into Feeder funds have to be sold.

UCITS IV Report - Belgium

Note: Only income taxes are considered here, no indirect taxes e.g. annual (subscription) tax, tax on stock exchange transactions, are mentioned.

I) Cross-border Mergers

1. SICAV

Private investors:

Private investors of a SICAV are generally not taxed upon merger nor upon liquidation, except for Belgian exit tax for qualifying UCITS .

Corporate investors:

Domestic merger: possibility of tax-exemption on the capital gains realized on the shares upon merger or contribution against shares.

Cross-border merger: if shares are exchanged as a result of a foreign merger or a cross-border merger, capital gains may be taxable, and capital losses are not tax deductible.

Corporate investors of a SICAV are, however, taxed upon liquidation or upon exchange of shares for units in an FCP.

2. FCP

Capital gains realised on units upon conversion of an FCP into Investment Company (type BEVEK or SICAV) are exempt from tax (except for Belgian exit tax).

Capital gains realised on units upon "merger" with another FCP (contribution in kind, i.e. exchange of units for units) are generally taxable. In principle, however, no taxation will occur in the hands of a private investor (except for Belgian exit tax).

II) Management Company Passport

The merger of Management Companies (inbound and outbound) as well as the conversion of a Management Company into a branch will not trigger any taxation at investor level. An inbound merger of a foreign Management Company of an FCP may result in WHT obligations. Non-Belgian source income of the FCP will become subject to Belgian WHT upon receipt by the Management Company that qualifies as Belgian financial intermediary.

An outbound merger of a Belgian Management Company of a so-called "DBI-bevek", whereby the effective management (and hence tax residency) of the Belgian "DBI-bevek" shifts away from Belgium, could result in the loss of "DBI" (i.e. partial exemption of corporate income tax on received dividends in the hands of corporate investors).

III) Master-Feeder Structures

In Belgium, no taxation will be triggered at investor level upon conversion of a fund into a Master or Feeder. There might, however, be WHT issues with the Master-Feeder structure, e.g. when a Belgian Master would be distributing funds to a foreign Feeder.

UCITS IV Report - Cyprus

I) Cross-border Mergers

1. Domestic merger

The merger of the funds will be, irrespective of their legal form, tax neutral at investor's level.

2. Cross-border merger:

Cyprus law is silent with regard to cross-border mergers of funds. In view of the tax exemption provisions with regard to the non-taxability of gains from disposal of units, such merger, once the UCITS IV Directive is implemented will not trigger any tax liability.

II) Management Company Passport

The merger of Management Companies (inbound and outbound) as well as the conversion of a Management Company into a branch will not trigger any taxation at investor's level.

III) Master-Feeder Structures

The conversion of a Fund into a Master or Feeder will not trigger any tax implications at investor level, regardless of whether the investor keeps the units/shares of the Feeder or Master fund. In addition, the legal form of the Funds will not impact the taxation at the investor's level

UCITS IV Report – Czech Republic

I) Cross-border Mergers

The neutrality would depend on how the merger takes place:

1. Domestic Merger

Merger between domestic mutual funds (the only type of fund allowed under UCITS) would not trigger any tax implications at investor level.

2. Cross-border merger

At the moment there are no specific Czech tax rules covering such situation. Under current Czech law, it is not quite clear if a Czech mutual fund is allowed to merge with any foreign fund but it is probably impossible. Accordingly, no certainty can be given to the tax treatment of such merger, once the UCITS IV Directive becomes implemented in the Czech Republic.

II) Management Company Passport

Under Czech law, only mutual funds qualify as UCITS. Although they do not have legal personality, they are subject to corporate income tax of 5 percent. These funds are managed by a so-called Investment Company, which is comparable to a Management Company. These Investment Companies and the managed funds are subject to the effective place of management rule. Accordingly, there is a risk that a foreign fund that would be managed by a single Management Company in the Czech Republic would become a Czech fund, subject to Czech taxation. In that situation, the risk of Czech withholding tax on distributions of the fund to the investors cannot be excluded.

Similarly, if a Czech mutual fund were managed by a foreign Single Management Company, e.g. following a Management Company merger, it cannot be excluded that it could become a foreign resident as well.

III) Master-Feeder Structures

In the Czech Republic, a conversion of a mutual fund into a Feeder is not possible, as this would run to contrary to the legal rules for funds with regard to risk diversification.

A conversion of a Czech mutual fund into a Master would be possible in principle, although the levying of withholding tax in case of distribution to the Feeders cannot be excluded. It is presently not clear what the tax implication of the implementation of the UCITS IV Directive with regard to Master-Feeder structures would be.

UCITS IV Report – Denmark

I) Cross-border Mergers

Denmark knows mutual investment funds (organized as a corporate) and open ended mutual funds (organized on an accumulation, distribution or account basis), named 'investment associations'. Investment funds may for Danish tax purposes also be qualified as so called "investment companies".

Taxation depends on the form of merger. Both a domestic and a cross-border merger may under certain conditions be performed as a tax exempt merger. In order to perform a merger as tax exempt merger certain requirements have to be met in respect of the legal form of the merged entities.

Potential taxable capital gains must, as a general principle, be declared on the investor's tax return.

Merger of a Danish corporate fund with foreign contractual funds or unit trusts are presently not possible under Danish law. As such, there is a risk of taxation at the level of the investors.

II) Management Company Passport

Generally, neither a domestic nor a cross-border merger (inbound and outbound) of management companies should have any tax effect for the Danish investors of the fund or the residency of the fund. However, in a cross-border setting, possible PE issues should be taken into account. Denmark applies the OECD principles for PE. There should be no differences in tax treatment if, instead of a merger, a Management Company is converted into a branch of another Management Company. This only applies to corporate funds, as there is no direct link between the Management Company and the Fund in that case. Other situations (contractual, unit trust) are not known under Danish law.

III) Master-Feeder Structures

A Master-Feeder structure is generally not applied for Danish mutual investment funds, which are generally organized as corporate entities.

There should generally be no Danish tax for the investor as long as the investor keeps the units in the same entity. If the investor receives units in another entity as part of the transaction capital gain taxation may be triggered. This will, however, depend on how the transaction is performed.

It is our opinion that Master-Feeder structures under the current tax regime can only be attractive, if the structure only contains investment companies (accumulating investment funds). Structures with distributing funds, will tax wise be less favorable treated than similar funds which do not participate in a Master-Feeder structure.

UCITS IV Report - Estonia

I) Cross-border Mergers

The merger of funds will be tax neutral at investor's level, in case of both, inbound and outbound mergers.

II) Management Company Passport

The merger of Management Companies (inbound and outbound) as well as the conversion of a Management Company into a branch will not trigger any taxation at investor's level.

III) Master-Feeder Structures

In Estonia, no taxation will be triggered at investor's level due to the conversion of a fund into a Master or Feeder.

UCITS IV Report - Greece

I) Cross-border Mergers

Greek UCITS may currently be merged either by absorption, or by a constitution of a new Greek UCITS. Such a merger incurs no taxation either for the funds involved or for the investors in such funds, regardless of tax residence of such investors (i.e. in case of a “domestic merger”, as this term is defined in the EFAMA/KPMG report).

The above tax treatment of domestic mergers has been in place since 1991 and is not expected to be altered with the implementation of Directive 65/2009.

With respect to “foreign mergers” there are no tax rules in Greece governing such mergers at the moment and therefore it is not possible to predetermine the implementation of UCITS IV regarding cross-border mergers and its impact at fund level. However at investor level it is expected that the fundamental rule that no taxation incurs at investor level will be maintained.

II) Management Company Passport

Present Greek law regulates the Greek Management Company as having its registered seat and central management in Greece, and a Greek depository in order for it to manage Greek UCITS.

The tax residence of the fund manager is therefore material for the purposes of securing the specific tax regime of Greek UCITS. Current Greek law does not provide for the tax regime of UCITS set up in another Member State managed (by means of the “passporting procedure” of UCITS I-III) by a Greek Management Company.

The implementation of UCITS IV in Greece is expected to maintain the present tax regime for Greek UCITS (a Greek fund managed by a Greek manager).

At fund level, for a Greek UCITS to maintain the existing tax regime irrespective of the seat of their Management Company (i.e. in the case of a Greek Management Company relocating its activities to a jurisdiction other than Greece) upon implementation of UCITS IV the separation must be made in the law at the level of definition of a Greek UCITS. At present, as already said, a Greek UCITS is a contractual-type fund created under Greek Law 3283/2004 and managed by a Management Company registered and regulated in Greece. This separation at definition level is also necessary in the case of a Greek Management Company managing a UCITS set up in another Member State, so that the foreign UCITS although managed by a Greek Management Company maintains the tax regime of the UCITS country of origin.

At company level, the merger of Management Companies (inbound and outbound) as well as the conversion of a Management Company into a branch should trigger no taxation at investor level.

III) Master-Feeder Structures

Greek law permits Greek UCITS to hold units of other UCITS (whether Greek or foreign) within the limitations of UCITS I-III. The tax regime provided by Greek law affords to the holding Greek UCITS tax exemption for income received by the other UCITS or when redeeming units of Greek UCITS. It also affords investors in a holding Greek UCITS a tax exemption when redeeming units of such holding Greek UCITS.

The implementation of UCITS IV in Greece should be expected to retain existing regime for such income and for such redemptions, within a Master-Feeder structure, in line with the current status of the law. Therefore, in a Greek Feeder – Foreign Master structure, sales of Feeder units to investors, whether in Greece or abroad, should be tax-free. Redemptions by such investors should be tax-free. Investors should incur no capital-gains tax upon redemption. Income paid by the Foreign Master to the Greek Feeder should be tax-free. In a Greek Master – Foreign Feeder structure, sales of Master units to the Feeder, whether in Greece or abroad, should be tax-free. Redemptions by the Feeder should be tax-free. The Feeder should incur no capital-gains tax upon redemption. Income from transferable securities received by the Master, should be tax-free. All other income and redemptions within a Master-Feeder structure will be subject to taxation depending on the jurisdiction of the Master UCITS and/or the Feeder UCITS.

UCITS IV Report – Hungary

I) Cross-border Mergers

A domestic merger of funds should trigger taxation to the extent that the investor is deemed to have new securities with higher value as a consequence of a merger. The same would apply to inbound or outbound mergers of funds at investor level.

The merger has no tax consequence on the other hand on fund level.

II) Management Company Passport

The merger of Management Companies (inbound and outbound) as well as the conversion of a Management Company into a branch will not trigger any taxation at investor's level. This is also applicable to cross-border situations.

III) Master-Feeder Structures

In Hungary, taxation will be triggered at investor's level due to the conversion of a fund into a Master or Feeder if and to the extent that the investor is deemed to have new securities with higher value as a consequence of the merger.

In case the conversion of a fund to a Master or Feeder fund means simply a change in the investment policy of the fund, it has no taxation impact at the investor's level.

UCITS IV Report - Malta

I) Cross-border Mergers

1. Domestic merger

Merger of funds or sub-funds belonging to different funds are tax neutral for the investor. Maltese law contemplates a merger only as between general and limited partnerships, while a company may be amalgamated only with another company. The law does not envisage mergers of funds having a different legal form - unit trusts, corporate fund/contractual fund. Contractual funds are merged by way of transfer of assets whereas corporate funds are merged the classical way. The exemption in tax law refers to mergers or amalgamations involving the exchange of shares. Where a 'merger' of funds having different forms takes place and capital gains are realized at investor level, such gains could be taxable, unless an exemption is applied for and obtained.

2. Cross-border merger

The law does not envisage mergers of funds having a different legal form - unit trusts, corporate fund/contractual fund. Contractual funds are merged by way of transfer of assets whereas corporate funds are merged the classical way. The exemption in tax law refers to mergers or amalgamations involving the exchange of shares. Where a "merger" of funds having different forms takes place and capital gains are realized at investor level, such gains could be taxable. Merger (transfer of assets) between contractual funds would not trigger any tax implications at investor level where there is no transfer between one person and another. Investors could be taxed when the merger occurs between corporate funds, unless an exemption is applied for and obtained. Non-resident shareholders of shares/units in such corporate funds are not subject to any tax on income or gains derived therefrom (provided some conditions are met).

II) Management Company Passport

The merger of management companies should not trigger taxation of unrealized gains at the investor's level.

III) Master-Feeder Structures

In January 2010 the Maltese regulator has published a circular on the proposed adoption of legislation with respect to Master-Feeder UCITS structures as envisaged by the UCITS IV Directive. In the meantime, no taxation will be triggered in Malta at investor's level to the extent that the investor maintains the unit/shares of the same fund.

UCITS IV Report - Poland

I) Cross-border Mergers

Generally the CIT obligation arises at the investor's level as a consequence of the situations:

- > buy-back of the units in corporate capitalizing funds,
- > redemption of participation units or investment certificates in corporate capitalizing funds except for exchange of units of sub-funds within the same fund,
- > receiving income when fund's regulation enables the payment of profits without repurchase of participation units or investment certificates.

Therefore a merger (inbound or outbound) involving redemption of units should trigger taxation regardless of the fund's form.

The merger of sub-funds of the same fund ("Umbrella Fund") should, however, be tax neutral at investor's level.

II) Management Company Passport

The merger of Management Companies (inbound and outbound), nor the conversion of a Management Company into a branch will not trigger any taxation at investor's level.

However, if a foreign fund is managed by a Polish Management Company, such fund could be considered as being effectively managed in Poland and therefore become Polish tax resident. As a consequence, a dividend distribution from such fund to an investor could, under certain circumstances, be subject to withholding tax.

III) Master-Feeder Structures

In Poland, no taxation will be triggered at the investor's level due to the conversion of a fund into a Master or Feeder.

UCITS IV Report - Portugal

I) Cross-border Mergers

In what regards domestic mergers, and specifically concerning the application of the tax neutrality regime thereto, please note that this special regime foreseen in the Corporate Income Tax ("CIT") Code is, in first instance, applied to companies.

Notwithstanding, according to the provisions foreseen in article 69, nº. 9 of the CIT Code, the tax neutrality regime can also be applied to mergers of entities (other than companies) which are resident for tax purposes within the Portuguese territory and subject to CIT.

In this context, we understand that under the above mentioned rule, the merger of funds may also benefit from the tax neutrality regime.

In what concerns cross-border mergers, the merger of funds (inbound and outbound) should trigger taxation to the extent that capital gains have effectively been realized. In such a case, the merger project should define which options are given to the investor (sale/trade) of the participation units.

As a result, the taxable event occurs upon the investors' entitlement to income, which arises only whenever it is distributed by the funds or in the case of redemption of the units.

Therefore, this operation may trigger the investor's taxation. However, under some circumstances (no commercial, industrial or agricultural activity), private individuals should be exempt from tax.

II) Management Company Passport

The merger of Management Companies (inbound and outbound) as well as the conversion of a Management Company into a branch will not trigger any taxation at investor's level.

III) Master-Feeder Structures

The conversion of funds (inbound and outbound) should trigger taxation to the extent that capital gains have effectively been realized. In such a case, the project should define which options are given to the investor (sale/trade) of the participation units.

As a result, the taxable event occurs upon the investors' entitlement to income, which arises only whenever it is distributed by the funds or in the case of redemption of the units.

Therefore, this operation may trigger the investor's taxation. However, under some circumstances (no commercial, industrial or agricultural activity), private individuals should be exempt from tax.

UCITS IV Report - Romania

I) Cross-border Mergers

There are no tax rules governing mergers of UCITS funds, either corporate or non-corporate. Therefore, a risk exists that such merger would trigger taxation at the investor level, as the funds are seen as transparent from a tax perspective.

II) Management Company Passport

The merger of Management Companies (inbound and outbound) as well as the conversion of a Management Company into a branch should, in principle, not trigger any taxation at investor's level.

However, if a foreign fund is managed by a Romanian Management Company, such a fund could be considered as being effectively managed in Romania and therefore become Romanian tax resident. As a consequence, a dividend distribution from such a fund to an investor could, under certain circumstances, be subject to withholding tax.

III) Master-Feeder Structures

Romanian legislation is silent with respect to Master-Feeder structures. Therefore, a risk exists that the conversion of a fund into a Master or Feeder fund would trigger taxation at the level of the investor.

UCITS IV Report - Slovakia

I) Cross-border Mergers

There are currently no tax rules governing mergers of Slovakian UCITS funds (inbound and outbound). Therefore, a risk exists that such merger would trigger taxation at the investor level.

The tax impact on investor level depends on a result of the merger. Should the merger of funds result in a step-up in value of the investment then this may be taxable at investor's level depending on the nature of such income (e.g. issuance of new shares may not be subject to tax).

Dependant on the investor's status (legal business entity, individual) such income can be taxed on accrued basis or on cash basis.

II) Management Company Passport

The merger of Management Companies (inbound and outbound) will not trigger any taxation at investor level.

III) Master-Feeder Structures

Slovakian legislation is currently silent with respect to the conversion of a fund into a Master or Feeder. As a consequence, there is a risk that such conversion may trigger taxation.

UCITS IV Report – The Netherlands

I) Cross-border Mergers

Private investors will in general be taxed on the net value of their assets despite the realisation of income due to a merger. Corporate investors subject to corporate income tax could be taxed over realized capital gains due to a merger. However, if certain conditions are met, an exemption could apply.

The Netherlands has several tax regimes for investment funds. The fiscal investment institution, the exempt investment institution, tax transparent mutual funds or funds subject to corporate income tax without a special tax status.

Whether a merger is possible for Dutch tax purposes depends on the legal form of the Fund. According to Dutch civil law, both in a domestic and in a cross-border setting, it is only possible to merge corporate Funds. For a merger several mechanisms are available such as a share for share merger, a contribution in kind or a legal merger. A legal merger is very common in domestic situations.

On the assumption that the investor is shareholder of the acquiring company, capital gains should not be regarded as realized, and therefore these should not be subject to taxation.

If the investor is a shareholder of the dissolving company and subject to corporate income tax, the merger could lead to the realisation of capital gains and therefore it could lead to taxation (unless the participation exemption is applicable). There are several exemptions to prevent taxation on the capital gains due to a merger.

From a civil law perspective, it is not possible to merge two non-corporate funds. However, when two non-corporate funds amalgamate, the Dutch tax regulations concerning mergers may be applicable after consent of the Dutch Ministry of Finance.

II) Management Company Passport

Taxation at the level of the investors could possibly be triggered in case the state of residence of the Fund changes due to transactions (e.g., amalgamation/merger) at the level of the Management Company.

If this would change the residency of the fund from the Netherlands to the country of the Management Company and the fund is not subject to corporate income tax, this could lead to taxation of unrealized capital gains at the level of certain corporate type investors.

In the situation that the residency of the fund would be transferred from abroad to the Netherlands the (new) tax status of the fund in the Netherlands is most relevant. For instance, if the fund applies for the fiscal regime of article 28 of the Dutch Corporate Income Tax Act 1969 (the most common tax regime for investment funds in the Netherlands), any distribution could lead to 15 percent Dutch withholding tax that possibly cannot be credited or deducted by non Dutch investors.

If the fund could apply for the fiscal regime of article 6a of the Dutch Corporate Income Tax act 1969, it would not have a dividend distribution obligation. However, adverse tax effects could occur at the level of Dutch corporate investors due to a mark-to-market obligation for investments in such funds.

III) Master-Feeder Structures

Due to a change in the (tax) structure of the fund, the investor's tax position may also change. The fiscal analysis of various situations and transactions has to be determined on a case-by-case approach. The relevant circumstances, among others, are:

- > Legal form of the funds
- > Place of residence of the investor
- > Tax status of the investor
- > Type of the various funds (e.g., transparent/non-transparent)
- > Liability to/exemption from corporate income tax of the various funds
- > Type of investment
- > Place of investment.

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