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European Fund Tax Reporting Roadshow

November 2011

Introduction

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Happy Thanksgiving

Tax reporting landscape

Tax Discrimination

Tax authorities under pressure

Ensure investors are paying their fair share of taxation

Emphasis on compliance with local rules/regime otherwise penal taxes can apply

**Tax
Transparency**

***Bank
Secrecy***

Agenda

Introduction

Pat Convery, PwC Dublin

Austrian tax reporting law changes

Johannes Edlbacher, PwC Vienna

German tax reporting update

Alexander Wenzel, PwC Frankfurt

UK reporting update

Rebecca Maher, PwC Dublin

Swiss tax reporting update

Tibor Pamer, PwC Zurich

Introduction to Italian daily reporting

Marco Vozzi, PwC Milan

Q&A

Austrian tax reporting law changes

Johannes Edlbacher
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Changes due to the Budgetbegleitgesetz 2011

Overview

Implementation of a capital gains tax as from 1.1.2011 onwards

- Standardisation of capital gains taxation for private and corporate investors
- No differentiation between income and capital, i.e. dividend and interest income, realised capital gains from the sale of securities and income from derivatives now subject to 25% withholding tax
- Abolition of the speculative period applicable for private investors
- As a consequence: abolition of the Austrian withholding tax credit/debit system on interest income
- Deadline for the technical implementation postponed from 1 October 2011 to 1 April 2012

Comparison of tax regime before BBG 2011 and the new regulations

Tax regime before BBG 2011

Ordinary Income

- Dividends
- Interest
- Other income

25% withholding tax
or
25% special tax rate

Capital gains

- Realised gains from the sale of investments
- Derivatives

§ 30 EStG Income from speculative transactions

§ 31 EStG Sale of participations

New tax regime

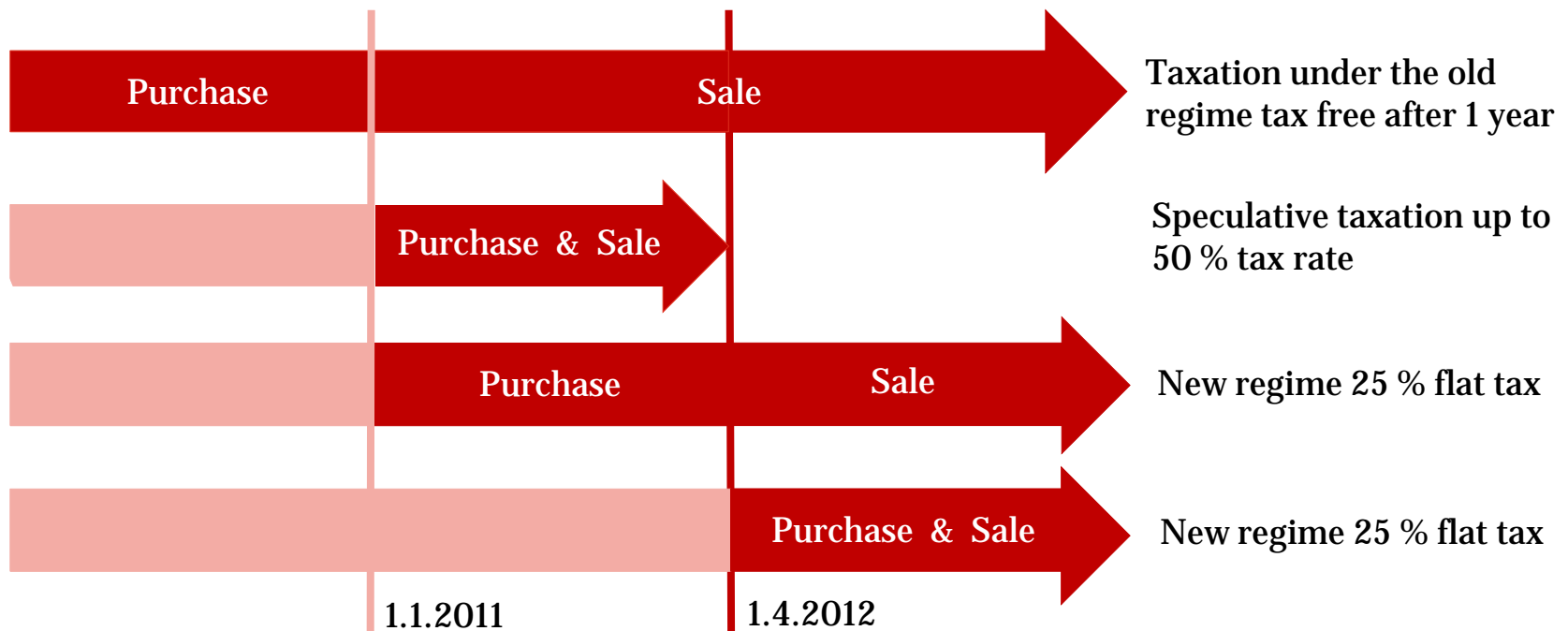
Abolition of the distinction between ordinary income and capital gains

- Dividends
- Interest
- Other income
- Realised gains from the sale of investments
- Derivatives

25% withholding tax or
25% special tax rate on ordinary income and capital gains irrespective of the holding period

The new tax regime is also applicable to the corporate income of individuals

Transitional period for investment funds



Cornerstones

- **Two layers of taxation under the application of the principle of transparency unchanged**
- **Loss utilisation and loss carry-forward at fund level still possible**
- **New: positive net investment income can be credited against loss carry-forwards from prior years at fund level**
- **Equalisation on interest income, dividends and realised capital gains is taxable (currently only equalisation on interest income)**
- **Daily reporting to OeKB no longer necessary from 1 April 2012 onwards, daily EU withholding tax reporting is likely to continue (under discussion)**
- **Abolition of safeguard tax applicable for white and black funds**

Categories of investment funds

- Investment funds which have appointed a tax representative in Austria (white funds) and
- Investment funds without a tax representative (black funds).

Black Funds

- Lump-sum taxation if no annual tax return is filed.
Tax base:
 - 90% of the difference between the NAV at the beginning and at the end of the calendar year;
 - at least 10% of the NAV at year end
- New: the Austrian depository bank will be obliged to levy the tax on basis of the lump-sum calculation for black funds (applicable from 31 December 2012 onwards)
- Self-calculation of the taxable income by the investor still possible

Extension of the responsibilities of the tax representative

- Requirement of a qualification in accordance with the professional code of provision for tax advisers for the tax representative of funds
- Reporting to OeKB (periodical and annual) will be carried out by the tax representative, not by the administrator anymore
- Contractual changes between the fund, administrator and tax representative necessary
- Filing of the annual tax returns no longer with the Austrian Ministry of Finance but with OeKB
- Content of the reporting:
 - Details on the composition of the tax base;
 - Effective tax amount;
 - Correction amount of acquisition cost

Changes to the tax base

Fund level

Annual taxation

- 25% withholding tax or 25% special tax rate on the net investment income plus realised capital gains
- Increase of the tax base of accumulated realised capital gains from 20% on equities and derivatives linked to equities to 60% of all realised capital gains

Beginning of the funds financial year	before 1.7.2011	from 1.7.2011	from 1.1.2012	from 1.1.2013	from 1.1.2014
Realised capital gains from equities	20%	30%	40%	50%	60%
Realised capital gains from bonds	0%	0%	0%	50%	60%

- Realised capital gains distributed within 4 months after year-end are taxable at a rate of 100%

Changes to the tax base

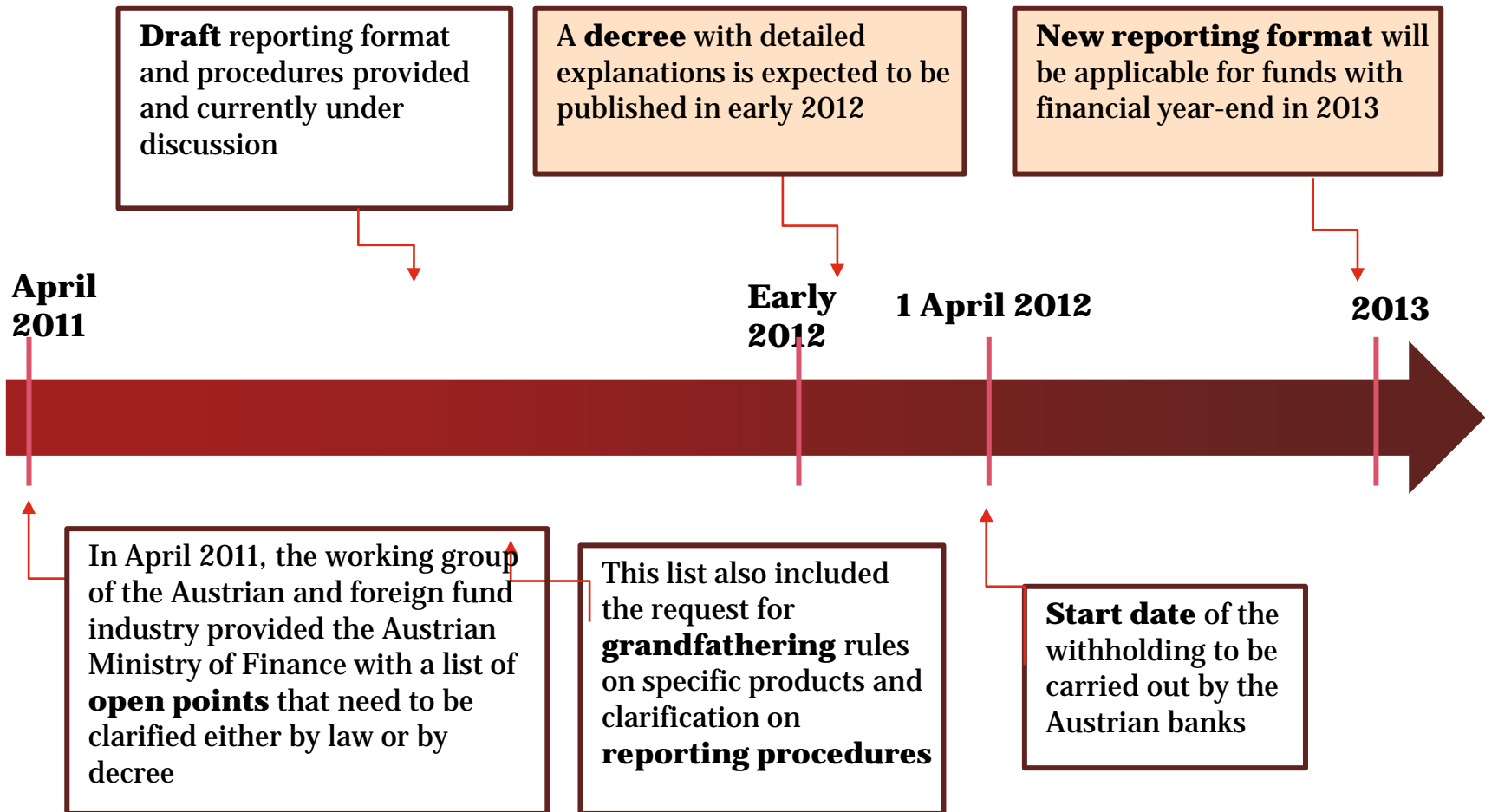
Investor level

Taxation in case of a sale of fund shares

- Realised capital gains from the sale of fund shares that have been purchased after 31 December 2010 are subject to 25% withholding tax or 25% special tax rate from 1 April 2012 onwards
- In the case of a sale, the full difference between sales price and purchase price (plus already taxed DDI and less distributions) will be taxable

⇒ **no double taxation of the investor**

Open points and roadmap



Summary – Implications for fund administrators

Abolition of the daily AK reporting

No periodical reporting anymore –
tax representative

No annual reporting anymore –
tax representative

Now is the **perfect moment** to think about outsourcing the Austrian tax reporting process to the Austrian tax representative

German tax reporting update

Alexander Wenzel
PwC Frankfurt

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Definition of foreign investment funds

Legal requirements and circular released by the BaFin

Foreign “vehicles”: only considered as funds if the legal requirements specified by the circular dated 22 Dec 2008 are fulfilled

Legal requirements

- Principle of risk diversification, redemption right etc

Investment restrictions for mutual funds, e.g.

- non-listed entrepreneurial participation
- precious metals
- certain derivatives
- non-securitised debt

Transitional period for fiscal years starting before 31 May 2013
(circular of the Ministry of Finance dated 25 July 2011)

Overview of the tax obligations

The foreign “vehicle” qualifies as:

Foreign Investment Fund	Corporation	Partnership
Reporting under the German Investment Tax Act (GITA)	Reporting under the German Foreign Transaction Tax Act (Außensteuergesetz - FTA)	Reporting according to Art. 180 of the General Tax Code
<ul style="list-style-type: none"> • Publication of the tax bases in the German Electronic Federal Gazette (“elektronischer Bundesanzeiger”) • Together with the annual report and the tax certificate • Publication of the accumulated deemed distributed Income (ADDI) • Verification procedure • Submission of WM sheets to WM-Datenservice (no tax transparency requirement) 	<ul style="list-style-type: none"> • Tax declaration in line with the provisions of the FTA • Application of the German CFC-rules • More burdensome than a tax reporting under the GITA • Familiar format for institutional investors • For private investors quite unknown format and therefore possibly an investment barrier 	<ul style="list-style-type: none"> • Uniform and separate tax declaration according to Art. 180 of the General Tax Code • More burdensome than a tax reporting under the GITA • Familiar format for institutional investors • For private investors quite unknown format and therefore possibly an investment barrier
<p style="text-align: center;">It must be analysed on a case by case basis whether or not a foreign entity qualifies as a corporation or as a partnership from a German tax perspective.</p>		

UCITS IV-Transformation Act

General

One objective of the UCITS IV directive is to make the European fund industry more competitive through a regulatory harmonization. The main goals are:

- **Cost efficiencies through economies of scale;**
- **Consolidation of the European fund industry;**
- **Higher performance and lower costs for the fund industry**

UCITS IV-Transformation Act

General

In order to reach these objectives the UCITS IV directive inter alia covers the following three aspects:

- **Cross-Border mergers**
- **Master-Feeder structures**
- **Management Company passport**

UCITS IV-Transformation Act

Cross-Border mergers

Taxation at the level of the German investor

The German Investment Tax Act includes two provisions in relation to the merger of funds:

- section 14 for a merger where only German funds are involved
- section 17a for a merger of non-German funds, i.e. without the participation of German funds

In both cases the merger can be tax neutral for the German investor if certain requirements are fulfilled

A cross-border merger is currently not covered by the GITA and thus such a merger is always taxable for the German investor

UCITS IV-Transformation Act

Cross-Border mergers

Taxation at the level of the fund

Under the GITA, a German fund is tax exempt in Germany, i.e. no corporate tax and no trade tax has to be paid by the fund

Therefore, a cross-border merger is tax neutral for a German fund. In relation to the non-German fund participating in the merger the tax treatment has to be assessed in line with the law of the relevant jurisdiction

UCITS IV-Transformation Act

Master-Feeder structures

Overview

Feeder Funds invest more than 85% of their capital into a Master Fund. Especially for small and medium size funds a Master-Feeder structure offers the possibility of reducing costs



UCITS IV-Transformation Act

Master-Feeder structures

Taxation at the level of the investor

The investment into a Feeder Fund has the same tax consequences for the German investor as the investment into a “normal” fund which in turn is invested in an underlying fund. Both the Feeder Fund and the Master Fund should therefore comply with the tax transparency requirements

Certain income distributed to the Feeder Fund as well as the deemed distributed income received by the Feeder Fund is taxable in the hands of the German investor. Also, a capital gain stemming from the sale of the Master Fund units has to be captured at the level of the Feeder Fund, but is only taxable in the case of a distribution or a redemption of the fund units

UCITS IV-Transformation Act

Master-Feeder structures

Taxation at the level of the investor

The conversion of a fund into a Master Fund or a Feeder Fund has an impact on the tax position of the German investor:

- **Conversion into a Master Fund: redemption of the fund units by the investor resulting in a capital gain/loss which is generally taxable at the level of the investor**
- **Conversion into a Feeder Fund: sale of the assets by the Feeder Fund and investment into the Master Fund resulting in a capital gain/loss at the level of the Feeder Fund which is basically only taxable in the case of a distribution or a sale of the fund units**

UCITS IV-Transformation Act

Master-Feeder structures

Taxation at the level of the fund

The income received by the Feeder Fund as well as any capital gain from the sale of the Master Fund units is not taxable at the level of the Feeder Fund. The Master Fund might however be obliged to retain withholding taxes depending on the tax law of the home state

UCITS IV-Transformation Act

Management Company Passport

Taxation at the level of the investor

The origin of a fund does not have an impact on the taxation of the German investor. This rather depends on whether or not the fund complies with the tax transparency requirements

Consequently, the distributions and/or the deemed distributed income is taxable in the case of tax transparency in line with the tax bases revealed to the investors. In the case of opacity, i.e. if the fund does not fulfil the tax transparency requirements, the investor is subject to a punitive lump-sum taxation

Finally, the capital gain/loss from the sale of fund units is generally taxable

UCITS IV-Transformation Act

Management Company Passport

Taxation at the level of the fund

From a German tax law perspective the following alternatives are to be considered:

- German fund with a German Management Company
- German fund with a EU Management Company with a branch in Germany
- German fund with a EU Management Company

According to the GITA German funds are always tax exempt. Also non German funds (contract type) can qualify as domestic funds under certain conditions and thus also be tax exempt. The residence of the fund has now to be determined in accordance with the regulatory law

Other latest developments

- Link between the publication of the Equity Gain (Aktiengewinn) and the tax exemption of income and capital gains from equity
- Deductibility of Interim Profit (Zwischengewinn) paid upon the purchase of fund units requires
 - a consistent operation of equalisation, i.e. for all tax figures and
 - a statement in the tax certificate as well as
 - in the publication of the Interim Profit that the equalisation method has been applied
- Treatment of performance fees: income related expenses, i.e. indirect expenses vs. extraordinary expenses

UK reporting update

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Agenda

What has changed since last year's update?

- **Fund distribution date – clarity received**
- **New upfront application deadline**
- **Equalisation options**
- **UK SORP adjustments**
- **Trading vs investment analysis**
- **Transparent funds**

Fund Distribution Date

- Investors taxed on distributions when received
- Investors taxed on excess Reportable Income over distributions – when?
- Previous rule – taxed when report published:
 - e.g. year ended 31 December 2010, report due 30 June 2011, published 15 May 2011 – investors deemed to receive on 15 May
 - published 31 August 2011 – investors deemed to receive on 31 December 2010!
- Possibility to play with tax years/tax rates
- New rule?
 - Fund distribution date always six months after year end

New upfront application deadline

Important dates for consideration

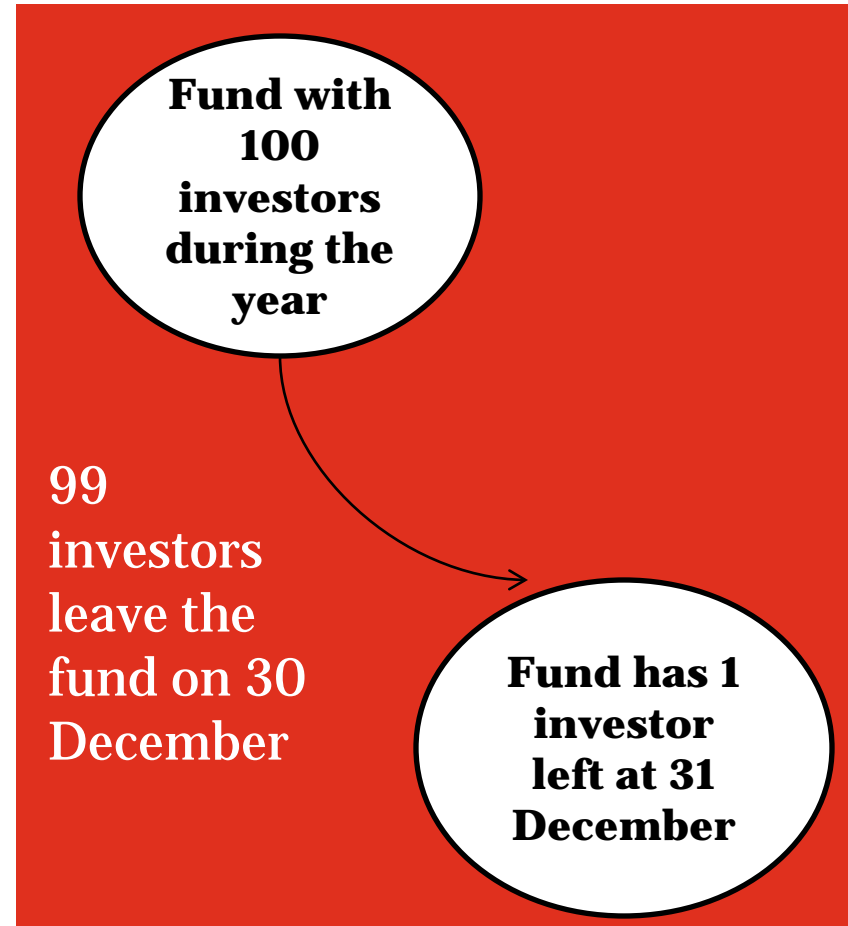
- **Offshore Funds (Tax) Regulations 2009**
 - **Came out – 12 November 2009**
 - **Came into force – 1 December 2009**

- **Offshore Funds (Tax) (Amendment) Regulations 2011**
 - **Came out – 4 May 2011**
 - **Came into force – 27 May 2011**
 - **Application for entry into regime now due before the Fund's year end**
 - **Equalisation decision must be made by 27 May 2012**

Equalisation

Why is it operated?

- Reportable income per share = the tax adjusted accounting income divided by the number of shares in issue at the year-end date of the fund
- Any shareholders who are in the fund at the year-end will be taxable on their share of reportable income.
- Can give rise to the “Last Man Standing” problem



Equalisation

What are the 5 options?

- 1. Fund level equalisation**
- 2. Full equalisation**
- 3. Income adjustments on the basis of reportable income**
- 4. Income adjustments on the basis of accounting income**
- 5. No equalisation**

Equalisation

Overview of the options

Equalisation option	Description
1. Fund level equalisation	<ul style="list-style-type: none">• Equalisation operated on subscriptions and redemptions.• Net of equalisation income and expense adjusted for in the calculation of reportable income.• Avoids the “Last Man Standing” issue, without incurring significant additional costs
2. Full equalisation	<ul style="list-style-type: none">• Equalisation operated on subscriptions and redemptions and the “Last Man Standing” issue is avoided• Requirement to separately report details of equalisation on subscriptions to investors.• Used to reduce excess reportable income figure and then taxable distributions received during the year

Equalisation

Overview of the options

Equalisation Option	Description
3. Reportable income adjustments	<ul style="list-style-type: none">• Equalisation not operated on subscriptions and redemptions.• Equalisation calculated by adjusting the <u>reportable income</u> figures using a formula based on the net increase/decrease in shares in issue during the year.• Minimises “Last Man Standing” issue
4. Accounting income adjustments	<ul style="list-style-type: none">• As above, equalisation not operated on subscriptions and redemptions• Equalisation calculated by adjusting the <u>accounting income</u> figures using a formula based on the net increase/decrease in shares in issue during the year.• Option only available where it doesn't result in a figure more than 10% different to the figure under option 3• Minimises “Last Man Standing” issue

Equalisation

Overview of the options

Equalisation option	Description
5. No Equalisation	<ul style="list-style-type: none">• Option not to operate equalisation at all!• Useful for funds which do not expect to have reportable income, do not experience significant fluctuations in ownership, or for transitional funds where appropriate information hasn't been monitored in 2010/2011• "Last Man Standing" issue still remains.

Trading versus investment analysis

<ul style="list-style-type: none">• Trading = income• Investment = capital	White list <ul style="list-style-type: none">• Equivalence test• “GDO” condition
Expansion of “equivalence test” <ul style="list-style-type: none">• Extended to cover master feeders• Extended to other EEA vehicles (non UCITS) authorised for retail or professional investor distribution which:<ul style="list-style-type: none">➢ Limit borrowing power to 100% NAV; and➢ Limit exposure to derivative contracts to 100% NAV	Non-UCITS <ul style="list-style-type: none">• Can fund otherwise meet equivalence test?• Is the fund undertaking “investment transactions” as defined?• GDO – HMRC clearance?• Otherwise – trading vs investing review based on UK case law principles

UK IMA SORP

- **Investment Management Association (IMA)** – UK’s industry representative to government and regulators
- Issues the **Statement of Recommended Practice for Authorised Investment Funds (SORP)** – latest issue October 2010
- The Statement of Recommended Practice (SORP) is produced by the IMA and gives guidance as how Authorised Investment Funds (AIFs) are to comply with UK GAAP
- Gives further guidance as to the “revenue/capital split”
- Offshore funds are required to follow the UK SORP for the purposes of assessing the “revenue”/ “capital” split for UK reporting purposes

SORP Application

*“The treatment of the returns from derivatives **depends** upon the nature of the transactions. Both **motive and circumstance** are used to determine whether returns should be treated as revenue or capital”*

*“Where positions are undertaken to **protect or enhance capital**, and the circumstances support this, **the returns are capital**”*

*“Where positions are undertaken to **protect or enhance revenue (income)**, and the circumstances support this, **the returns are revenue**”*

*“Where positions **generate total returns** it will generally be appropriate to apportion such returns between **capital and revenue** to properly reflect the nature of the transactions” *i.e. bifurcate some revenue...**

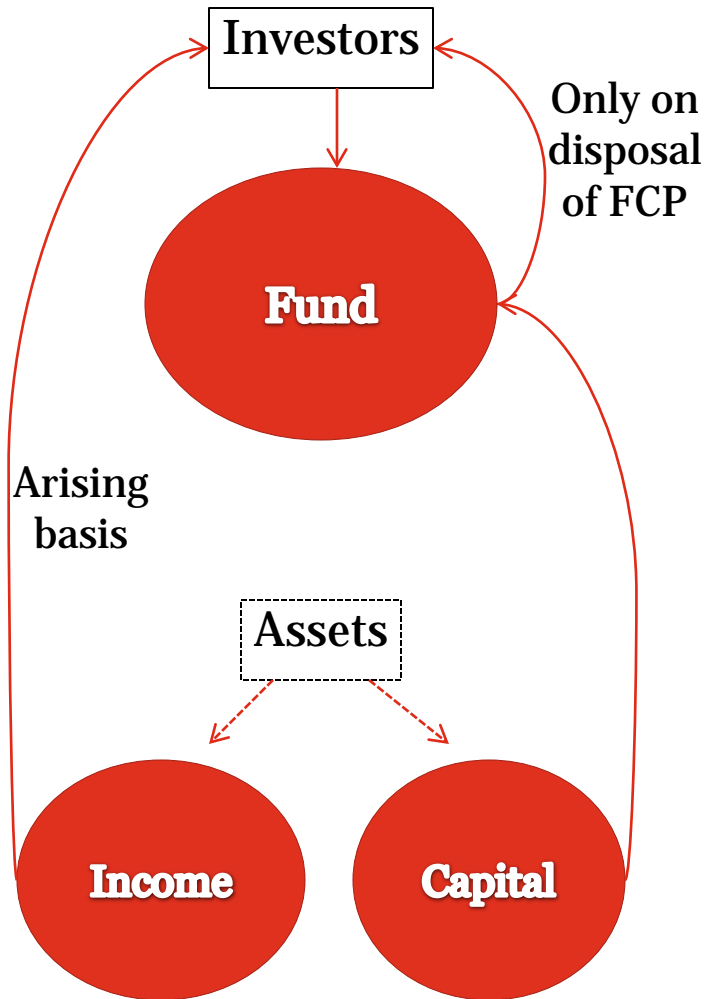
Most common derivative instruments

- Futures – equity /bond/ index/ currency
 - Options – calls/puts
 - Forwards – equity/bond/index/currency
 - Swaps – CDS/IRS/total return
 - Contracts for Difference (CFD's)
-
- **Motive:**
 - Investment objective and policy of the fund;
 - Hedging; or investing/enhancing investment strategy
 - **Circumstance:**
 - Nature and timing of cash-flows;
 - Risk/return profile of the derivative strategy

Further IMA Guidance...?

- The requirement to comply with the UK SORP accounting principles is a burdensome exercise
- Uncertainty in the market place as to the appropriate treatment
- Our experience is that there are inconsistencies in the application of the UK SORP accounting principles for offshore funds calculating UK reportable income
- IMA are expected to issue guidance
- Next IMA working group meeting will be held on 1 December 2011

Transparent funds



1. Provision of 'sufficient information' to UK investors
2. The need for a regular reporting process to be in place – dependent on the investor types targeted
3. Revenue streams measured on income and corporate tax basis
4. Need to calculate “top up” reporting from underlying offshore fund
5. Does the fund invest more than 5% of its assets in other non-reporting funds?

Swiss tax reporting update

Tibor Pamer
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Swiss Tax Reporting is Best Practice



- Ensure determination of effectively taxable income
- Avoid punitive taxation of investors
- Investors are receiving summations by the tax authorities in case of missing or incorrectly reported income tax values
- Tax Authorities auditing the calculations and declarations
- Banks and asset managers will only select funds with Swiss tax reporting
- 6'000 share classes are actually published on the official rates list (estimate)

Swiss Tax Reporting – Key elements

- Required for Swiss private investors only
- Annual reporting
- Based on audited annual report in local GAAP
- Applied calculation method is a ‘cost allocation control’ approach
 - few cost types are fully deductible
 - for most cost types (including all kind of fees) a cost cap applies
 - some cost types are not deductible at all
- Tax values get published on the official rates list
 - online data base, updated on a daily basis, source for cantonal tax authorities and e-tax returns

Official Rates List – Sample



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Bundesverwaltung admin.ch

Eidgenössisches Finanzdepartement EFD

Eidgenössische Steuerverwaltung ESTV

Deutsch | Français | Italiano

Detailansicht des Titels

Anlagefonds (Schweiz) / Fonds de placement (Suisse) / Fondi d'investimento (Svizzera)



Titel/Titres/Titoli	W M V	Nominell Valeur nominale Valore nominale	Valoren-Nr. No de valeur Numero di valore	Steuerwert Val. imposable Val. imposable 31.12.2009 CHF	Ertrag / Rendement / Reddito 2009						
					Datum / Date		Cp.	W M V	Brutto Brut lordo Fr.W.	KG CHF	zu versteuerender Ertrag/Rendement imposable/Reddito imponibile CHF
					ex.	zahlb. pay. pag.					
					(E)						
Raiffeisen Futura - Swiss Franc Bond, Schweiz	CHF	0.000	1 198 099	105.41	09.06.	12.06.		CHF			2.000

Latest Developments

Equalization (for Swiss tax purposes)

Equalization aims to adjust income and expense positions in relation to the fluctuation of outstanding shares

Included in audited financial statements

- Has to be considered

Not included in audited financial statements

- Circular letters 24 and 25
 - Possibility to use auxiliary approach
 - Calculation of NAV for cost cap with use of average outstanding shares
 - Average outstanding shares for determination of income per share?

Latest Developments

Equalization (for Swiss tax purposes)

Not included in audited financial statements (cont'd)

- Potential further possibilities
 - More complex calculation possible to the extent that it gets pre-agreed with the tax authorities
 - Taking the risk of a negative decision?
 - Applying best knowledge?

Latest Developments

Synthetic index tracker (i.e. via swap investment)

Definition according to FTA: Fund, predominantly invested in Swaps

- Minority stakes in Swaps may be disregarded depending on the effective circumstances

Tax treatment according to FTA:

- Not 'per se' treated as tax free capital gain
- As a rule, income from the underlying of the Swap will serve as basis to determine the taxable capital income

Funds / Share Classes in Liquidation

Of special note

Issue	Comment
Definition of 'in liquidation'	<ul style="list-style-type: none">• Strongly depends on local regulations• Blocked and forced redemptions as indication of a liquidation
Reporting procedures	<ul style="list-style-type: none">• As a rule, standard tax reporting procedures apply to funds in liquidation (accompanied by specific rules)
Treatment of repayments	<ul style="list-style-type: none">• repayments in course of the liquidation based on treatment in the financial statements• Risk of being treated as fully taxable if no or incomplete financial information available
Financial information	<ul style="list-style-type: none">• Often no financial information on funds in liquidation available prior to the final liquidation report• Risk of tax assessment based on best estimate

➤ **As a rule, also funds in liquidation have to report the taxable income on a yearly basis**

Fund of Funds

Of special note

Swap Rates as Calculation Substitute

Fund of Funds tax reporting rely on the availability of financial information of target funds. Quite often, no or no up-to-date information is available

- 5 year swap rate of target fund currency
- May only be used as 'last resort'
- Only applied for accumulating target funds
- Treatment of newly launched funds / sub funds?
- Treatment of newly launched share classes?
- Treatment of newly launched series?
- Funds in liquidation?

Introduction to Italian daily reporting

Marco Vozzi

PwC Milan

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New withholding and capital gain tax rate for profits deriving from investment Funds

Overview

New regime applicable from 1 January 2012

Starting from 1 January 2012, profits deriving from Italian and certain EU and EEA foreign UCITS and non-UCITS Funds and SICAVs will become subject to a **20% tax rate** (in place of the existing 12.5% tax rate)

New withholding and capital gain tax rate for profits deriving from investment Funds

Overview

The exception represented by government bonds

Profits deriving from Italian government bonds and other eligible securities (including government bonds issued by qualified foreign Countries – i.e., Countries which have agreed to co-operate with the Italian Tax Authorities in international tax matters through exchange of information) will continue to be subject to the current tax regime (i.e., subject to a **12.5% tax rate** or **tax exempt** in case of non-Italian “qualified” investors)

New withholding and capital gain tax rate for profits deriving from investment Funds

Overview

Investors affected by the new 20% tax rate

The increase (from 12.5% to 20%) of the tax rate applicable to profits deriving from investments Funds will mainly affect:

- Italian resident private individual investors
- Certain non-Italian resident investors (i.e., investors tax resident or established in Countries – e.g., Cayman Island, Jersey and BVI – which have not agreed to co-operate with the Italian Tax Authorities in international tax matters through exchange of information)

Introduction to the new Italian tax reporting regime

Overview

Profits deriving from Funds investing in government bonds

The new Law has introduced a mechanism in order to prevent that "indirect" investments in government bonds be penalized *vis-a-vis* direct investments

Accordingly the higher 20% tax rate will apply to the total profits – qualifying as income from capital – net of a portion of profits generated (at the Fund or SICAV level) from investments in Italian government bonds (as well as in foreign eligible bonds)

Introduction to the new Italian tax reporting regime

Overview

A Decree should explain how to split the profits

All the technicalities associated to this new rule and in particular the methodology to be applied to determine the portion of proceeds that will be exempt from the new 20% tax rate, will be detailed in a Decree to be issued by the Italian Ministry of Economy and Finance

Introduction to the new Italian tax reporting regime

Overview

Some rumours

The expectation is for simple rules without the need of a daily actual profits tracking

Profits arising from qualified government bonds would then be computed based on the average ratio between the value of these bonds and the overall value of the assets of the Fund as per the last two approved six-months period accounting situations

Introduction to the new Italian tax reporting regime

Overview

An example

	Dec 31, 2010	June 30, 2011
Gov. Bonds	250 25%	400 33%
Other Assets	<u>750</u> 75%	<u>800</u> 67%
Total Assets	1000	1200

Based on the above situation, a percentage equal to **29%** [(i.e, 25% + 33%) / 2] would be used in order to identify the portion of the profits to be associated to government bonds

Introduction to the new Italian tax reporting regime

Overview

An example (cont'd)

Assuming a profit distribution of 100, we would have that 11 would be tax exempt and only **89^(*)** would be subject to the new 20% tax rate with total taxes to be paid equal to **18** (i.e., $89 * 20\%$)

This would be equal to a situation where 29 is taxed at 12.5% rate (with taxes equal to 4) and the remaining 71 is taxed at the new 20% rate (with taxes equal to 14)

(*) $100 * 29\% * 62,5\%$

Q&A

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Thank you

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