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The EVCA is the voice of European private equity. Our membership covers the full range of private equity activity, from early-stage venture capital to the largest private equity firms, investors such as pension funds, insurance companies, fund-of-funds and family offices and associate members from related professions. We represent 650 member firms and 500 affiliate members.

The EVCA shapes the future direction of the industry, while promoting it to stakeholders such as entrepreneurs, business owners and employee representatives.

We explain private equity to the public and help shape public policy, so that our members can conduct their business effectively.

The EVCA is responsible for the industry’s professional standards, demanding accountability, good governance and transparency from our members and spreading best practice through our training courses.

We have the facts when it comes to European private equity, thanks to our trusted and authoritative research and analysis.

The EVCA has 25 dedicated staff working in Brussels to make sure that our industry is heard.

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- Maria Leander - European Investment Fund
- James Modrall - Cleary Gottlieb Steen & Hamilton LLP
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- Robin A. Painter - Proskauer
- Bernard Peeters - Altius/Tiberghien
- Isabel Rodriguez - SJ Berwin Madrid
- Jyrki Tähtinen - Attorneys at law Borenius
- Patricia Taylor - William Fry
- Markus Thill - Robert Bosch Venture Capital GmbH
- Rachel Thompson - Bridgepoint Advisers Limited
- Christian Schatz - SJ Berwin LLP Munich
- Ole Schmidt - Accura Tax Partnerselskab
- Sylvie Vansteenkiste - SJ Berwin Paris
- France Vassaux - AFIC (Association Française des Investisseurs en Capital)
I am delighted to introduce this landmark issue of the EVCA Benchmark, which for the first time focuses exclusively on tax regimes at all levels across Europe.

Previous editions also looked at the legal regimes of member states but that is no longer necessary due to this summer’s implementation of the Alternative Investment Fund Managers Directive.

The introduction of a pan-European legal framework this summer, while not without its challenges, is an important milestone in the development of the industry. We are a mature, regulated asset class with a widely recognised corporate governance model that ensures the interests of investors, fund managers and companies are aligned.

The difficulties in dealing with different private placement regimes over time will become a thing of the past as we now have a pan-EU fundraising ‘passport’.

As focus now turns to national transposition and implementation of the AIFMD we will work closely with our national member associations to ensure that this is done consistently to maintain a level playing field.

The EVCA has also seen its hard work on the European Venture Capital Funds Regulation rewarded. This voluntary regulation, which is due to come into force at the same time as the AIFMD, provides the same cross-border marketing passport for smaller funds.

Of course challenges remain for European private equity, especially in the current economic climate.

Our industry is a business builder and, for the right companies, private equity can provide an alternative to bank finance and bring new ideas and momentum, playing a part in getting the European economy moving again.

A competitive and fair tax environment plays an important part in the development of an overall climate in which funds can make their contribution to delivering jobs and growth.

As tax issues become an increasingly important part of the policy debate, in Europe and globally, the EVCA hopes with this latest Benchmark to make a valuable contribution to the debate with both national and European regulators at this crucial time. More specifically, the purpose of the report is to contribute to the debate over differing policy and tax regimes in European countries and to highlight where changes could help entrepreneurship, private equity and venture capital develop.

The EVCA continues its efforts to explain private equity to press, politicians and policymakers, so its beneficial effect on the local and European economies is correctly understood.

On behalf of the EVCA, I would like to thank KPMG Network and their local offices throughout Europe. Their role in collecting information in different jurisdictions has been invaluable.

Special thanks must also go to the members and member firms of the EVCA Tax, Legal and Regulatory Committee, whose expertise and time is greatly appreciated.

Finally I would like to thank all the EVCA members and other contributors to the Benchmark, which would not have been possible without their help.

Dörte Höppner
EVCA Secretary-General
## Contributors

- For Austria - Dorda Brugger Jordis Rechtsanwalte GmbH
- For Belgium - Altius/Tiberghien
- For Bulgaria - Boteva & Kantutis Law Office
- For the Czech Republic - Dentons (previously Salans)
- For Denmark - Accura Tax Partnerselskab
- For Estonia - Attorneys At Law Borenius
- For France - SJ Berwin
- For Finland - Attorneys At Law Borenius
- For Germany - Clifford Chance and SJ Berwin
- For Hungary - Dentons (previously Salans)
- For Ireland - William Fry
- For Italy - Di Tanno e Associati
- For Latvia - Attorneys At Law Borenius
- For Lithuania - Attorneys At Law Borenius
- For Luxembourg - Arendt&Medernach and Allen & Overy Luxembourg
- For the Netherlands - Loyens & Loeff
- For Norway - Haavind
- For Poland - Dentons (previously Salans)
- For Portugal - Abreu Advogados
- For Romania - Dentons (previously Salans)
- For the Slovak Republic - Dentons (previously Salans)
- For Spain - Baker&McKenzie and SJ Berwin
- For Sweden - Andulf Advokat AB and Mannheimer Swartling
- For Switzerland - Lenz & Staehelin
- For the United Kingdom - SJ Berwin LLP
- For the United States of America - Proskauer Rose
Preface

The EVCA Benchmark study was launched in 2003 and has established itself as a valuable resource for policymakers, academics and practitioners throughout Europe.

But it has always evolved to reflect changes in the industry and the legal, tax and regulatory environment in which we operate.

This edition, which has undergone a significant revamp, is no exception.

As the pan-European Alternative Investment Fund Managers Directive becomes effective in all member states, and given current discussions about further EU-wide investor regulation, comparisons between legal and regulatory rules in member states, an important focus of our previous editions, have become less relevant.

This Benchmark study therefore focuses exclusively on the tax regime of each EU member state, together with Norway, Switzerland and the US, and examines the tax rules at every level, including for portfolio companies.

This reflects the important role that tax can play in investment and business decisions, and in shaping the overall attractiveness of European economies to outside investors. However, since tax is only one of many factors that inform investment decisions, we have decided not to include a ranking of jurisdictions. Instead, we have expanded some of the analysis, including on fund structures and fund-level taxation, and have reviewed and updated our criteria.

We feel there is real value in presenting the facts about European tax regimes in a comparative format as part of the EVCA’s contribution to the debate about the future direction of policy aimed at promoting Europe’s competitiveness and its ability to generate jobs and economic growth.

A competitive tax environment is one key component that policymakers can provide so that private equity and venture capital firms can get to work in creating value and accelerating business growth.

For that reason the Benchmark should be useful not just for the industry, but also for policymakers at the national and EU levels.

I am convinced that this edition of the Benchmark study will, like its predecessors, prove itself to be an important and influential tool.

The EVCA Tax, Legal and Regulatory Committee would like to thank KPMG Network whose assistance has been so vital since our first collaboration in 2006.

I am also extremely grateful to all the other contributors to this report, whose expertise has helped us take it to the next level.

Simon Witney
Chairman
EVCA Tax, Legal and Regulatory Committee
Indicators of a competitive tax environment for the development of private equity and venture capital in Europe

The research presented in this report analyses a selection of key features that are relevant to European private equity and venture capital (PE/VC) and its key actors, namely investors, funds and fund managers, portfolio companies and entrepreneurs. None of these factors alone will deliver a fully competitive environment for private equity and venture capital, but the tax issues that have been assessed make a crucial contribution.

While the results are a very useful tool for analysis of the tax frameworks in Europe, it is important that they are interpreted with care.

Fund structures for private equity and venture capital

The specificities of the private equity and venture capital business model – active investment through long-term equity stakes in private companies – need investment funds that can be managed flexibly depending upon the phase of the investment cycle.

Investment fund structures must also meet the needs of both domestic and non-domestic investors, to encourage foreign capital to flow into the European economy.

But if legal requirements prevent the creation of an efficient domestic fund structure this may necessitate the use of a foreign structure (incurring significant set-up and transaction costs) or simply discourage foreign investors from committing their funds to assets in that country.

Given this, an important addition to this year’s study is an analysis of whether or not the country considered allows for a fund structure which does not give rise to incremental tax for domestic and foreign investors (i.e. which is tax neutral) and thereby ensuring parity of treatment with equivalent investments that investors might make directly in the portfolio company. An investor’s choice between investing directly or via a PE/VC fund should not be distorted by differences in tax regimes.

Generally, if the fund entity has tax transparency it becomes tax neutral. Unfortunately some EU countries still consider the activities of the fund itself as a business enterprise. This treatment may have significant disadvantages for foreign investors, for example generating a ‘permanent establishment’ – and thus an additional tax liability – for them in the home country of the fund.

Even if the fund is established as a tax transparent entity in its home jurisdiction without triggering a permanent establishment for the foreign investors, tax neutrality may not be achieved. Some countries may classify the fund entity as non-transparent for tax purposes under their domestic tax rules, causing mismatches in entity classification. This may lead to incremental taxation.

For example, if the home jurisdiction of a portfolio company imposes tax on shareholder capital gains but does not accept the tax transparency of the fund entity invested in the company, the fund may be exposed to a tax liability that is higher than the aggregate tax liability of the investors if the fund were considered tax transparent in the home jurisdiction of the portfolio company, for instance if the capital gains taxation is triggered only if a certain ownership threshold is exceeded (a higher tax liability would arise in such a case because its minimum threshold for capital gain taxation would be determined on the basis of the percentage ownership of the fund, not on the indirect ownership share that each fund investor has in the company). Moreover, in such situations, the fund cannot rely on a tax treaty seeking protection against the capital gains taxation in the jurisdiction of the portfolio company, because the fund is tax transparent in its home jurisdiction and as a result thereof not considered a “resident” of that state for tax treaty purposes, whereas the investors in the fund may be eligible for protection under the tax treaty concluded between their home jurisdiction and the jurisdiction of the portfolio company if the fund were considered tax transparent in the latter state.
Another way is offering a special tax regime for fund entities. However, this may lead to distortions as well, both in the home jurisdiction of the investor and of the portfolio company in the case of such fund lacking tax transparency. For instance, if the fund is lacking transparency for tax purposes in the state of the investor, repatriation of proceeds realized by the fund in the form of capital gains may be transformed into dividend income, which is generally taxed less favourably than capital gains. And in the state of the portfolio company, the tax exempt fund entity may be denied the benefits of a tax treaty or the EU Parent-Subsidiary Directive because the fund is not subject to tax.

Against this background, in order to achieve optimal conditions for a national fund structure, the following areas should be addressed:

- Tax transparency for domestic and non-domestic investors
- Absence of incremental tax for domestic and non-domestic investors (i.e. equivalent treatment to that offered to direct investments in the target companies)
- Removing the risk of double taxation by ensuring that international investors and fund managers are not caught by domestic taxes as a result of a permanent establishment
- No additional capital gains taxation for non-residents
- The freedom from undue restrictions on the type of investments carried out by the fund (this is essential for an optimal allocation of the fund and a better return)

**Taxation at a fund level**

For this edition, new areas are analysed which are particularly relevant for private equity and venture capital funds and their investors.

These include whether a country imposes a source taxation on proceeds typically generated by PE/VC funds (i.e., capital gains, dividend and interest income) and whether a country allows for the structuring of a fund entity that is tax neutral for (domestic and foreign) investors when compared to investing directly in the portfolio company (see above).

When a PE/VC fund generates a return from its investment in a portfolio company, such a return is generally realised in the form of capital gain and, to a lesser extent, in the form of dividend or interest income. Some countries impose a tax on capital gains realised on the sale of shares of the portfolio company located in their country, irrespective of whether the shareholder is a domestic or foreign shareholder.

Most of the time, foreign shareholders are protected against such taxation on capital gains under a double taxation treaty (cf. Article 13 OECD Model Treaty). PE/VC funds, however, often lack such tax treaty protection as they are not treated as a “resident” for tax treaty purposes, generating a risk of double taxation.

Intermediate holding companies may be formed between the fund and a portfolio company. These may protect against tax being levied on capital gains in the portfolio company’s home country. Such a holding entity should be entitled to tax treaty protection, and be protected against taxation on the capital gain.

Ideally a portfolio company’s home country would not tax capital gains realised by foreign shareholders, leaving those gains to be taxed where the shareholder is based. As a consequence, also the setting up of holding structures may not be necessary, leading to lower operational costs for the PE/VC funds. Our analysis shows, however, that various EU countries do still apply capital gains taxes in this way.

The Benchmark also examines other tax items typically relevant for a PE/VC fund and its investors, such as:

- VAT on management fees charged to the fund
- Withholding taxes on dividends or other forms of income such as interest and royalties
- Tax exemptions available for dividend income and capital gains
- The availability of special fund regimes
- Stamp duties or financial transaction taxes

**Tax issues for investee companies (Company tax rates, interest deductibility and fiscal incentives)**

The creation and ongoing development of a business depends strongly on the fiscal environment that a country provides. Young companies need particular support in the early years of development when often few or no profits are earned. Companies that depend on high R&D investments, which often take several years to pay off and generate income, will face particular challenges. A special tax rate for small companies, or other fiscal incentive, can provide crucial support to those businesses contributing to an innovation-friendly environment for business.

Another important factor is whether portfolio companies can deduct interest and interest-related expenses (on both related and unrelated-party loans). These deductions help businesses to finance their growth and improve their competitive position, and so it is crucial that limits for interest deductibility are set at levels that encourage businesses to invest in future growth.
Introduction

Retaining talent in investee companies

Retaining talent is a key area of concern for individual companies and for the wider economy. Demographic shifts and international competition for talent risk a shortage of key people, including not only entrepreneurial talent, but also researchers, highly qualified company managers, and investment fund managers, able to select the most promising teams.

They should be attracted, supported and retained through tailored fiscal measures and well-addressed performance-related incentives. Those incentives, such as stock options, are crucial; this should be reflected in their taxation, to encourage entrepreneurial thinking and risk-taking, fostering growth and innovation in Europe.

The taxation of stock options for investee company managers and employees can take place ‘upon grant’, ‘upon vesting’, ‘upon exercise’ or ‘upon the sale of the underlying shares’. The first three lead to a situation where stock options are generally taxed at the time when the money from a possible gain is not yet received. Ideally, if any taxation is applicable, there should be no taxation of unrealised gains. The fourth and best situation is taxation ‘at exit’ or ‘upon sale’.

Research methodology

For the research behind this report, a standardised procedure was followed based on detailed definitions and questions covering 22 individual criteria and 31 variables across the 27 EU member states, as well as Norway, Switzerland and the US. It is the first time the Benchmark covers Bulgaria, Malta and the US.

This edition of the EVCA Benchmark differs considerably from those published in 2003, 2004, 2006 and 2008. Most of the variables, for example capital gains and income taxation at company and individual/employee level, were used in the 2008 edition. Other variables have been added or removed to reflect the changing tax environments and maturing of private equity and venture capital markets over time. For example, variables on withholding taxation, anti-abuse rules and stamp duties were added, the section dealing with fund structures developed and the sections on pension funds and insurance companies removed.

We have not scored or ranked tax environments on their competitiveness. It is not possible to do this based on the elements assessed in this study alone. We have opted for an objective representation of the facts and tax environments across the countries covered.

Furthermore, due to the significant changes the study has gone through in terms of topics/variables covered and the way in which the questions were phrased, a strict comparison with the results in the previous Benchmark studies has not been possible.

The information gathered reflects the situation in each country as at 1 January 2013 (legislation in place as of this date). In some cases and where relevant/applicable, the cut-off date is 1 March 2013. All currency conversions were done according to the 2 April 2013 rate.

The information in this paper is set out in individual country chapters. Each country is subdivided into seven sections:

- Introduction
- Summary overview
- Fund structures
- Taxation at a fund level
- Taxation at a company level
- Taxation of employees
- Fiscal incentives

Fund structures for private equity and venture capital

The fund structure analysis refers to the most commonly used domestic structure(s) and does not cover the possibility of using foreign fund structures to invest in private equity and venture capital in the country.

The questions put forward for this section are:

1. What is the most commonly used domestic fund structure or investment vehicle for private equity and venture capital investments?

   Are there other structures which are commonly used? If so, please specify.

2. a) Is this fund structure tax transparent for domestic investors?

   b) Does this fund structure give domestic investors the same taxation (ie no incremental tax) as compared to the situation that such domestic investors would invest directly in the target companies? Please differentiate between domestic tax-exempt investors, domestic investors being individuals, and domestic (taxable) corporate investors.

3. a) Is this fund structure tax transparent for non-domestic investors?

   b) Does this fund structure give non-domestic investors the same taxation (ie no incremental tax) as compared to the situation that such non-domestic investors would invest directly in the target companies? Please differentiate between non-domestic investors being individuals, and non-domestic corporate investors.

4. Does this fund structure, as commonly employed by private equity and venture capital firms, prevent non-domestic investors and fund managers from having a permanent establishment in your country? Please specify the conditions under which a permanent establishment is created, and under which no permanent establishment is constituted.

5. If there is no permanent establishment, are there any other circumstances where capital gains tax is charged to non-residents and if so, what are these circumstances?

1 Where there are several such structures, the most frequent ones were selected for analysis.
Research methodology

For example, does your country impose tax on non-residents for gains generated on the sale of shares of companies established in your country?

6. Is this fund structure free from undue restrictions2?

Taxation at a fund level

The questions asked for this section follow below:

1. In the way funds are normally structured, is there VAT on management fees charged to the fund3 (or equivalent if structured differently, e.g. as a profit share for the fund manager)?
   If yes, can this VAT on management fees be recuperated?

2. Does your country levy any withholding taxes on dividends or other forms of income if a distribution is made by a portfolio company established in your country to a fund (with non-domestic investors) established in another country?
   If yes, please specify.
   In particular, is there a specific tax rate for withholding taxes? What is the tax rate in your country as of 1 January 2013?
   When you provide the withholding tax rate, could you please specify whether this tax rate includes any municipal, local, social or trade tax? Or should we still add any municipal, local, social or trade tax to this rate to come to the effective capital gains tax rate?
   Are withholding taxes definite or is there a possibility to recover them? Please explain the recovery procedure.

3. a) Does your country levy a (corporate) income tax or a capital gains tax from a domestic investor which sells shares in a portfolio company?
   If yes, please specify (e.g. are there differences with regard to specific investors or holding periods?).
   Are capital gains subject to the same tax rate as dividend income in your country?
   Or is there a specific tax rate for capital gains on the disposal of shares in your country and what is the tax rate in your country as of 1 January 2013?
   When you provide the tax rate levied from capital gains, could you please specify whether this tax rate includes any municipal, local, social or trade tax? Or should we still add any municipal, local, social or trade tax to this rate to come to the effective capital gains tax rate?

   If there are any differences in taxation according to different holding periods, please mention them.
   Please also specify what the effective tax rate would be after application of the national participation exemption regime (or similar) (where applicable)?

   b) Is the tax liability of such domestic investor different if the gain is not realised from a direct investment but from an investment in a tax transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor?

4. Does your country levy any stamp duties, financial transaction tax, or the like (ignoring any transfer duties on real estate)?

5. Do you have any anti-abuse rules (like beneficial ownership provisions with regard to intermediate structures)? Please specify.

Taxation at a company level

Company tax rates

The company tax rates given in this paper are usually the maximum tax rates, including a base tax, local, state and/or municipal taxes and any other charges levied on the same tax base. The company tax rates and their exact composition are further specified in the individual country chapters.

The employer’s social security contributions are usually not included in the company tax rates. These have been dealt with separately (see below).

The questions raised in this section include:

1. What is the nominal company tax rate in your country as of 1 January 2013?
   When you provide the company tax rate, could you please specify whether this tax rate includes any municipal, local, social or trade tax? Or should we still add any municipal, local, social or trade tax to this rate to come to the effective company tax rate?

2. Is there a special company tax rate for SMEs, as defined in EU legislation, in your country?
   If yes, what is the company tax rate for SMEs in your country as of 1 January 2013 and which conditions have to be fulfilled by companies to be eligible?
   Please specify if this tax rate is composed of several tax rates (e.g. local taxes, trade taxes, municipality taxes, etc.).

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2 Examples of such restrictions include being required to invest a certain percentage in the home country or in a particular industry, or being forbidden any shareholdings in quoted companies.
3 Please note that this refers to VAT on fees regarding PE/VC FUND management (services).
Research methodology

3. Is there a special company tax rate for small companies based on other criteria, e.g. amount of profits, (early) stage of development, etc.?

Please note that for the purposes of the summary tables at the beginning of each country report, the above two questions have been considered as one.

Interest deductibility

4. Can a portfolio company in your country deduct its net interest expenses on unrelated-party loans from its tax basis without any limitation?
   Please specify any conditions or ceilings that apply for unrelated-party loans (e.g. thin capitalisation or interest stripping rules)?

5. Can a portfolio company in your country deduct its net interest expenses on related-party loans from its tax basis?
   Please specify any conditions or ceilings that apply (e.g. thin capitalisation or interest stripping rules)?

Taxation of employees

The analysis is based on the following variables:
- Capital gains tax for private individuals
- Income tax for private individuals
- Social security contributions
- Special tax regimes
- Taxation of stock options
  - Timing of taxation
  - Method of taxation (i.e. capital gains, income or other)
  - Special rules for certain types of company
  - Tax relief for the grantor of the stock options

Capital gains

Capital gains tax rates include local and/or municipal taxes, and other charges if applicable. For each country, the minimum and maximum tax rates are represented.

The assessment disregards tax allowances/credits, which might additionally favour the acquisition of shares.

The capital gains tax rates and their exact composition are further specified in the individual country chapters.

Income

The income tax rates given in this paper include a base tax, local and/or municipal taxes and any other charges levied on the same tax base (e.g. exceptional social charges). The employee’s social security contributions are usually not included in the income tax rates. These are dealt with separately (see below).

The income tax rates and their exact composition are further specified in the individual country chapters.

Social security

For the first time this year, the EVCA Benchmark also covers social security contributions from both employees and employers.

Taxation of stock options – Timing of taxation

Four options were given for the taxation of stock options: ‘upon grant’, ‘upon vesting’, ‘upon exercise’ and ‘upon the sale of the underlying shares’.

Where several stock options are available, analysis has been provided for each of the most commonly used stock option schemes in the case of private equity and venture capital.

Taxation of stock options – Method of taxation

This section looks at how stock options are taxed, as capital gains, income or other.

Special rules and tax relief for the grantor of the stock options

For the first time, the EVCA Benchmark looks at special stock option rules for certain types of company, and whether there is any tax relief for the grantor of the stock options.

The following questions were asked:

1. Is there a specific tax rate for capital gains on the disposal of shares for private individuals in your country? e.g. special rates of capital gains tax for entrepreneurs?
   If yes, what is the capital gains tax rate in your country as of 1 January 2013?

   When you provide the capital gains tax rate, could you specify whether this tax rate includes any municipal, local, social or trade tax? Or should we still add any municipal, local, social or trade tax to this rate to come to the effective capital gains tax rate?

   If there are any differences in taxation according to different holding periods, please mention them.
Research methodology

If no, are capital gains taxed as income or other?

2. What is the income tax rate for private individuals in your country as of 1 January 2013? When you provide the income tax rate, could you please specify whether this tax rate includes any municipal, local, social or trade tax? Or should we still add any municipal, local, social or trade tax to this rate to come to the effective income tax rate?

3. Do private individuals have to pay social security contributions in your country? If yes, what is the rate in your country as of 1 January 2013? If there are any differences in social security levies, e.g. depending on types or amount of income, please mention them.

4. Do employers have to pay social security contributions in your country? If yes, what is the rate in your country as of 1 January 2013? If there are any differences in social security levies, e.g. depending on types or amount of income, please mention them.

5. Does your country provide for any special tax regimes for private individuals, e.g. due to age, retirement, specific circumstances in life? If yes, please specify.

6. When is a private individual who receives stock options taxed in your country? Options:
   - When the option is granted
   - When the option is vested
   - When the option is exercised
   - When the underlying stocks are sold

7. How is the above-mentioned stock option scheme taxed (capital gains, professional income or other)?

8. Are there special rules on stock options for certain types of company? (e.g. special treatment if you have options in SMEs and are an employee). Please explain.

9. Is there any tax relief for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options in your country?

Fiscal incentives

Fiscal incentives for private equity and venture capital at a fund level

- Investors
  1. Does your country provide any form of fiscal incentive for investors to invest in private equity and venture capital (either through a fund or directly into the portfolio company)?
     If yes, please specify and mention whether there are any differences if the investors are local or international.

- Fund managers
  2. Does your country provide any form of fiscal incentive or any other specially agreed tax treatment for fund managers or the fund itself to invest in private equity and venture capital?

[It should be noted that only those incentives were taken into consideration that are specifically aimed at or for private equity and venture capital. Incentives which are also available for other investment structures were not included.]

Fiscal incentives at a company level

This section includes the coverage of fiscal R&D incentives, including for contracting researchers and to support technology transfers, as well as special incentives aimed at young and innovative companies.

- Fiscal R&D Incentives

The analysis of the environment for fiscal R&D incentives focuses on the same six incentives/variables used in the 2008 edition. The selection of those incentives was based on the study “Corporation tax and innovation: Issues at stake and review of European Union experiences in the nineties” (2002), published by the European Commission Directorate-General for Enterprise and Industry.

Information was collected on the provision of the following R&D incentives in each of the countries covered:

1. Fiscal incentives for business R&D expenditure (e.g. tax credits or allowances)
2. Fiscal incentives for R&D capital expenditure (e.g. free or accelerated depreciation)

---

4 Tax credit refers to fiscal incentives, which allow firms to deduct a percentage of their tax bills/liabilities. Tax allowances are incentives as they enable firms to deduct more than 100% of their R&D activity expenditure from the tax base.
Research methodology

3. Fiscal incentives for contracting researchers (tax incentives that encourage the hiring of specialist personnel, e.g. support via personal income tax, social charges or corporation taxes)

4. Fiscal incentives for technology transfer (e.g. a tax incentive to support the purchase of a technology or a tax incentive for the developer of a new technology to transfer his know-how or an exemption or reduced rate of taxation for royalties obtained from the use of patents or other intellectual property)

5. Fiscal incentives for the cooperation between firms and research institutes/universities (e.g. tax incentives for collaborative projects)

6. Fiscal incentives for the creation or spin-out of innovative firms from their parent

It should be noted that the same R&D incentive might count several times when it covers several of the areas looked at. For example, a fiscal incentive for business R&D expenditure that also implies an incentive for contracting researchers would be accredited twice.

› Young and innovative companies

1. Does your country provide fiscal incentives to support young and innovative companies in their early development phase?

If the relevant fiscal incentives are provided in the form of a scheme, please specify the name of the scheme, the characteristics required for the scheme to apply, the date from when it has been in place and the type of incentives/measures the scheme provides.

It should be noted that only those fiscal incentives that are related to the age and/or size of the company (in terms of turnover and/or number of employees) and to its innovativeness (in terms of R&D spending, R&D personnel or an equivalent measure) were taken into account. Non-fiscal support, or schemes targeted towards young and non-innovative companies were excluded from the analysis.

Future developments

Instead of having a separate chapter dealing with the future tax developments related to private equity and venture capital, as was the case in the 2008 edition, we have put this information in the relevant section of the country reports.

The questions raised are:

Are there any tax developments or forthcoming changes currently under discussion or in the pipeline for 2013 which would affect/have an impact on:

1. the tax environment for investors and fund managers?

2. the tax environment for investee companies?

3. the tax environment for retaining talent in investee companies?
European overview
## An overview of European fund structures and investment vehicles

<table>
<thead>
<tr>
<th>Country</th>
<th>Structure</th>
<th>Domestic transparency*</th>
<th>Non-domestic transparency</th>
<th>Permanent establishment tax</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Mittelstandsfinanzierungsgesellschaft (MiFiG)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Belgium</td>
<td>Limited Liability Company</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Investment Company</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Contractual Fund</td>
<td>Yes</td>
<td>Yes</td>
<td>Generally speaking no</td>
<td>Yes</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Common (contractual) fund</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>1 Yes</td>
</tr>
<tr>
<td></td>
<td>Investment company</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Cyprus</td>
<td>International Variable Capital Company</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>International Fixed Capital Company</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>International Investment Limited Partnership</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>International Unit Trust</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>The Czech Republic</td>
<td>Mutual Fund</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td></td>
<td>Investment Fund</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Special Fund of Qualified Investors</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Denmark</td>
<td>K/S Kommandiselskab</td>
<td>Yes (but anti-hybrid provisions exist)</td>
<td>Yes</td>
<td>No (under certain conditions)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>P/S Kommanditakieselskab</td>
<td>Yes (but anti-hybrid provisions exist)</td>
<td>Yes</td>
<td>No (under certain conditions)</td>
<td>No</td>
</tr>
<tr>
<td>Estonia</td>
<td>Public limited companies</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Contractual Funds</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Finland</td>
<td>Kommandiittiyhtiö (Limited Partnership, Ky)</td>
<td>Yes²</td>
<td>Yes</td>
<td>Usually no (when a tax treaty applies)</td>
<td>No</td>
</tr>
</tbody>
</table>

1. Any other activity of an investor in the country other than the mere holding of shares should be considered on a case-by-case basis.
2. As a calculation unit it may affect nevertheless the taxation to some extent.

* If the fund structure does not constitute a permanent establishment, it has been noted as a ‘No’. If a structure may be organised to be transparent it is noted as a ‘Yes’.

N.B. The assessments in this table may be subject to restrictions. Where possible, these have been set out in the full reports below.
<table>
<thead>
<tr>
<th>Country</th>
<th>Structure</th>
<th>Domestic transparency*</th>
<th>Non-domestic transparency</th>
<th>Permanent establishment tax</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>Fonds communs de placement à risque (FCPR)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Fonds communs de placement pour l’innovation (FCPI)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Fonds d’investissement de proximité (FIP)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Germany</td>
<td>German Limited Partnership (GmbH &amp; Co. KG, non-trading)</td>
<td>Yes</td>
<td>Yes</td>
<td>No, if non-trading</td>
<td>No*</td>
</tr>
<tr>
<td>Greece</td>
<td>Closed ended venture capital Mutual Fund (AKES)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>EKES</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Hungary</td>
<td>Private equity fund</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Investment fund</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Ireland</td>
<td>Limited Partnership (unregulated)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Undertakings for Collective Investment in Transferable Securities (UCITS) (regulated - company or fund)</td>
<td>No</td>
<td>No</td>
<td>No, provided the non-resident declarations are in place</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Regulated non-UCITS collective investment schemes including Qualifying Investor Funds (QIFs) which will be re-cast as Qualifying Investor AIFs (“QIAFs”) under the AIFMD regime</td>
<td>No</td>
<td>No</td>
<td>No, provided the non-resident declarations are in place</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Investment Limited Partnership (ILP) (regulated)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Italy</td>
<td>Fondo Chiuso</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Latvia</td>
<td>Pilnsabiedrība (General Partnership)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Komandātsabiedrība (Limited Partnership)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>SIA (Private Limited Liability Company)</td>
<td>No</td>
<td>No</td>
<td>N/A (a company established in Latvia will be a Latvian tax resident)</td>
<td>No</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Trust or common fund</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Investment Company with Variable Capital</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Closed-end investment company</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Closed-end trust or common fund</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

* Please note that a decree by the German Federal Ministry of Finance sets certain requirements for a fund being recognised as non-trading, which differs from typical private equity standards.

* * If the fund structure does not constitute a permanent establishment, it has been noted as a ‘No’. If a structure may be organised to be transparent it is noted as a ‘Yes’.

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**European overview**

| Country       | Structure                                                      | Domestic transparency* | Non-domestic transparency | Permanent establishment tax | Undue restrictions |
|---------------|                                                               |                        |                            |                            |                   |
| Luxembourg    | Société d'Investissement en Capital à Risque (SICAR)           | Yes4                  | Yes5                       | No                           | No                |
|               | Fonds d'Investissement Spécialisé (Specialised Investment Fund, SIF) | Yes6                  | Yes7                       | No                           | No                |
| Malta         | Investment company with variable share capital (SICAV)        | No                     | No                         | No                           | Varies with the fund licence |
|               | Investment company with fixed share capital (INVCO)           | No                     | No                         | No                           | Varies with the fund licence |
|               | Partnership en commandite or Limited Partnership              | Yes8                   | Yes8                       | No                           | Varies with the fund licence |
|               | Unit Trust                                                     | Yes                     | Yes                        | No                           | Varies with the fund licence |
|               | Limited Liability Company                                     | No                     | Yes                        | No                           | Varies with the fund licence |
|               | Funds or schemes established by contract                      | Yes                     | Yes                        | No                           | Varies with the fund licence |
| The Netherlands | Besloten Vennootschap (Limited Liability Company, BV)         | No                     | No                         | No                           | No                |
|               | Commanditaire Vennootschap (Limited Partnership, CV)          | Yes subject to conditions | Yes subject to conditions | Should be established on a case-by-case basis | No                |
|               | Co-operative (Co-op)                                          | No                     | No                         | No                           | No                |
| Norway        | Limited Partnership (Kommandittelskap (KS))                  | Yes                     | Yes                        | Yes                          | No                |
|               | Private Limited Company (Limited Liability Company or Aksjeselskap (AS)) | No                     | No                         | No                           | No                |
| Poland        | Closed-End Investment Fund for Non-Public Assets (CEIF)       | No (although exempt from CIT) | No (although exempt from CIT) | No                           | No tax restrictions; however, there are regulatory ones |
| Portugal      | Fundo de Capital de Risco (FCR)                               | No                     | No                         | No                           | No                |

4 But it depends on how the SICAR is structured (i.e., only common (CLP) or special (SLP) limited partnerships are tax transparent).
5 But this is ultimately subject to residence country criteria and how the SICAR is structured.
6 But it depends on how the SIF is structured (i.e., only common (CLP) or special (SLP) limited partnerships and common funds (fonds commun de placement - FCP) are tax transparent).
7 But this is ultimately subject to residence country criteria and depends on how the SIF is structured.
8 If the capital of the partnership is not divided into shares and the partnership carries on a trade or business.

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## European overview

<table>
<thead>
<tr>
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<th>Structure</th>
<th>Domestic transparency*</th>
<th>Non-domestic transparency</th>
<th>Permanent establishment tax</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Romania</td>
<td>Closed-End Investment Fund for Non-Public Assets (CEIF or AOPC):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>contract-based</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Regulatory</td>
</tr>
<tr>
<td></td>
<td>company-based</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Regulatory</td>
</tr>
<tr>
<td>The Slovak Republic</td>
<td>Limited Liability Company</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Joint-Stock Company</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Mutual fund</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Venture Capital Company</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Spain</td>
<td>Sociedad de Capital Riesgo (SCR)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Fondo de Capital Riesgo (FCR)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Sweden</td>
<td>Aktiebolag (Swedish Limited Liability Company)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Kommanditbolag (Swedish Limited Partnership)</td>
<td>Yes</td>
<td>Yes</td>
<td>Generally yes if the fund management conducts its investment activities in Sweden</td>
<td>No</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Contractual Fund</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Investment Company with Variable Capital (SICAV)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Limited Partnership for collective investment (LP)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No (used only to a very limited extent)</td>
</tr>
<tr>
<td></td>
<td>Investment Company with Fixed Capital (SICAF)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>The United Kingdom</td>
<td>English limited partnership (ELP)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Scottish limited partnership (SLP)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>The United States of America</td>
<td>Delaware Limited Partnership</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<td></td>
<td>Cayman Island Limited Partnership</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

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### An overview of European tax at a fund level

<table>
<thead>
<tr>
<th>Country</th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Payment</td>
<td>Reclaim</td>
<td>(Min.)</td>
<td>(Max.)</td>
<td>Stamp</td>
</tr>
<tr>
<td>Austria</td>
<td>Yes</td>
<td>No</td>
<td>25%</td>
<td>-</td>
<td>Yes</td>
</tr>
<tr>
<td>Belgium</td>
<td>Yes</td>
<td>Yes</td>
<td>0%</td>
<td>33.99%</td>
<td>Yes</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>No</td>
<td>-</td>
<td>0%</td>
<td>10%</td>
<td>No</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Yes</td>
<td>Yes</td>
<td>20%</td>
<td>-</td>
<td>Yes</td>
</tr>
<tr>
<td>The Czech Republic</td>
<td>No</td>
<td>-</td>
<td>5%</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Denmark</td>
<td>No</td>
<td>-</td>
<td>0%</td>
<td>25%</td>
<td>No</td>
</tr>
<tr>
<td>Estonia</td>
<td>No</td>
<td>-</td>
<td>21%</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Finland</td>
<td>Generally no</td>
<td>Yes (if fund liable to VAT)</td>
<td>N/A</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>France</td>
<td>No</td>
<td>-</td>
<td>33.33%</td>
<td>36.1%</td>
<td>No</td>
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<tr>
<td>Germany</td>
<td>Yes</td>
<td>Yes</td>
<td>1.14%</td>
<td>1.65%</td>
<td>No</td>
</tr>
<tr>
<td>Greece</td>
<td>No</td>
<td>No</td>
<td>20%</td>
<td>-</td>
<td>Yes</td>
</tr>
<tr>
<td>Hungary</td>
<td>No</td>
<td>-</td>
<td>19%</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Ireland</td>
<td>Regulated</td>
<td>No</td>
<td>May be possible</td>
<td>None</td>
<td>33/36% (non resident exemption)</td>
</tr>
<tr>
<td>Unregulated Limited Partnership</td>
<td>Yes</td>
<td>May be possible</td>
<td>33% (for partners on certain assets)</td>
<td>None</td>
<td>-</td>
</tr>
<tr>
<td>Italy</td>
<td>No</td>
<td>-</td>
<td>No</td>
<td>-</td>
<td>0%</td>
</tr>
<tr>
<td>Latvia</td>
<td>Yes14</td>
<td>Yes</td>
<td>0%</td>
<td>15%</td>
<td>0%</td>
</tr>
<tr>
<td>Lithuania</td>
<td>No</td>
<td>-</td>
<td>Maximum 15%</td>
<td>-</td>
<td>0%</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>No</td>
<td>-</td>
<td>0%</td>
<td>29.22%</td>
<td>0%</td>
</tr>
</tbody>
</table>

9 This is a specific withholding tax rate for liquidation bonuses (expected to be abolished by the end of 2014).
10 Although withholding tax is not imposed on the distribution of dividends paid to residents or non-residents, withholding tax of 21% does apply in certain cases.
11 Assuming that non-cooperative states rules do not apply.
12 Real Estate Transfer Tax may become applicable if real estate (or shares in a real estate company) is transferred in the course of the transaction.
13 Transfers of Fund units are exempt.
14 VAT exemption would apply if the respective services qualify as services (including intermediary services) related to investments in the capital and storage, alienation and management of the securities (shares, bonds, mortgage bonds, etc), as well as issue of the securities.
### European overview

<table>
<thead>
<tr>
<th>Country</th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Payment</td>
<td>Reclaim</td>
<td>(Min.)</td>
<td>(Max.)</td>
<td>(Min.)</td>
</tr>
<tr>
<td>Malta</td>
<td>No</td>
<td>-</td>
<td>0%</td>
<td>35%</td>
<td>0%</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>No</td>
<td>Yes</td>
<td>20%</td>
<td>25%</td>
<td>0%</td>
</tr>
<tr>
<td>Norway</td>
<td>No</td>
<td>-</td>
<td>0%</td>
<td>28%</td>
<td>0%</td>
</tr>
<tr>
<td>Poland</td>
<td>No</td>
<td>-</td>
<td>No for CEIF; otherwise 19%</td>
<td>No for CEIF; otherwise 19%</td>
<td>Yes</td>
</tr>
<tr>
<td>Portugal</td>
<td>No</td>
<td>-</td>
<td>0%</td>
<td>31.5%</td>
<td>0%</td>
</tr>
<tr>
<td>Romania</td>
<td>No</td>
<td>-</td>
<td>1%</td>
<td>16%</td>
<td>16%</td>
</tr>
<tr>
<td>The Slovak Republic</td>
<td>No (if considered a distribution of profit shares)</td>
<td>-</td>
<td>23%</td>
<td>-</td>
<td>Not on dividends</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Yes</td>
<td>Yes</td>
<td>17%</td>
<td>-</td>
<td>0%</td>
</tr>
<tr>
<td>Spain</td>
<td>No</td>
<td>-</td>
<td>0.30%</td>
<td>-</td>
<td>0%</td>
</tr>
<tr>
<td>Sweden</td>
<td>Yes</td>
<td>Yes</td>
<td>0%</td>
<td>22%</td>
<td>0%</td>
</tr>
<tr>
<td>Switzerland</td>
<td>No2</td>
<td>-</td>
<td>0%</td>
<td>24% (if any)</td>
<td>35% (if any)</td>
</tr>
<tr>
<td>The United Kingdom</td>
<td>No</td>
<td>-</td>
<td>No</td>
<td>-</td>
<td>0%</td>
</tr>
<tr>
<td>The United States</td>
<td>No</td>
<td>-</td>
<td>Max. 35%</td>
<td>-</td>
<td>30%</td>
</tr>
</tbody>
</table>

---

15. Malta does not impose any withholding tax on dividends, interest, royalties or proceeds from liquidation. Withholding tax is only applied on certain investment income of prescribed funds. No withholding tax applies on the income of non-prescribed funds.

16. The Netherlands does not have a capital gains tax. However, the Netherlands may impose corporate income tax on capital gains realised by non-resident participants in a Dutch fund.

17. The withholding tax rate on dividends is dependent on the investor and his residency; however, for private equity and venture capital investments, the participation exemption method will often apply.

18. However, health insurance payment for dividend income is due in certain circumstances.

19. However, 50% of capital gains derived by a taxpayer from the disposal of shares may be exempt subject to certain conditions.

20. For private individuals, withholding tax amounts to 25% since 1 January 2013.

21. Spanish law establishes a 99% tax exemption for capital gains. The remaining 1% is taxed at the company tax rate of 30%.

22. If and to the extent that the funds are governed by the CISG.
### European overview

#### An overview of European tax at a company level

<table>
<thead>
<tr>
<th>Country</th>
<th>Company tax rate</th>
<th>Special tax regime for SMEs</th>
<th>Related-party loans interest deduction</th>
<th>Unrelated-party loans interest deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Min.)</td>
<td>(Max.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>25%</td>
<td>-</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>Belgium</td>
<td>33.99%</td>
<td>-</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>10%</td>
<td>-</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>Cyprus</td>
<td>10%</td>
<td>-</td>
<td>Yes*</td>
<td>Yes*</td>
</tr>
<tr>
<td>The Czech Republic</td>
<td>19%</td>
<td>-</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>Denmark</td>
<td>25%</td>
<td>-</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>Estonia</td>
<td>21%</td>
<td>-</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>Finland</td>
<td>24.5%</td>
<td>-</td>
<td>Yes (conditionally/restricted)</td>
<td>Yes</td>
</tr>
<tr>
<td>France</td>
<td>33.33%</td>
<td>36.1%</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
<tr>
<td>Germany</td>
<td>22.825%</td>
<td>32.975%</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>Greece</td>
<td>26% + 3%</td>
<td>-</td>
<td>No25</td>
<td>Yes*</td>
</tr>
<tr>
<td>Hungary</td>
<td>19% + max 2% (local business tax)</td>
<td>Yes</td>
<td>Yes*</td>
<td>Yes*</td>
</tr>
<tr>
<td>Ireland</td>
<td>12.5% (trading)</td>
<td>25%26 (non trading)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Italy</td>
<td>27.5%</td>
<td>38% (for non-operating companies)</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>Latvia</td>
<td>15%</td>
<td>-</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
<tr>
<td>Lithuania</td>
<td>5%</td>
<td>15%</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>28.15%</td>
<td>29.22%</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
<tr>
<td>Malta</td>
<td>35%28</td>
<td>-</td>
<td>Yes, subject to conditions</td>
<td>Yes, subject to conditions</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>20% - 25%</td>
<td>-</td>
<td>No</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

* Subject to restrictions.

23 Combined corporate and trade tax rate.
24 A corporate 3% supplementary tax applies to gross rental income, provided that the company is in a tax-profit position.
25 However, there is a special tax regime for general partnerships (OE), limited partnerships (EE), civil societies engaged in business or profession, civil or non-profit companies, joint or invisible companies and joint ventures that do not maintain double-entry books. This would also apply to SMEs.
26 Additional surcharge of 20% applies to investment income of certain private companies which is not distributed.
27 For Luxembourg companies with a registered seat in Luxembourg City.
28 Partial refunds of the 35% tax can be claimed by shareholders upon receipt of dividends from trading profits not linked to immovable property situated in Malta, reducing the overall effective rate of tax to between 0% and 5%.
### European overview

<table>
<thead>
<tr>
<th>Country</th>
<th>Company tax rate</th>
<th>Special tax regime for SMEs</th>
<th>Related-party loans interest deduction</th>
<th>Unrelated-party loans interest deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Min.)</td>
<td>(Max.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Norway</strong></td>
<td>28%</td>
<td>-</td>
<td>Yes*</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Poland</strong></td>
<td>19%</td>
<td>-</td>
<td>Yes*</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Portugal</strong></td>
<td>Max. 31.5%²⁹</td>
<td>-</td>
<td>Yes*</td>
<td>Yes, subject to conditions</td>
</tr>
<tr>
<td><strong>Romania</strong></td>
<td>16%</td>
<td>-</td>
<td>Yes*</td>
<td>Yes*</td>
</tr>
<tr>
<td><strong>The Slovak Republic</strong></td>
<td>23%</td>
<td>-</td>
<td>Yes*</td>
<td>Yes*</td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
<td>17%</td>
<td>-</td>
<td>Yes*</td>
<td>Yes under certain conditions</td>
</tr>
<tr>
<td><strong>Spain</strong></td>
<td>30%</td>
<td>-</td>
<td>Yes, but limited</td>
<td>Yes, but limited</td>
</tr>
<tr>
<td><strong>Sweden</strong></td>
<td>22%</td>
<td>-</td>
<td>Yes*</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Switzerland</strong></td>
<td>12% 24%</td>
<td>No</td>
<td>Yes*</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>The United Kingdom</strong></td>
<td>20% 24%³⁰</td>
<td>Yes</td>
<td>Yes*</td>
<td>Yes subject to anti-avoidance provisions</td>
</tr>
<tr>
<td><strong>The United States</strong></td>
<td>15% 35%</td>
<td>No</td>
<td>Yes*</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

* Subject to restrictions.

²⁹ The standard corporate income tax rate is 25%; the maximum of 31.5% includes municipal surcharge (up to 15%, depending on the municipality) and state surcharge (up to 5%, depending on the taxable profits).

³⁰ The main rate of UK corporation tax will reduce to 23% from 1 April 2013 and further reduce to 21% with effect from 1 April 2014 and 20% with effect from 1 April 2015.
## European overview

### An overview of European taxation of employees

<table>
<thead>
<tr>
<th>Country</th>
<th>Income tax (Min.)</th>
<th>Social security (Min.)</th>
<th>Capital gains tax (Min.)</th>
<th>Tax on stock options (Min.)</th>
<th>Special tax regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>0%</td>
<td>40%31</td>
<td>25%</td>
<td>25%</td>
<td>No</td>
</tr>
<tr>
<td>Belgium</td>
<td>25%</td>
<td>Approximately 48%</td>
<td>0%</td>
<td>25%</td>
<td>Yes</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>10%</td>
<td>30.7%</td>
<td>0%</td>
<td>0%</td>
<td>Yes</td>
</tr>
<tr>
<td>Cyprus</td>
<td>0%</td>
<td>12.6%</td>
<td>20%</td>
<td>-</td>
<td>Yes</td>
</tr>
<tr>
<td>The Czech Republic</td>
<td>15% + 7% (solidarity surcharge)</td>
<td>45%36</td>
<td>15%</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Denmark</td>
<td>42%37 Income &gt; €52,000: + 15%</td>
<td>8% (included in the income tax rate)</td>
<td>27%</td>
<td>42%</td>
<td>No</td>
</tr>
<tr>
<td>Estonia</td>
<td>21%</td>
<td>36%</td>
<td>21%</td>
<td>-</td>
<td>Yes</td>
</tr>
<tr>
<td>Finland</td>
<td>16.25%</td>
<td>53.75% (+max. 2.2% church tax)</td>
<td>+ 7.7% (employee) + approx. 22-25% (employer)</td>
<td>30%</td>
<td>Yes</td>
</tr>
<tr>
<td>France</td>
<td>0%</td>
<td>51.8%40 Variable</td>
<td>15.5%</td>
<td>62%</td>
<td>Yes</td>
</tr>
<tr>
<td>Germany</td>
<td>0%</td>
<td>47.475%</td>
<td>26.375%</td>
<td>28.485%</td>
<td>Yes</td>
</tr>
<tr>
<td>Greece</td>
<td>22%</td>
<td>42%42</td>
<td>0.2% (listed)/ 5% (non-listed)</td>
<td>Upon exercise: max. 46% Upon subsequent sale: min. 0.2%/max. 20% capital gains tax + 0.2% stock exchange transaction duty</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Notes

31 22% by the employer and 18% by the employee.
32 Monthly cap for social security contributions €4,440 x 12 months.
33 33% + 9% municipality surcharge.
34 The difference of 0.7 comes from the contribution for the Labour accident and occupational disease fund, which varies from 0.4 to 1.1 depending on the type of labour. The rates are calculated up to a maximum of BGN 2,000 (€1,022) monthly income.
35 6.8% is paid by the employer.
36 Incl. social insurance (pension, sickness and unemployment insurance) and health insurance. 34% is paid by the employer and 11% by the employee.
37 The 42% rate is simplified as the first DKK 42,000 is not taxable. Furthermore, the exact tax rate depends on where in Denmark you live (municipality tax).
38 As of 2013, the employer pays unemployment contribution of 1% and withholds the employee's unemployment contribution of 2% from his or her gross salary.
39 Options are taxable at the level of the employer as fringe benefits at the moment options are exercised or transferred (sold). This means that both income tax at the rate of 21% of the gross amount and social tax at the rate of 33% of the gross amount must be paid by the employer.
40 France has an extensive social security system levied on employers and employees in an approximate ratio of 2:1.
41 Combined employer and employee contributions.
42 An additional solidarity contribution from 1% to 4% will be imposed on income earned in financial years 2010 to 2014 (5% for high-ranking state officers).
43 27.46% is paid by the employer and 16.5% is paid by the employee.
### European overview

<table>
<thead>
<tr>
<th>Country</th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Min.)</td>
<td>(Max.)</td>
<td>(Min.)</td>
<td>(Max.)</td>
<td>(Min.)</td>
</tr>
<tr>
<td>Hungary</td>
<td>16% - 27% (employer) + 18.5% (employee)</td>
<td>16% - 16%</td>
<td>-</td>
<td>16%</td>
<td>-</td>
</tr>
<tr>
<td>Ireland</td>
<td>24%44</td>
<td>48%45</td>
<td>8.25%46</td>
<td>14.75%47</td>
<td>33%</td>
</tr>
<tr>
<td>Italy</td>
<td>23%</td>
<td>43% - 45%49</td>
<td>10%</td>
<td>40%50</td>
<td>20%</td>
</tr>
<tr>
<td>Latvia</td>
<td>24%</td>
<td>-</td>
<td>32.17%52</td>
<td>35.09%53</td>
<td>15%</td>
</tr>
<tr>
<td>Lithuania</td>
<td>5%</td>
<td>20%</td>
<td>35.3%54</td>
<td>41.6%55</td>
<td>0%</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0%</td>
<td>43.6%</td>
<td>25.12%</td>
<td>27.35%57</td>
<td>0%</td>
</tr>
<tr>
<td>Malta</td>
<td>0%</td>
<td>35%</td>
<td>€688.48</td>
<td>€4,193.2859</td>
<td>0%</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>37%</td>
<td>52%</td>
<td>31.15%40</td>
<td>-</td>
<td>0%</td>
</tr>
<tr>
<td>Norway</td>
<td>28%</td>
<td>40%</td>
<td>21.9%61</td>
<td>-</td>
<td>28%</td>
</tr>
<tr>
<td>Poland</td>
<td>18%</td>
<td>32%</td>
<td>14% + 9% health insurance63</td>
<td>19%</td>
<td>-</td>
</tr>
<tr>
<td>Portugal</td>
<td>14.5%</td>
<td>48%</td>
<td>9.3% (employee)/11.9% (employee)</td>
<td>11% (employee)/23.75% (employee)64</td>
<td>28%</td>
</tr>
</tbody>
</table>

---

44 20% income tax + 4% USC
45 41% income tax + 7% USC
46 The 8.25% social security would apply to an individual earning €18,304-€18,512 and consists of 4% employee social security and 4.25% employer contribution. Lower rates can apply to individuals earning less than €18,304.
47 The 14.75% rate refers to 4% employee contribution and 10.75% employer contribution that would apply to an individual earning more than €18,512.
48 Tax on stock options would be income tax, USC and employee social security of 4% (no employer contribution applies).
49 Including additional municipality and regional taxes. Furthermore, a 3% tax rate is due as solidarity contribution on taxable income exceeding €300,000 (from 1 January 2011 to 31 December 2013).
50 Social security contribution range depends on several circumstances, splitting between employer and employee (respectively about 2/3 and about 1/3).
51 A 10% surcharge applies on income from employment deriving from bonuses and stock options paid to managers of the financial sector exceeding 100% of the fixed salary.
52 This rate is applicable for self-employed persons. For regular employees, the minimum rate is 30.09%; lower rates may be available for other categories (eg, retired employees) or if the employer is a foreign resident.
53 Employer’s part = 24.09%; Employee’s part = 11%.
54 This is only for owners of individual companies.
55 30.98%-32.6% is paid by the employer, 9% by the employee. This includes social security and health insurance contributions.
56 Under certain conditions, the same taxation as the taxation of employees may be applied, including social security contributions.
57 The employer’s contribution can range between 12.67% and 14.90%; the employee pays 12.45%.
58 In addition, a dependency contribution of 14% applies to the taxable income.
59 Half is borne by the employer and half by the employee.
60 Included in the income tax rate.
61 14.1% is paid by the employer and 7.8% by the employee.
62 Capital gains may be taxed as employment income (up to 40%) eg, in an earn-out scenario where the seller commits to remain employed.
63 Employers will pay at least 19.48% social security contributions.
64 If a person is self-employed, in general, their self-employment income is subject to a rate of 29.6%.
65 For 2013 an extraordinary surtax is due at a rate of 3.5%. An additional solidarity surcharge is also due and applicable at a rate of 2.5% on annual income exceeding €80,000 (for annual income over €250,000 a tax rate of 5% will apply).
### European overview

<table>
<thead>
<tr>
<th>Country</th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Min.)</td>
<td>(Max.)</td>
<td>(Min.)</td>
<td>(Max.)</td>
<td></td>
</tr>
<tr>
<td><strong>Romania</strong></td>
<td>16%</td>
<td>-</td>
<td>16%</td>
<td>-</td>
<td>Taxable at employee level at 16% when underlying stock is sold</td>
</tr>
<tr>
<td><strong>The Slovak Republic</strong></td>
<td>19%/25%</td>
<td>-</td>
<td>Approximately €45 for employees/approximately €119 for employers</td>
<td>Approximately €520 for employees/for employers it depends on income</td>
<td>19%/25%</td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
<td>16%</td>
<td>50%</td>
<td>38.2%</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td><strong>Spain</strong></td>
<td>24.35%</td>
<td>51.9%</td>
<td>€391.68</td>
<td>€1,276.07³⁶</td>
<td>21%</td>
</tr>
<tr>
<td><strong>Sweden</strong></td>
<td>~ 29%</td>
<td>~ 60%</td>
<td>10.21%</td>
<td>31.42%</td>
<td>25% (20% - closely held companies)</td>
</tr>
<tr>
<td><strong>Switzerland</strong></td>
<td>19%</td>
<td>46%</td>
<td>12.5% (6.25% by both employee and employer)³⁹</td>
<td>0%</td>
<td>46%</td>
</tr>
<tr>
<td><strong>The United Kingdom</strong></td>
<td>0%</td>
<td>50%³⁰</td>
<td>0%</td>
<td>12%³¹ / 2%</td>
<td>0%</td>
</tr>
<tr>
<td><strong>The United States</strong></td>
<td>10%</td>
<td>39.6%</td>
<td>5.65% (employee) + 7.65% (employer)</td>
<td>15% for long-term capital gains; max. 39.6% for short-term gains</td>
<td>0%³³</td>
</tr>
</tbody>
</table>

---

66 The 50% tax bracket applies only temporarily for the years 2013 and 2014.
67 16.1% is paid by the employer and 22.1% is paid by the employee.
68 These figures are an approximation of the total contribution to social security to be paid by the employer in the event of (i) an employee within the category of engineer and university graduate, (ii) economic activity of office work and (iii) no extraordinary hours being made by the employee. The employee contribution is deducted from gross salary.
69 The social security contribution for self-employed individuals amounts to 9.7%. There are also compulsory contributions to occupational benefit plans for salary amounting up to CHF 84,240 a year. The average contribution ranges between 12% and 14% of salary and is borne half by the employer and half by the employee.
70 The maximum rate of UK income tax for income over £150,000 will reduce to 45% with effect from 6 April 2013.
71 The 12% rate is subject to a cap of £42,484 income. Employers pay their contributions at 13.8% on earnings or other taxable benefits provided to employees over £7,488.
72 This percentage consists of 4.2% social security tax on wages up to $110,100 and a 14.5% Medicare tax on all wages. For tax years beginning after 2012, social security tax will be 6.2% (this will apply to all wages up to $113,700). Please note that the rates are different for self-employed individuals.
73 Tax treatment depends on classification as statutory or non-statutory. Additionally, these rates do not take into account employment taxes or any tax that may be imposed on the stock after the option is exercised.
## European overview

### An overview of European fiscal incentives

<table>
<thead>
<tr>
<th>Country</th>
<th>Investors</th>
<th>Fund managers</th>
<th>Business R&amp;D expenditure</th>
<th>R&amp;D Capital expenditure</th>
<th>Contracting researchers</th>
<th>Technology transfer</th>
<th>Cooperative external research</th>
<th>Innovative spin-out</th>
<th>Young and innovative companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
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<td>Yes (temporarily)</td>
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</tr>
</tbody>
</table>

<sup>74</sup> Although not applied in practice
## European overview

<table>
<thead>
<tr>
<th>Country</th>
<th>Investors</th>
<th>Fund managers</th>
<th>Business R&amp;D expenditure</th>
<th>R&amp;D Capital expenditure</th>
<th>Contracting researchers</th>
<th>Technology transfer</th>
<th>Cooperative external research</th>
<th>Innovative spin-out</th>
<th>Young and innovative companies</th>
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<tr>
<td>The Slovak Republic</td>
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<td>Yes</td>
<td>Yes (upon request in certain circumstances)</td>
<td>No</td>
<td>Yes (upon request in certain circumstances)</td>
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<td>Yes</td>
<td>Yes (upon request in certain circumstances)</td>
<td>Yes</td>
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<td>The United States</td>
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<td>Yes</td>
<td>Yes</td>
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Country reports
Austria

Introduction

The most commonly used structure for Austrian private equity and venture capital funds used to be the Mittelstandsfinanzierungsgesellschaft (MiFiG), which was introduced in 1994. A MiFiG is a corporate entity, usually a stock corporation. However, following pressure by the European Commission (on the grounds of forbidden hidden subsidy) no new MiFiGs could be established after 2007 and a phase-out period was defined between 2008 and 2013. Thus, the old regime expires at the end of 2013.

As a replacement, a new MiFiG regime was created in 2007; however, the rules and limitations are so strict that this regime is in fact not used.

2013 is the last year in which the old MiFiG system is available. After this, there will be no special rules available in Austria for private equity and venture capital investments. Currently, it is not foreseeable whether or when a new special regime will be introduced.

A MiFiG is subject to significant restrictions and in fact is only suitable for quite small venture capital transactions; it affords a capital gains exemption and does not constitute a permanent establishment.

Further, the general tax structure in Austria is clear and simple with attractive stock option exemptions.

However, taxes on real estate and equity injections may be onerous.

Austrian fund structures

Structure

The most commonly used fund structure in Austria is the Mittelstandsfinanzierungsgesellschaft (MiFiG). It should be noted, however, that it is only suitable for quite small venture capital transactions. Most existing funds are operating on the basis of an old regime that is not open for new investments.

Description

The MiFiG is supposed to be a (non-transparent) company subject to generous tax exemptions. Capital gains from the sale of participations are generally tax-exempt. The benefits of a MiFiG are only applicable to investments in small and medium-sized companies (with a maximum turnover of €220 million).

Transparency

A MiFiG is a corporate entity and not transparent for either domestic or non-domestic investors. Due to the tax exemption for capital gains no corporate income tax (CIT) becomes due for transactions that are usually taxable. This is especially relevant for the sale of a domestic participation, which is subject to tax under normal rules.

Depending on the shareholder and the amount of shareholding, the distribution of a MiFiG is often free from withholding taxes.

Permanent establishment

This structure does not constitute a permanent establishment of investors in Austria.

Capital gains tax for non-resident investors

Capital gains realised by foreign investors upon sale of shares in an Austrian corporate entity are subject to Austrian CIT at a rate of 25%. However, under most double tax treaties concluded by Austria, actual double taxation in Austria is prevented.

Capital gains on partnership shares are taxed in Austria, which is in line with double tax treaties.

Undue restrictions

A MiFiG is subject to certain restrictions:

- A maximum participation of 49% and no dominant position
- Only up to 20% of equity can be invested in one investee company
- Participations in some specific sectors of industry are excluded
- At least 70% of the equity must be invested in participations within a period of 5 years
### Fund Structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Domestic</th>
<th>Non-domestic</th>
<th>Domestic</th>
<th>Non-domestic</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
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<tr>
<td>Mittlestandsförderungsgesellschaft (MiFiG)</td>
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<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No, if covered by double tax treaty</td>
<td>Yes</td>
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</table>

### Taxation at a Fund Level

<table>
<thead>
<tr>
<th>VAT on management fees</th>
<th>Payment</th>
<th>Reclaim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
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</table>

<table>
<thead>
<tr>
<th>Capital gains tax</th>
<th>25%</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Withholding tax</th>
<th>25%</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Stamp duties or transaction taxes</th>
<th>Stamp</th>
<th>Transaction</th>
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</thead>
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<td>Yes</td>
<td>No</td>
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<table>
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<tr>
<th>Anti-abuse rules</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Fiscal incentives</th>
<th>Investors</th>
<th>Fund management</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No</td>
<td></td>
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</tbody>
</table>

### Taxation at a Company Level

<table>
<thead>
<tr>
<th>Company tax</th>
<th>25%</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Special tax regime for SMEs or other small companies</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Deductibility of interest</th>
<th>Related-party loans</th>
<th>Unrelated-party loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, subject to restrictions</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

### Taxation of Employees

- **Income tax**: Min. 0% - Max. 50%
- **Social security**: Min. 40%<sup>1</sup> - Max. €53,280<sup>2</sup>
- **Capital gains tax**: 25%
- **Tax on stock options**: Min. 25% - Max. 50%

### Fiscal Incentives at a Company Level

- **Business R&D expenditure**: Yes
- **R&D capital expenditure**: No
- **Contracting researchers**: No
- **Technology transfer**: No
- **Cooperative external research**: No
- **Innovative spin-out**: No
- **Young and innovative companies**: Yes

---

<sup>1</sup> 22% is borne by the employer; 18% by the employee

<sup>2</sup> This amount is calculated as follows: monthly cap for social security contributions €4,440 × 12 months
**Austrian tax at a fund level**

**VAT on management fees**
VAT is levied on management fees and may not be reclaimed.

**Capital gains tax**
Capital gains realised by private investors are subject to capital gains taxation. Depending on the type of investment, there may be a withholding obligation (typically for banks).

Capital gains realised by corporations are subject to CIT at the standard flat rate of 25%. The exception to this is where the sold participation constitutes a qualified international participation (a minimum 10% shareholding in a foreign corporate entity for at least 1 year and no misuse of case law).

There are no other (federal, country or municipal) taxes on capital gains.

Domestic dividends between Austrian corporates are tax-exempt. Capital gains realised by an Austrian corporate from the sale of another Austrian corporate entity is subject to the regular flat CIT rate of 25%.

**Withholding taxes**
Withholding tax on dividends is levied under domestic law at a rate of 25%.

This may be eliminated under the Parent-Subsidiary Directive as implemented in Austria or reduced under an applicable double tax treaty.

In addition, withholding tax may be refunded if relief at source is not available at the point in time the dividend distribution is made. An application has to be filed with the competent tax office.

Provided that certain criteria are met, dividends distributed by Austrian corporations to other Austrian corporations are exempt from withholding tax.

**Stamp duties and transaction taxes**
Currently, Austria does not levy a share transfer tax or a financial transaction tax.

However, the following taxes are raised:

- A capital contribution tax at a rate of 1% is levied on equity injections into Austrian companies.
- A stamp tax is imposed on several legal transactions by assignments, lease agreement, surety ships.
- A real estate transfer tax of 3.5% is levied on the transfer of Austrian real estate. An additional 11% court registration fee may apply.

The tax base for real estate transfer tax depends on the type of transaction. For example, if 100% of the shares in a company holding are acquired, Austrian real estate is subject to real estate transfer tax, based on 3 times the unit (tax) value. This is typically significantly lower than the fair market value.

**Anti-abuse rules**
Austrian law provides that a tax liability cannot be avoided by an abuse of legal forms and methods offered by civil law to arrange one’s affairs. If such an abuse were to be established, the Austrian tax administration would compute tax as if the abuse had not occurred. Generally, sufficient substance is important to gain approval from the tax authorities for structures.

Specific anti-abuse provisions may need to be considered in individual cases. For example, there is switch-over provision for investments by Austrian corporations into a qualifying, low-taxed, passive foreign participation.

**Austrian tax at a company level**

**Company tax**
Corporate income tax is levied at 25% in Austria. There are no further taxes on profits of corporations.

**Deductibility of interest**

**Unrelated-party loans**
Net interest expenses on unrelated-party loans are usually tax-deductible in Austria, without any restrictions.

---

3 There is no national participation exemption for capital gains according to the regular tax rules in Austria. There is only one for international participations.
4 However, Austria is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
Related-party loans
Net interest expenses on related-party loans are also usually tax-deductible in Austria given:

- Arm’s length terms
- A sufficient debt-equity ratio, no hidden equity
- No acquisition of shareholdings from related parties

Austrian taxation of employees

Income tax for private individuals
The following tax brackets are applied:

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Tax Rate</th>
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<tbody>
<tr>
<td>€0–€11,000</td>
<td>0%</td>
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<tr>
<td>€11,001–€25,000</td>
<td>36.50%</td>
</tr>
<tr>
<td>€25,001–€60,000</td>
<td>43.21%</td>
</tr>
<tr>
<td>€60,001</td>
<td>50%</td>
</tr>
</tbody>
</table>

Social security payments
The Austrian social security contribution includes:

- Accident insurance
- Health insurance
- Unemployment insurance
- A contribution to the public pension plan

Both the employer and employee have to pay contributions and, depending on the type of employment, different rates are levied:

- The overall employer’s portion is approximately 22%
- The overall employee’s portion is approximately 18%

Austrian social security contributions depend on the type of income as well as on the amount.

There is a €4,440 monthly ceiling for social security contributions and an exemption from social security contributions, with a minimum threshold up to a monthly income of €376.26.

Capital gains tax for private individuals
Capital gains tax is levied on private individuals at a rate of 25%.

No other taxes are levied on the capital gains of private individuals. Furthermore, there are no differences in taxation according to different holding periods.

Taxation of stock options
Stock options are taxed at the time of the exercise. However, where options are transferable/tradable and do not depend on the behaviour of an employee (for example, the option-holder has to be employee of the company when exercising the option) they are taxed when granted.

Under certain conditions a beneficial tax provisions are available:

- 10%-50% (depending on the holding period of the option) of the difference between the grant value of the option (maximum basis: €36,400) and the exercise value is tax-exempt
- A tax exemption of €1,460 per employee per year, provided certain conditions are met (e.g., shares must be held for 5 years by the employee)

Stock options are taxed as either capital gains or professional income.

Benefits available for options granted to employees (irrespective of the size of the company) are regulated according to section 3, paragraph 1, figure 15 of the Austrian income tax Act.

There is no tax relief for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options in Austria.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
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<tbody>
<tr>
<td></td>
<td>At the time of exercise</td>
<td>Either as capital gains or as professional income</td>
</tr>
<tr>
<td>Special rules for certain types of company</td>
<td>Beneficial tax provisions are available under certain conditions</td>
<td></td>
</tr>
<tr>
<td>Tax relief for the grantor</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

5 For example, if the stock option scheme is made available to all or a group of employees.

6 Where options are transferable and do not depend on the behaviour of an employee, they are taxed when granted.
Austria

Austrian fiscal incentives

Fiscal incentives at a fund level
Austria does not provide any fiscal incentives at a fund level.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
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<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>No</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>No</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

In Austria, there is an R&D premium equal to 10% of qualifying expenses relating to domestic research and experimental activities. There is no limitation to the tax basis for internal (own) research but the basis for contract research is limited to €1 million.

The earlier Austrian R&D allowance has been abolished.

Young and innovative companies

There are (albeit very limited) exemptions from property transfer tax (Gründerwerbsteuer), stamp duties and capital duties available upon the foundation of a new enterprise. These are granted under the so-called Neugründungsförderungsgesetz.

Further, under certain conditions, an exemption from social security contributions may also be available to new enterprises for a limited period of time.
Introduction

Belgium provides a series of investment vehicles for private equity and venture capital investment.

Nominal tax rates in Belgium are above average. However, depending on facts and circumstances, Belgian companies may be entitled to specific deductions (eg notional interest deduction), which imply a much lower actual corporate income tax (CIT) rate.

Belgium has in place a number of tax incentives to encourage research.

Belgian fund structures

In Belgium, private equity funds generally take the form of a Limited Liability Company (for example: NV or SA, SPRL or BVBA, CVA or SCA). A fund may also be formed as either a closed or open-ended:

- Investment company (which is a legal entity)
- Contractual fund (which is not a legal entity)

In the latter case, investors in the fund are co-owners of the fund assets.

There are several forms of investment company available:

- SICAV
- SICAF
- SICAFI (real estate)
- Private PRICAF

A Private PRICAF is specially designed to gather capital from either individual investors or corporate investors in order to fund investments in non-quoted companies.

Investment companies are subject to corporate income tax, but benefit from a special tax regime which does not take into account the investment’s income or the capital gains for determining the taxable basis.

Transparency

Domestic incorporated fund structures are not tax-transparent in the hands of either domestic or non-domestic investors.

In contrast, contractual (unincorporated) fund structures are tax-transparent in principle but capital gains realised upon the alienation of units may trigger taxation in the hands of a corporate investor because the investor is deemed to transfer all underlying assets when alienating its units in the fund.

Absence of incremental tax (as compared to direct investments)

The advantage of investing in investment companies for Belgian corporate investors is that there is no minimum threshold requirement for DRD1 relief (provided that the investment company qualifies for DRD relief under the taxation requirement).

As far as Belgian or foreign individuals and foreign corporate investors are concerned, the main advantage of an investment company is that liquidation and redemption bonuses are exempt from withholding tax. Moreover, investing in a real estate SICAFI does not give rise to capital gains taxation where direct investment in Belgian real estate does.

Permanent establishment

Holding shares in incorporated fund structures does not, as such, trigger the existence of a Belgian permanent establishment.

Holding a passive investment in a transparent fund should not necessarily trigger the existence of a permanent establishment in Belgium.
## Summary

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Limited Liability Company</strong></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No (if double tax convention is in place)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Investment Company</strong></td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No (if double tax convention is in place)</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Contractual Fund</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, subject to breakdown requirement</td>
<td>Generally speaking no</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>Payment</th>
<th>Reclaim</th>
</tr>
</thead>
<tbody>
<tr>
<td>VAT on management fees</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>Min. 0%</td>
<td>Max. 33.99%</td>
</tr>
<tr>
<td>Withholding tax</td>
<td>Min. 10%²</td>
<td>Max. 25%</td>
</tr>
<tr>
<td>Stamp duties or transaction taxes</td>
<td>Stamp</td>
<td>Transaction</td>
</tr>
<tr>
<td>Anti-abuse rules</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Fiscal incentives</td>
<td>Investors</td>
<td>Fund management</td>
</tr>
</tbody>
</table>

### Taxation at a company level

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Company tax</td>
<td>33.99%</td>
</tr>
<tr>
<td>Special tax regime for SMEs or other small companies</td>
<td>Yes</td>
</tr>
<tr>
<td>Deductibility of interest</td>
<td>Related-party loans Yes, subject to restrictions</td>
</tr>
</tbody>
</table>

### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Min. 25%</th>
<th>Max. 54.5%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social security</td>
<td></td>
<td>Approximately 48%</td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>Min. 0%</td>
<td>Max. 35.97%³</td>
</tr>
<tr>
<td>Tax on stock options</td>
<td>Min. 25%</td>
<td>Max. 54.5%</td>
</tr>
<tr>
<td>Special tax regimes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td></td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td></td>
</tr>
<tr>
<td>Contracting researchers</td>
<td></td>
</tr>
<tr>
<td>Technology transfer</td>
<td></td>
</tr>
<tr>
<td>Cooperative external research</td>
<td></td>
</tr>
<tr>
<td>Innovative spin-out</td>
<td>No</td>
</tr>
<tr>
<td>Young and innovative companies</td>
<td>Yes</td>
</tr>
</tbody>
</table>

---

² This is a specific withholding tax rate for liquidation bonuses, which is expected to be abolished by the end of 2014.
³ This is calculated as follows: 33% + 9% municipality surcharge.
However, participations in a partnership do trigger the existence of a Belgian establishment under the domestic income tax rules for non-residents (this may e.g. be an issue if no double tax treaty is available). It should be noted that a contractual fund does not necessarily qualify as a partnership.

**Capital gains tax for non-resident investors**

The double tax conventions adopted by Belgium generally provide that capital gains on shares are taxable in the investor’s state of residence only. Therefore capital gains on Belgian shares made by a foreign investor are in general not taxable in Belgium.

At the end of 2012, the Belgian legislator adopted new rules regarding the Belgian tax regime for non-residents governing income paid out by a Belgian resident entity, individual or Belgian establishment (article 228, § 3 ITC). These rules apply if no double tax convention is available, provided that the taxpayer does not provide proof of actual taxation in its state of residence. Under these new rules, one can not exclude that a foreign corporate investor, located in a State which did not conclude a double tax convention with Belgium, would incur tax exposure in Belgium on capital gains made on Belgian shares (e.g. if the minimum holding period is not met, if the shares do not qualify under the taxation requirement or against the 0.412% rate).

Furthermore, under Belgian domestic legislation, Belgian tax exposure may, for example, be triggered by a foreign investor that participates in a Belgian partnership.

**Undue restrictions**

Belgian fund structures are generally considered to be free from undue restrictions.

However, a Private Pricaf is subject to some restrictions. For example, a Private Pricaf may not acquire a controlling interest. Exceptions do apply, however, such as for a management buy-out.

SICAFs and SICAVs are also subject to investment restrictions for investments in non-listed companies.

**Belgian tax at a fund level**

**VAT on management fees**

VAT is levied on management fees in Belgium, except for fees on qualifying funds and directors’ fees. However, transactions (including negotiating but not managing or safekeeping) in shares and other securities are VAT-exempt. Place of supply rules are applied.

VAT is in principle recoverable depending on the deduction right of the fund. VAT may be recovered through a Belgian VAT-return or, for entities not VAT registered in Belgium, through a distinct refund procedure.

**Capital gains tax**

Capital gains are subject to the normal corporate tax rate of 33.99% (the general corporate tax rate), except for capital gains on qualifying shares. These are either exempt (small companies) or taxed at 0.412%, subject to a minimum holding period of one year (see below).

As far as qualifying funds are concerned, capital gains are not taken into account for determining the taxable basis of the company (neither is any other kind of income, apart from disallowed expenses).

If gains are reinvested in depreciable assets within three to five years, a company may opt for deferred taxation.

Capital gains on shares are exempt (small companies) or subject to taxation at 0.412% provided that:

- The investee company is not excluded from the dividend received deduction on the basis of the taxation requirement (article 203 ITC). It should be noted, however, that investment companies that benefit from a special corporate tax regime are generally excluded from the DRD-reduction on the basis of Article 203 ITC. Specific rules apply in a number of cases.
- The shares have been held for more than one year.

If shares qualify under the taxation requirement, but have not been held for more than a year, the rate is 25.75%.

These rules apply provided the underlying investment is a company with a separate legal personality. In the case of investments in funds without a separate legal personality, the rules of tax transparency apply (the look-through approach).

**Withholding taxes**

Dividends paid by a Belgian company are subject to withholding tax of 25%.

Subject to conditions, parent-subsidiary exemption and double tax treaty exemptions or reduced tax rates may apply.

Belgian investment funds may claim credit against withholding tax.
However, foreign investment funds cannot request a refund of Belgian withholding tax. By decision of 25 October 2012 (ECJ C-387/11) the European Court of Justice ruled that by maintaining different rules for the taxation of income from capital and movable property according to whether it is earned by resident investment companies or non-resident investment companies with no permanent establishment in Belgium, the Kingdom of Belgium has failed to fulfill its obligations under Articles 49 TFEU and 63 TFEU, and Articles 31 and 40 of the Agreement on the European Economic Area of 2 May 1992.

Specific exemptions from withholding tax apply to dividends paid out to qualifying foreign pension funds and to dividends paid by a number of qualifying Belgian investment companies.

### Stamp duties and transaction taxes

Although there is no overall exemption from stamps in favour of investment funds, the day-to-day operations performed by fund vehicles do generally not trigger Belgian stamp duties.

Tax is levied on stock exchange transactions at 0.25% (max. €740) but is reduced to 0.09% in a number of cases. A 1% rate applies to capitalisation shares of SICAVs. There is however an overall exemption for transactions performed by qualifying investment funds.

A transfer tax of 10% (Flemish Region) or 12.5% (Brussels and Walloon Region) is levied on the transfer of real estate.

### Anti-abuse rules

Under general anti-abuse rules, a legal act cannot be taken to avoid taxation or to benefit from a tax advantage if this would frustrate the aim of a particular article in the ITC.

If the taxpayer cannot prove that such an act was motivated by (substantial) motives (e.g. business purpose motives) other than tax avoidance, taxation will be due as if the abuse had not occurred.

### Belgian tax at a company level

#### Company tax

The general nominal company tax rate amounts to 33.99%, consisting of a base tax of 33% and a crisis surcharge of 3%.

Both are federal taxes.

#### Company tax for SMEs

Belgium provides a specific tax rate for SMEs with 3 tax brackets if the taxable income stays below €322,500:

<table>
<thead>
<tr>
<th>Taxable Income (€)</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-25,000</td>
<td>24.98%</td>
</tr>
<tr>
<td>25,000-90,000</td>
<td>31.93%</td>
</tr>
<tr>
<td>90,000-322,500</td>
<td>35.54%</td>
</tr>
</tbody>
</table>

The following companies are excluded:

- Financial companies owning participations exceeding certain limits
- Companies whose shares are at least 50% owned by one or more companies
- Companies whose dividend distributions exceed 13% of the paid-up capital at the beginning of the financial year
- Companies that do not pay earned income of at least €36,000 to at least one of the directors or active partners. If the taxable income of the company is less than €36,000 all income must be earned income
- Investment companies (SICAV or SICAF or Private PRCIF) and qualifying pension funds

#### Deductibility of interest

When a loan has been taken out for business reasons, interest expenses on both related and unrelated-party loans are deductible from the tax base as business costs.

Arm’s length rules apply. Further, thin capitalisation rules mean that the deduction of interest on loans will be disallowed for any loan size higher than five times the sum of the taxed reserves at the beginning of a taxable period and the paid-up capital at the end of the period.

A deduction limitation is applicable if the beneficial owners of the interest are:

- Established in a tax haven, or
- Part of a group to which the debtor belongs

Please note that specific rules apply for treasury centres.

4 Furthermore, Belgium is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
The term 'loans' does not include bonds issued by public offering, or loans granted by financial institutions.

Beneficial owners of an interest are deemed to be established in a tax haven if they are not subject to income tax or are subject to a substantially more favourable tax regime than the Belgian common tax regime.

It should be noted that Belgium does not have tax consolidation or group relief rules. Offsetting interest expenses on acquisition debt (housed in a separate holding company) with operational income from the target company is in many cases difficult.

**Belgian Taxation of Employees**

**Income tax for private individuals**

The following tax brackets apply:

<table>
<thead>
<tr>
<th>Bracket</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0-€8,590</td>
<td>25%</td>
</tr>
<tr>
<td>€8,590-€12,220</td>
<td>30%</td>
</tr>
<tr>
<td>€12,220-€20,370</td>
<td>40%</td>
</tr>
<tr>
<td>€20,370-€37,330</td>
<td>45%</td>
</tr>
<tr>
<td>€37,331+</td>
<td>50%</td>
</tr>
</tbody>
</table>

An additional fixed municipality tax is applied. This varies from city to city and lies between 0% and 9%.

The average municipality tax rate can be estimated at 7.8% and is calculated as a surcharge (for example 50 x 1.08 = 54%).

**Social security payments**

Social security payments are levied on gross salaries in Belgium:

- Employee contributions at 13.07%
- Employer contributions at 35%

Generally speaking, this includes all social risks covered. However, the exact rate varies slightly depending on the status of the employee and the sector in which the employees are working.

Mandatory employee social security contributions can be deducted from the gross salary to determine the taxable employment income.

**Capital gains tax for private individuals**

Capital gains on shares held by an individual in private estate are, as a general rule, tax-exempt. However, depending on the circumstances under which the capital gain on shares is realised, the capital gain may be taxed as ‘miscellaneous income’ at 33% plus municipality surcharges.

Case law is not unanimous as to when a gain can be considered as miscellaneous income.

The sale of a substantial shareholding to a non-EEA legal entity is subject to a tax of 16.5% (federal tax) plus municipality surcharges.

**The taxation of stock options**

Stock options are taxed as income and, in principle, on exercise. However, in practice the option schemes are usually structured under the Stock Option Law of 26 March 1999, taxing them at grant and on the basis of a lump sum as far as non-listed options are concerned.

The “general” rules apply in the hands of the grantor.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In principle, when the option is exercised</td>
<td>As income</td>
</tr>
</tbody>
</table>
Belgium does not provide tax incentives at a fund level. However, for qualifying funds such as Sicav, Sicaf, Sicafi and a qualifying private pricaf, neither investment income (interest, dividends) nor capital gains are taken into account for determining the taxable basis. Instead, this consists exclusively of disallowed expenses and abnormal and benevolent advantages received.

Fiscal incentives at a company level

Business R&D expenditure: Yes
R&D capital expenditure: Yes
Contracting researchers: Yes
Technology transfer: Yes
The cooperation between firms and research institutes or universities: Yes
The creation or spin-out of innovative firms from their parent: No

Special tax regimes
Belgium has a special tax regime for foreign executives and specialists who are temporarily working in Belgium. Conditions need to be met by both the employer and the individual. An application must be filed with the Belgian tax authorities within 6 months of employment or secondment.

The benefits are fourfold:
- The individual is considered a non-resident for Belgian income tax purposes and is only taxed in Belgium on Belgian source income
- Certain expatriate allowances or expenses reimbursed may be (partially) exempt from taxation
- Remuneration related to days worked outside of Belgium is not taxable in Belgium (travel exclusion)
- Expatriate allowance or expenses reimbursed are not subject to Belgian social security contributions

Fiscal incentives at a company level

Companies investing in patents, certain other types of intellectual property or in assets for R&D that are ecologically favourable can obtain an increased investment deduction. This allows companies to deduct a percentage on top of the normal depreciations. The investment deduction can be applied either:
- In one go at 13.5% for 2012, rising to 15.5% for 2013 onwards
- Spread over the depreciation period for investment in assets for R&D at 20.5% for 2012, rising to 22.5% for 2013 onwards

On election, the scheme may alternatively be structured as a tax credit.

If the tax levied is less than the credit, the credit is transferrable to the next 4 financial years. If, after 5 years, the credit has not been offset against CIT, the remaining amount is refundable. Premiums, capital investment or interest subsidies to stimulate R&D are exempt from CIT.

A patent income deduction is applicable to 80% of new patent income. This includes royalties from patents for which the company has granted a licence or income from patents that are used by the company during the manufacture of the patented products.

Young and innovative companies
Since 2006, the premiums granted to creative employees by their employer for an innovation that is to be applied within the company have been exempt from social security contributions and individual income taxes (or non-resident individual income taxes). A series of conditions apply.

Companies that employ scientific researchers may limit the remittance of withholding tax withheld on the researchers’ salaries to 25% provided the employer has withheld 100% of withholding tax normally due. This results in a cash saving for the employer whilst the employee is deemed to have paid the wage withholding tax. A series of conditions apply, including:
- The company was incorporated fewer than 10 years before the year of the exemption
- R&D expenses amount to 15% of total costs
Introduction

There is a range of fund structures available in Bulgaria; however, the lack of transparency and restrictions may present limitations.

On the other hand, taxation in Bulgaria is low, irrespective of the time, location or type of taxation. Bulgaria levies one of the lowest corporate and personal income taxes in Europe. Also capital gains taxation for individuals and companies, as well as taxation on stock options are low.

R&D is well supported in terms of both capital expenditure and collaboration.

Bulgarian fund structures

Structures

There are two specific legal structures under Bulgarian law to accommodate funds investing in equity: collective investment schemes, which can be established as a common (contractual) fund, or an investment company.

However, due to severe limitations as to the scope of investments – generally, non-listed/non-publicly traded shares are excluded – none of these structures is suitable for investments into non-listed SMEs. For such investments there are no special fund structures and therefore no fiscal incentives or tax exemptions for the fund and/or the fund manager.1

Description

To be active in Bulgaria an investment vehicle must obtain a permit (contractual fund) or a licence (investment company) from the Bulgarian Financial Supervision Commission.

Their activities are regulated by the Bulgarian Collective Investment Schemes and Other Undertakings for Collective Investments Act.

Transparency

Bulgarian fund structures are transparent for neither domestic nor non-domestic investors.

Absence of incremental tax (as compared to direct investments)

The fund structures regulated by the Bulgarian Collective Investment Schemes and Other Undertakings for Collective Investments Act do not give rise to incremental taxation for investors.

- Any collective investment scheme, which has been admitted to public offering in the Republic of Bulgaria, and any licensed investment company of the closed-end type under the Collective Investment Schemes and Collective Investment Undertakings Activities Act are fully exempt from corporate tax levy.
- For non-domestic corporate investors, proceeds from the disposal of certain financial instruments (such as shares in collective investment schemes, shares and share options performed on regulated markets) are not taxable at source. For domestic investors, these proceeds reduce the accounting financial result when determining the taxable result.
- For non-domestic individual investors, proceeds from the disposal of shares in collective investment schemes, as well as shares and share options performed on regulated markets are not subject to withholding tax. For domestic individual investors, these proceeds are not taxable.

Permanent establishment

The mere fact of investing in a collective investment scheme or directly in a portfolio company will not result per se in a permanent establishment for the non-resident investor.

Capital gains tax for non-resident investors

As outlined above, capital gains realised by non-resident investors from the disposal of a number of financial instruments is not subject to withholding tax.

1 In general, VAT on management fees, as well as withholding tax on management fees, capital gains and dividends will apply in the range of 5-10%. There are some specifics for investors from EU member states, as well as the provisions of applicable double tax treaties should be taken into consideration in each specific case.
# Bulgaria

## Summary

### Taxation at a fund level

<table>
<thead>
<tr>
<th>Taxation at a fund level</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor type</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td>Common (contractual fund)</td>
<td>No</td>
<td>No</td>
<td>Yes^2</td>
<td>No^3</td>
<td>No</td>
</tr>
<tr>
<td>Investment company</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Taxation of employees

<table>
<thead>
<tr>
<th>Taxation of employees</th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10%</td>
<td>Min. 30.7%</td>
<td>0% or 10%</td>
<td>0% or 10%</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Fiscal incentives at a company level</th>
<th>Business R&amp;D expenditure</th>
<th>R&amp;D capital expenditure</th>
<th>Contracting researchers</th>
<th>Technology transfer</th>
<th>Cooperative external research</th>
<th>Innovative spin-out</th>
<th>Young and innovative companies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

## Fund structures

<table>
<thead>
<tr>
<th>Fund structures</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Investor type</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td>Common (contractual fund)</td>
<td>No</td>
<td>No</td>
<td>Yes^2</td>
<td>No^3</td>
<td>No</td>
</tr>
<tr>
<td>Investment company</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

2 With respect to the disposal of shares in collective investment schemes, shares and share options performed on regulated markets.

3 Any other activity of an investor in the country other than the mere holding of shares should be considered on a case-by-case basis.

4 The difference of 0.7 comes from the contribution for the Labour accident and occupational disease fund, which varies from 0.4 to 11 depending on the type of labour. The total 31.4% consists of 17.8 plus 8 plus 5.6 (for individuals born before 1960) or 12.8 plus 8 plus 5 plus 5.6 for individuals born after 1960. The rates are calculated up to a maximum of BGN 2,000 (€1,022) monthly income.
The disposal of financial instruments for these purposes means:

- Transactions with shares of collective investment schemes, shares and stock options performed on a regulated market
- Pre-emption transactions made by collective investment schemes, admitted for public offering in Bulgaria or in another EU or EEA member state
- Transactions made pursuant to a bid proposal under Chapter XI, Section II of the Public Offer of Securities Act, or identical transactions in another EU or EEA member-state

In all other cases, capital gains realised by non-resident investors from the disposal of shares in a Bulgarian legal entity are taxed at source at the rate of 10%.

Undue restrictions

Limitations apply to the investment vehicles’ sources of financing and the type of assets in which they are allowed to invest. These should be considered separately for each type of investment vehicle.

Definitions

According to the Bulgarian law, the permanent establishment of a foreign entity is deemed to arise if any of the following criteria are met:

- There is a fixed place (owned, rented or otherwise at the disposal of the enterprise) in Bulgaria through which the foreign entity carries out business activities in the country
- There are persons in Bulgaria who are authorised to conclude contracts on behalf of the foreign entity
- There is a permanent or continued carrying out of transactions with the place of performance on Bulgarian territory, even if not carried out through a fixed location

The investment of non-Bulgarian limited partners does not give rise to a permanent establishment, unless any of the above listed criteria is met.

Note that the permanent establishment definition stipulated in an applicable double tax treaty signed between Bulgaria and the country of residence of the foreign entity takes precedence. Generally, the provisions of a double tax treaty, which follows the OECD Model Convention, coincide with the first two criteria and exclude the third.

Bulgarian tax at a fund level

VAT on management fees

According to the provisions of the Bulgarian VAT Act, the management of the activity of collective investment schemes, investment companies of the closed-end type and pension funds, and the provision of investment advice according to the procedure established by the Collective Investment Schemes and Other Undertakings for Collective Investments Act, and the Markets in Financial Instruments Act are VAT-exempt with no right to input VAT credit for the related purchases.

Capital gains tax

Bulgaria levies tax on capital gains as a withholding tax at a rate of 10%. This rate does not include any municipal, local, social or trade taxes.

Withholding tax on capital gains becomes due upon accrual. With regard to capital gains, the foreign person realising the capital is obliged to deduct and pay the withholding tax.

As outlined above, no withholding tax is due on capital gains realised from:

- The disposal of financial assets through a regulated market, as defined by the Bulgarian Markets in Financial Instruments Act
- Transactions concluded under the terms and according to the procedure of repurchase or redemption by collective investment schemes that have been admitted to public offering in Bulgaria or in another EU/EEA member state
- Transactions concluded under the terms and according to the procedure of tender offering under Section II of Chapter Eleven of the Public Offering of Securities Act, or transactions of analogous type in another EU/EEA member state

In structures other than those under the Bulgarian Collective Investment Schemes and Other Undertakings for Collective Investments Act corporate domestic investors pay capital gains from the disposal of shares in portfolio companies through their taxable income, which is subject to 10% corporate tax. Individual domestic investors include the capital gains in their tax return and the capital gain is subject to 10% personal income tax.

The tax on dividend income in Bulgaria is 5% (see below) and is lower than the tax on capital gains, which, as of 1 September 2012, is 10%. There are no differences in taxation on the basis of different holding periods.

No participation exemption regimes or similar are available under Bulgarian law.
**Withholding taxes**

Dividends distributed by local entities to non-resident funds are subject to withholding tax at 5%. An exemption is available if the dividends are distributed by resident legal entities in favour of:

- Legal entities that are resident of an EU or EEA member state
- Common (contractual) funds

The following types of income earned by foreign entities (without a permanent establishment in Bulgaria) when accrued by local entities are subject to 10% withholding tax:

- Interest
- Royalties
- Rent
- Fees for management and control of local legal entities
- Fees for technical services, including services of an advisory nature
- Franchise and factoring fees

The gains of foreign entities without a permanent establishment in Bulgaria are considered to have their source in Bulgaria when they arise from trading in shares and securities issued by local legal entities, the government or municipalities. They are also considered to have their source in Bulgaria when they involve transactions with real estate properties in Bulgaria.

Until 31 December 2014, interest and royalties are subject to a phase-out withholding tax rate of 5%, after which they will become exempt. Additional conditions must be fulfilled by the foreign income recipient.

Generally, withholding tax borne by a foreign tax resident is not recoverable. However, reimbursement of overpaid withholding tax may be sought if an effective double tax treaty provides for a relief or reduction of withholding tax and the foreign income recipient has evidence of its eligibility to benefit from the respective double tax treaty at a later stage.

Withholding tax is due on gross income. However, entities that are resident in an EU or EEA member state can opt to recalculate the tax withheld at source on a net basis. A separate tax return must be filed by the end of the year following the accrual of the income. This is subject to various conditions.

**Anti-abuse rules**

There are anti-abuse rules provided for by Bulgarian legislation, including beneficial ownership provisions and transfer pricing regulations.

Recent practice of the revenue authorities shows a particular attention to the beneficial ownership status of foreign residents realising Bulgarian source income, especially interest income.

**Bulgarian tax at a company level**

**Company tax**

Corporate income tax in Bulgaria is levied at a flat rate of 10%.

Additional taxes related to the ownership of property or vehicles (and their subsequent disposal) are determined at municipal level. These include:

- Real estate tax
- Transfer tax
- Garbage collection fee
- Transport vehicles tax

**Deductibility of interest**

Net interest expenses on both related and unrelated-party loans are tax-deductible in Bulgaria, subject to thin capitalisation rules.

The maximum amount of interest expenses, subject to thin capitalisation, that would be tax-deductible in the year accrued is equal to the interest income recognised for the year plus 75% of the profits before all interest income and interest expenses.

Interest expenses exceeding the above limit are added back to the financial result when determining the tax base. This adjustment represents a temporary tax difference and is reclaimable in the following 5 tax years up to the above-mentioned threshold calculated in those subsequent years.

Thin capitalisation rules do not apply when the annual debt/equity ratio of the tax-liable person does not exceed 3:1.

**Stamp duties and transaction taxes**

No such taxes are levied in Bulgaria.
Certain interest expenses are not subject to thin capitalisation. These include:

- Interest in relation to finance lease
- Bank loans received from non-related lessors or banks6

Penalty interest for the late payment of taxes and interest expenses capitalised in the value of an asset, in accordance with the accounting legislation, or other interest charges that are not tax-deductible on other grounds, do not count towards the interest expenses subject to thin capitalisation.

Bulgarian taxation of employees

**Income tax for private individuals**

Private individuals are subject to personal income tax at a flat rate of 10%, applicable to all income levels.

The tax rate does not include municipal, local, social or trade taxes.

**Social security payments**

Social security and health insurance contributions are mandatory in Bulgaria. The social security contributions vary depending on the economic activity the company performs.

The contributions are split between the employer and the employee at rates that depend on the fund to which the contributions are being made:

- 55:45 for pension and additional mandatory pension insurance contributions
- 60:40 for general illness and maternity, unemployment and health insurance funds
- 0:100 for labour accident and occupational disease fund

Social and health insurance contributions made on behalf of private individuals are allowed as a deduction for income tax purposes.

The general rates for social security and health insurance contributions for 2012 are as follows:

- Social security on the part of employers: 13%-13.7%7
- Social security on the part of employees: 9.7%8
- Health insurance on the part of employers: 4.8%
- Health insurance on the part of employees: 3.2%

These contributions are levied after a statutory deduction of 25% of the gross income for activities performed under civil contracts.

A maximum threshold of BGN 2,200 (€1,125) for 2013 (up from BGN 2,000 in 2012) per month is applied, above which income is not subject to social and health insurance charges.

No social security and health insurance contributions are due on capital gains and dividends.

**Capital gains tax for private individuals**

Capital gains are taxed as income in Bulgaria.

Capital gains from the disposal of stock traded on the Bulgarian regulated stock market or a similar registered market in the EU or EEA are exempt from taxation (see above).

**The taxation of stock options**

Bulgarian personal income tax legislation does not provide an explicit treatment of stock options and other equity compensation for private individuals.

In general, stock options are taxed on exercise. The difference between the market price and the exercise price is treated as taxable income.

On the disposal of stock at a gain, private individuals are subject to personal income tax. The tax base for the capital gain is the positive difference between the sale price and the fair market value of the stock.

All proceeds from the disposal of stock or stock options traded on regulated markets in Bulgaria or EU/EEA are exempt from taxation.

There are no special rules on stock options for certain types of company.

There is no tax relief for the grantor of stock options on the grant and/or exercise of stock options in Bulgaria.

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6 Unless the loan is guaranteed or secured by a related party, in which case the interest on them would be also subject to thin capitalisation.
7 Depending on the economic activity of the employer.
8 These are the rates for the most common type of employee under Category III. Employees from Category I and II (such as miners, pilots, underground machine workers, workers in construction and chemical materials industry, etc.) are charged with higher social contributions.
In general, when the option is exercised. The difference between the market price and the exercise price is treated as taxable income. On the disposal of stock at a gain, private individuals are subject to personal income tax. All proceeds from the disposal of stock or stock options traded on regulated markets in Bulgaria or EU/EEA are exempt from taxation.

**Special rules for certain types of company**

- **No**

**Tax relief for the grantor**

- **No**

**Taxation of stock options**

**Special tax regimes**

Bulgarian legislation does not provide a special tax regime for private individuals. However, certain deductions are allowed for personal income tax purposes. These include, but are not limited to, deductions of:

- A fixed amount for disabled individuals
- Up to 10% of the personal income tax base for voluntary social and pension contributions, as well as for life and health insurance contributions to a Bulgarian insurance fund or a fund operating in an EU or EEA Member State
- 40% for royalties and certain agricultural produce
- 60% for tobacco growers
- 25% for activities under civil contracts

Furthermore, corporate tax incentives are granted to enterprises employing unemployed people or people with disabilities, companies investing in municipalities with an unemployment higher than the average unemployment rate for Bulgaria, as well as for agricultural producers.

**Bulgarian fiscal incentives**

**Fiscal incentives at a fund level**

Bulgarian collective investment schemes and closed-ended investment companies are exempt from:

- Corporate income tax
- Withholding tax on dividends distributed to Bulgarian or EU/EEA member state legal entities

Dividends distributed to individuals (both Bulgarian and foreign) and non-EU or non-EEA legal entities are subject to withholding tax at a rate of 5%.

Dividend income received by a Bulgarian legal entity is not subject to corporate income tax, unless the dividend is distributed by a special investment company (real estate investment company).

**Fiscal incentives at a company level**

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>No</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>No</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>Yes</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

Once its CIT base has been determined, a taxable entity has the one-off right to decrease its tax base by the historical cost of an intangible fixed asset. It can do this when the following conditions are simultaneously fulfilled:

- The intangible asset has been formed as a result of a R&D activity
- The R&D activity has been carried out in connection with the activity carried out by the taxable person as a regular business
- The development activity has been commissioned under market conditions to a scientific research institute or a higher school
Introduction

Cyprus levies one of the lowest corporate income taxes in Europe, currently at the rate of 10%. It is expected that the tax rate will increase to 12.5% in 2013.

Further, it does not levy any withholding taxes.

However, there are few Cypriot fiscal incentives.

Cypriot fund structures

Structures

Cypriot fund structures are organised under the international collective investment schemes (ICIS).

There are 4 types of ICIS:
- International variable capital company - most commonly used for private equity and venture capital investments
- International fixed capital company
- International investment limited partnership
- International unit trust

Transparency

Provided the ICIS takes the form of an international investment limited partnership or of an international unit trust, the ICIS is transparent for both domestic and non-domestic investors.

Absence of incremental tax (as compared to direct investments)

ICIS do not give domestic and non-domestic investors the same tax treatment compared to when such investors would invest directly in the target companies.

Permanent establishment

The Cypriot definition of permanent establishment follows the OECD model convention. Conducting business wholly or partly through fixed office space may give rise to the creation of a permanent establishment.

However, as commonly employed by private equity and venture capital firms, ICIS prevent non-domestic investors and fund managers from being subject to domestic taxes as a result of a permanent establishment in Cyprus (by ruling).

Capital gains tax for non-resident investors

There are no other circumstances under which capital gains tax is charged to non-residents. Capital gains tax will be levied only where immovable property situated in Cyprus is involved, both for resident and non-resident taxpayers.

Undue restrictions

ICIS are considered to be free from undue restrictions.

Cypriot tax at a fund level

VAT on management fees

The fund management company must pay VAT on management fees but this VAT may be recuperated.

Capital gains tax

Cyprus levies capital gains tax only insofar as gains arise from the disposal of immovable property situated in Cyprus or from non-quoted shares in a Cyprus tax resident company owning property situated in Cyprus.

These are taxed under Capital Gains Tax Law at a flat rate of 20%.
## Summary

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td>International Variable Capital Company</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>International Fixed Capital Company</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>International Investment Limited Partnership</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>International Unit Trust</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

### Taxation at a fund level

<table>
<thead>
<tr>
<th>VAT on management fees</th>
<th>Payment</th>
<th>Reclaim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital gains tax</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Withholding tax</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Stamp duties or transaction taxes</td>
<td>Stamp Yes</td>
<td>Transaction No</td>
</tr>
<tr>
<td>Anti-abuse rules</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Fiscal incentives</td>
<td>Investors No</td>
<td>Fund management No</td>
</tr>
</tbody>
</table>

### Taxation at a company level

| Company tax                     | 10%           |                           |
| Special tax regime for SMEs or other small companies | No |                           |

### Deductibility of interest

| Related-party loans | Yes         |
| Unrelated-party loans | Yes         |

### Taxation of employees

| Income tax                     | Min. 0%      | Max. 35%                  |
| Social security                | Min. 12.6%   | Max. 13.6%                |
| Capital gains tax              | 20%          |                           |
| Tax on stock options           | 20%          |                           |
| Special tax regimes            | Yes          |                           |

### Fiscal incentives at a company level

| Business R&D expenditure       | No           |                           |
| R&D capital expenditure        | No           |                           |
| Contracting researchers        | No           |                           |
| Technology transfer            | Yes          |                           |

1. 6.8% is paid by the employer.
There are no municipal, local, social or trade taxes in Cyprus. No participation exemption regime is applicable.

Finally, where an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to a domestic investor, its tax liability is the same as a gain is realised from a direct investment.

**Withholding taxes**

Cyprus does not levy withholding taxes (on dividends or other forms of income if a distribution is made by a portfolio company established in Cyprus to a fund established in another country).

**Stamp duties and transaction taxes**

Cyprus levies a stamp duty on documents dealing with the following:

- Property, whether tangible or intangible, situated within the territory of Cyprus
- Issues, procedures or other objects that will be executed or performed in Cyprus

This is levied irrespective of where the document in question is signed.

Stamp duty is calculated on the fair value of the agreement at 0.15% for the first €170,000 (with the first €5,000 being exempt) and at 0.2% thereafter. Stamp duty due on agreements is capped at a maximum of €20,000 per agreement.

**Anti-abuse rules**

There are no anti-abuse rules in Cyprus.

**Cypriot taxation of employees**

**Income tax for private individuals**

The following tax brackets are applied:

<table>
<thead>
<tr>
<th>€</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0€–19,500</td>
<td>0%</td>
</tr>
<tr>
<td>19,501–28,000</td>
<td>20%</td>
</tr>
<tr>
<td>28,001–36,300</td>
<td>25%</td>
</tr>
<tr>
<td>36,301–60,000</td>
<td>30%</td>
</tr>
<tr>
<td>60,000+</td>
<td>35%</td>
</tr>
</tbody>
</table>

No municipal, local, social or trade taxes are levied.

**Social security payments**

Social security is levied at 12.6% if the private individual is self-employed and 6.8% if an employee (a further 6.8% is paid by the employer).

**Capital gains tax for private individuals**

Capital gains are taxed only insofar as they arise from the disposal of immovable property situated in Cyprus or from shares in a Cyprus tax resident company owning property situated in Cyprus. They are taxed at a flat rate of 20%.

**The taxation of stock options**

Stock options are taxed as capital gains when the underlying stocks are sold and may therefore attract taxation only in the event where they are directly related to Cyprus situated immovable property.

There is no tax relief for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When the underlying stocks are sold</td>
<td>As capital gains</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tax relief for the grantor</th>
<th>No</th>
</tr>
</thead>
</table>
Fiscal incentives in Cyprus

Fiscal incentives at a fund level

Cyprus does not provide fiscal incentives at a fund level. Generally applicable favourable tax provisions apply.

Fiscal incentives at a company level

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</table>

Intellectual property

A special intellectual property regime was introduced in Cyprus in January 2012. This special regime applies to all expenses incurred for the acquisition or development of intangible assets. These include all intangible assets as defined in:

- Patents Law 16(I) / 98 as amended
- Right of Intellectual Property Law 59 / 76 as amended
- Trademarks Law Cap 268 as amended

Capital expenditure in relation thereto will be eligible for capital allowances at the rate of 20% per year over a period of 5 years.

Further, 80% of profit generated on such intangible assets (including compensation for the infringement of use of such assets) as well as of profit from the assets' disposal (including royalty income) will be deemed as an expense.

Expatriate concessions

The following expatriate concessions are available:

- 50% of gross emoluments is exempt from taxable income for individuals that commence employment in Cyprus for the first time and were residents outside Cyprus before their employment started.
  The 50% exemption is allowed for 5 years starting in the year of first employment, assuming employment income exceeds €100,000 per annum.

- 20% exemption for the emoluments of an expatriate (maximum €8,550 per year) who was a resident outside Cyprus before the commencement of employment. This exemption applies for a period of 3 years commencing from the 1st January following the year the employment commenced.

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The Czech Republic

Introduction

The Czech Republic provides an unusually favourable tax environment for individuals, levying low taxes on income, capital gains and stock options. However, this is marred by the levy of high social security taxes. Effective from 2013, the low individual income tax rates were temporarily increased for some types of income. This increase is designed to last for a maximum of 3 years.

Although the availability of suitable fund structures is relatively restricted, funds for collective investment are subject to a reduced tax rate of 5%.

Fiscal incentives are not widely available.

Significant uncertainty about the interpretation of Czech anti-abuse laws is of concern.

Czech fund structures

Structures

Czech legislation recognises investment companies (ie, management companies establishing and/or administering the funds) and funds of collective investment that can be structured either as mutual funds (a structure without legal personality most commonly used for retail funds) or as investment funds (a structure with legal personality in the form of a joint stock company). The income of funds of collective investment is generally subject to a reduced tax rate of 5%.

Transparency

Funds of collective investment are not tax transparent for either domestic or non-domestic investors.

Although mutual funds are transparent from a legal perspective, their income is subject to a 5% tax (ie they are not tax transparent although they are subject to lower tax than a company). The same taxation applies to investment funds, which are not transparent even from a legal perspective.

Absence of incremental tax (as compared to direct investments)

Both fund structures only partially do not give rise to incremental tax for domestic and foreign investors as compared to such investors investing directly. As a general rule, there are two tiers of taxation - at the fund level and at the investor level. This double taxation does not occur only in specific enumerated cases, namely:

- Situations where the fund pays dividends sourced from received dividends and interest, in which case such dividend paid by the fund is not taxed
- Situations where an investment fund pays dividends to a corporate shareholder who enjoys the benefit of a participation exemption (generally, ownership of 10% or more of shares of the fund for 12 months or longer), in which case such dividend paid by the fund is not taxed
- Situations where an individual investor sells his/her shares in the fund after the expiry of the time test (generally, 6 months with some additional conditions) in which case the capital gains are tax-free for such investor.

These rules apply uniformly to domestic and foreign investors except that certain foreign investors can claim a reduced tax rate or other benefits under the applicable tax treaty.

Permanent establishment

Generally, the mere fact that an entity is a limited partner in a Czech company should not result in its permanent establishment in the Czech Republic unless it carries out business activities in the Czech Republic.

Management services carried out in the Czech Republic and charged to a portfolio company may give rise to a permanent establishment of the management company in the Czech Republic.

Capital gains tax for non-resident investors

Under domestic Czech tax laws, non-resident investors are liable to pay Czech income tax on the proceeds from the sale of shares of companies (including investment funds) with a seat (registered address) in the Czech Republic, and also on the proceeds from Czech residents for the sale of securities (including shares of mutual funds) and other investment instruments registered in the Czech Republic. Most non-residents are usually protected from this taxation by an applicable tax treaty.
## Summary

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td>Mutual Fund</td>
<td>No</td>
<td>No</td>
<td>Partially</td>
<td>Partially</td>
<td>No</td>
</tr>
<tr>
<td>Investment Fund</td>
<td>No</td>
<td>No</td>
<td>Partially</td>
<td>Partially</td>
<td>No</td>
</tr>
<tr>
<td>Special Fund of Qualified Investors</td>
<td>No</td>
<td>No</td>
<td>Partially</td>
<td>Partially</td>
<td>No</td>
</tr>
</tbody>
</table>

### Taxation at a fund level

- **VAT on management fees**: No
- **Capital gains tax**: 5%
- **Withholding tax**: 15%
- **Stamp duties or transaction taxes**: Stamp: No, Transaction: No
- **Anti-abuse rules**: Yes
- **Fiscal incentives**: Investors: No, Fund management: No

### Taxation of employees

- **Income tax**: 15% + 7%\(^1\)
- **Social security**: 45%\(^2\)
- **Capital gains tax**: 15%
- **Tax on stock options**: 15%
- **Special tax regimes**: No

### Fiscal incentives at a company level

- **Business R&D expenditure**: Yes
- **R&D capital expenditure**: No
- **Contracting researchers**: No
- **Technology transfer**: Yes
- **Cooperative external research**: No
- **Innovative spin-out**: No
- **Young and innovative companies**: No

---

1. 7% solidarity surcharge on salaries exceeding CZK 124,432 annually.
2. This includes social insurance (pension, sickness and unemployment insurance) and health insurance. 34% is paid by the employer and 11% by the employee.
The Czech Republic

Undue restrictions

Czech mutual funds are considered to be free from undue restrictions. However, investment companies (i.e., management companies needed for the operation of all mutual funds and most investment funds) and investment funds are heavily regulated and thus may be difficult to use for private equity or venture capital purposes. A possible exception is for the special funds of qualified investors, where the level of regulation is significantly lower.

Czech Tax from 2015

From 2015 the tax rate for funds of collective investment will be reduced to 0%. However, the distribution of dividends by the funds will be subject to a 19% withholding tax and the domestic participation exemption will not be applicable to capital gains received as a result of a transfer of shares in the funds. This change was pre-approved by Parliament in 2011 but can still be reverted after general elections, which are due in 2014.

Czech tax at a fund level

VAT on management fees

Under Czech VAT law, management services provided by investment companies (i.e., management companies) to investment and mutual funds are generally exempt from VAT. The management company is not allowed to deduct any related input VAT.

Capital gains tax

Capital gains are included in the standard tax base and as such are generally subject to standard income tax rates (in 2013: 19% for legal entities and 15% for individuals). These standard income tax rates may not be identical to the tax rates applicable to dividend income (in 2013: 15% for both legal entities and individuals).

There is no difference in the taxation of capital gains arising from the sale of shares in a fund of collective investment as compared to the sale of shares in a portfolio company held by the investor directly. There may be a difference in situations where the gain is realised from an investment in a fund that distributes the proceeds of the gain to the investor. In this instance, the type of income changes from capital gains to a dividend that is taxed on different principles. Capital gains are exempt from taxation (i.e., the effective taxation rate is 0%)

- When the participation exemption applies (only in the case of corporate investors in investment funds holding 10% or more of shares of the fund for 12 months or more), or
- When the time test is met (only in the case of individual investors in mutual funds or investment funds; the holding time requirement is 6 months or 5 years, depending on certain further conditions).

Withholding taxes

If a Czech portfolio company makes dividend distribution to a non-Czech fund with non-Czech investors there is, generally and with certain exceptions, an obligation to withhold Czech income tax on the dividend.

The applicable tax rate is in most cases 15%, although from 2013 an increased rate of 35% applies to dividend recipients who are not resident in an EU or EEA member country or a tax treaty country (an anti-avoidance measure aimed against tax havens). The following reductions and exemptions apply:

- The tax may be reduced or eliminated entirely under an applicable tax treaty
- Dividend income may be exempt under the EU Parent-Subsidiary Directive if at least a 10% share in the eligible subsidiary is held for longer than 12 months

Similar withholding tax treatment would also apply to other forms of income, such as an interest or share in liquidation surplus. The withholding tax is generally final (there are no municipal, local, social or trade taxes in the Czech Republic).

EU or EEA residents have the option to file a tax return for income subject to Czech withholding tax (with the exception of dividends). Expenses related to the income may then be claimed against the income so that only the net profit remains subject to Czech tax. The paid withholding tax would then be treated as a pre-payment i.e., it may be deducted from the final tax liability and recovered.

Stamp duties and transaction taxes

There are no financial transaction taxes in the Czech Republic and there is no intention to introduce them in the near future.

There is a real estate transfer tax of 4% (increased from the 3% applicable before 2013), which currently does not apply to transfers of shares in real estate companies. Extension of the tax to these share transfers from 2014 has been considered by the government but seems unlikely to pass.
The Czech Republic

Anti-Abuse Rules

Reductions and exemptions are generally only applicable if the entity receiving the income is also its beneficial owner. Czech tax authorities carefully examine structures, usually requiring documentation of beneficial ownership.

The Czech tax authorities are known to have challenged structures where the transaction was primarily designed to obtain a tax benefit. A "substance over form" principle is explicitly set out in Czech tax law. Czech courts are gradually replacing this with a general concept of abuse of law.

The abuse of law is defined as a situation in which a person exercises his or her rights to the detriment of others or society in general. This means that even if the exercise of a right is technically in line with the law, if it creates a situation that contravenes the purpose of the law it will not be supported in court. This has caused significant uncertainty.

Czech tax at a company level

Company tax

Company tax is levied at 19%. There are no municipal, local, social or trade taxes in the Czech Republic.

There is no special income tax treatment (special tax rates or other tax benefits) of small companies.

Deductibility of interest

Unrelated parties

Under Czech tax law, interest on debt financing is generally deductible with the following restrictions:

- Profit participating loans: When the interest from the loan depends completely or mostly on the profit of the debtor, these expenses are non-deductible
- Loans on acquisition of shares: Expenses of a parent company related to its shareholding in a subsidiary (at least a 10% share held for at least 12 months) are non-deductible
- Loans granted by an individual: Interest on loans where the creditor is an individual who does not keep double-entry accounting books only becomes a deductible expense upon its payment

Related parties

Net interest expenses on related-party loans are also tax-deductible in the Czech Republic with the following restrictions in addition to the standard limitations described above:

- Thin capitalisation rules: Where the total amount of debts from related parties (including back-to-back financing) exceeds 4 times the equity of the debtor in the taxable period, interest and other related financial expenses (for example, expenses for processing the loan or commissions for its intermediation) related to the excessive part of the debts are non-deductible
- Transfer pricing: Where the debtor and the creditor are related parties and the interest on the loan is higher than it would have been if the loan had been granted between unrelated parties (arm’s length interest) and questioned by the tax authorities, the excessive part of the interest is non-deductible

Czech taxation of employees

Income tax for private individuals

Income tax is levied at 15% of gross salary, increased by the employer’s health insurance and social security contributions and decreased by specified tax allowances.

For the years 2013-2015 the tax has been temporarily increased by a 7% “solidarity surcharge” applicable on the gross salary exceeding CZK 1,242,432 (approximately €48,200) annually.

The income tax rate will be changed to 19% from 2015. The tax base will then be calculated as gross salary (without the increase from the employer’s health insurance and social security contributions) and decreased by specified tax allowances.
The Czech Republic

Social security payments

Social security payments in the Czech Republic are made up of pension, sickness and unemployment insurance, with additional health insurance payments. All these insurance payments are split between the employer and employee. In total, a rate of:

- 34% is levied on the employer (35% on some small employers)
- 11% is levied on the employee

There is an annual cap on:

- The calculation base for social security payments, which is equal to 48 times the average monthly salary\(^3\) (CZK 1,242,432\(^4\) in 2013), making the maximum annual social security payment CZK 310,608 (approximately €12,050) for the employer and CZK 80,759 (approximately €3,130) for the employee
- A similar cap on the calculation base for health insurance payments has been abolished from 2013

Capital gains tax for private individuals

Capital gains are taxed as part of regular income in the Czech Republic.

The gain from an investment held for non-business purposes may qualify for a tax exemption if held for at least 5 years. This time test is reduced to a holding period of 6 months for capital gains on securities provided that the individual investor’s direct participation in the capital, or voting rights of the issuer did not exceed 5% at any time during the 24-month period preceding the sale\(^5\).

Capital gains from participation rights in limited liability companies and cooperatives are exempt after a holding period of 5 years.

The taxation of stock options

Stock is taxed as income when the option is exercised. No tax relief arises for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief for the grantor</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

Forthcoming changes

New Act on Investment Companies and Investment Funds

A brand new, extensive piece of legislation is being prepared to replace the current Act on Collective Investment later in 2013. This new law will, among other things, implement the Alternative Investment Fund Managers Directive and certain other preceding EU directives, including the updated UCITS Directive and introduce, for the first time in Czech history, SICAV-like types of funds.

Czech fiscal incentives

Fiscal incentives at a fund level

The Czech Republic does not provide fiscal incentives at a fund level. Furthermore, there is no special tax treatment for fund managers or funds investing into private equity and venture capital. The reduced income tax rate for funds (5% through 2014 and 0% thereafter) is mentioned above.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
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</tr>
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<td>Contracting researchers</td>
<td>No</td>
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<td>Technology transfer</td>
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<td>The cooperation between firms and research institutes or universities</td>
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</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

The Czech Republic provides an investment incentive to support the introduction or expansion of production in the manufacturing industry in the form of corporate tax relief for a period of 5 years.

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\(3\) The annual social security base cap is set at 48 average monthly salaries, or, in other words, the monthly cap is set at 4 average monthly salaries.

\(4\) This is intentionally the same amount as the gross salary threshold triggering the solidarity surcharge. The lawmakers’ idea is that if high-income individuals do not have to pay social security payments above a certain cap they should pay the solidarity surcharge instead.

\(5\) From 2015, this period will be extended to 3 years.
The Czech Republic

This is subject to:

- A minimum investment of CZK 100 million (approximately €3.9 million)
- A minimum investment of CZK 50 million (approximately €1.9 million) in regions with high unemployment
- At least 50% of the investment being in new machinery

Investment incentives are also provided to technology centres and strategic service centres. The technology centre incentive is subject to the following requirements:

- The creation of at least 40 new jobs
- That 50% of the minimum investment threshold of CZK 10 million (approximately €388,000) is in new machinery

The strategic service centres incentive is subject to the following requirements:

- The creation of at least 40 new jobs for centres developing software solutions
- The creation of at least 100 new jobs for shared service or repair centres
- There is no minimum investment amount

Further Czech incentives include:

- Eligible costs incurred in research and development can be deducted from the tax base twice (as a special allowance)
- Projects located in regions with a high unemployment rate can obtain job creation grants as well as training and retraining grants
- The transfer of land at advantageous prices is also possible

Additional subsidies are available from Czech and EU funds.
Introduction
Denmark provides 2 fund structures for private equity and venture capital investments. Both are tax-transparent and without undue restrictions.

Tax is above average in Denmark but due to decreasing bands, Denmark levies a relatively low highest rate of income tax.

R&D is also fiscally supported in Denmark.

Danish fund structures

Structures
The most commonly used fund structures in Denmark for private equity and venture capital investments are:

- K/S Kommandiselskab
- P/S Kommanditaktieselskab

Transparency
Both fund structures are transparent for domestic and non-domestic investors (unless 50% of the share capital or voting rights are held by non-domestic shareholders domiciled in a state where the K/S or P/S is considered a non-transparent entity – the anti-hybrid provision).

Special requalification rules may apply when a majority of shareholders are foreign investors who treat a K/S or P/S as non-transparent in accordance with legislation in their respective home countries.

Absence of incremental tax (as compared to direct investments)
A K/S and a P/S do not imply incremental taxes for domestic or non-domestic investors as compared to the situation that these investors would invest directly in the target companies.

Permanent establishment
Provided that the fund does not have a fixed place of business and the management company is not considered a dependent agent, no permanent establishment should be constituted in Denmark. This can be confirmed by a ruling, although this is not required, it is often applied for to ensure there is no permanent establishment.

If the management company cannot be considered an independent agent, a private equity fund may have its governance structured differently to mitigate/eliminate the risk of a permanent establishment, which could be confirmed by ruling.

Whether management can be considered a dependent agent is determined through an overall assessment of the factual circumstances. In determining whether this could be the case, the commentaries to Article 5 in the OECD’s Model Convention should be taken into consideration. In published case law so far, management has not been deemed a dependent agent.

Capital gains tax for non-resident investors
There are no other circumstances where capital gains tax is charged to non-residents.

However, group-related transfers of shares would be treated as dividends subject to dividend taxation where the remuneration for the transfer is either entirely or partly not in the form of shares. Depending on the status of the receiving company withholding tax could be triggered (please refer to Withholding taxes below).

Undue restrictions
Both fund structures are free from undue restrictions. There are no restrictions on the type of investments that can be made in either of the fund structures.
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th></th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Investor type</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
</tr>
<tr>
<td>K/S Kommandiselskab</td>
<td>Yes (but anti-hybrid provisions exist)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>P/S Kommanditaktieselskab</td>
<td>Yes (but anti-hybrid provisions exist)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
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</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
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<td>Min. 0%</td>
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<tr>
<td></td>
<td></td>
<td>Max. 25%</td>
<td>Max. 25%</td>
<td>Transaction</td>
<td>Fund management</td>
<td>Fund management</td>
</tr>
</tbody>
</table>

#### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
<th>Fiscal incentives at a company level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Min. 42%²</td>
<td>8%³</td>
<td>Min. 27%</td>
<td>42%/56%⁴</td>
<td>No</td>
<td>Business R&amp;D expenditure</td>
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<td></td>
<td>Max. Income above €52,000 → additional 15%</td>
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<td>Max. 42%</td>
<td>(share income/ordinary income)</td>
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#### Taxation at a company level

<table>
<thead>
<tr>
<th></th>
<th>Company tax</th>
<th>Special tax regime for SMEs or other small companies</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
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<td>25%</td>
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<td>Related-party loans</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Unrelated-party loans</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Yes, subject to restrictions</td>
</tr>
</tbody>
</table>

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1. Although not applied in practice.
2. The 42% rate is simplified as the first DKK 42,000 (approximately €5,633) is not taxable. Furthermore, the exact tax rate depends on where in Denmark you live (municipality tax).
3. Included in the income tax rate.
4. Ordinary income (salary etc.) is taxed at up to approximately 56.2%. Income derived from shares (gains and dividends) are taxed at a flat rate of 27% and 42% if the amount exceeds DKK 48,300 (approximately €6,478).
Denmark

Danish tax at a fund level

As a K/S or P/S should be tax-transparent in Denmark no taxes should be levied at fund level. However, the fund is subject to VAT.

VAT on management fees

According to most recent tax practice, most private equity funds would not have to charge VAT on management fees, although this could depend on the management agreement, etc. Historically, an approximate 90/10 split between VAT-exempt and VATable services has been applied by some private equity houses.

In many situations there is a payroll tax obligation for VAT-exempt services.

Capital gains tax

For domestic corporate investors, capital gains on the disposal of listed shares with an ownership share of less than 10% are taxed at a rate of 25%. Disposal of unlisted shares is tax-exempt.

The tax liability of domestic investors is not different if the gain is not realised from a direct investment but from an investment in a tax transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor.

Withholding taxes

Dividends

Dividend income is subject to a 27% withholding tax. However, a 25% withholding tax may be levied for certain Danish investors.

A reclaim down to 15% on dividends may be feasible through an individual application at investor level. It may be possible to obtain a reduction at source (ie, no reclaim procedure) if an approval from the Danish Tax Authorities is obtained.

Dividends paid to a company holding at least 10% of share capital in the distributing Danish company will not be subject to withholding tax provided that the receiving company is domiciled in a state that has entered into a tax treaty with Denmark or is a member of the EU.

Interest

Under certain circumstances, interest income from intra-group loans is subject to 25% withholding tax. Denmark levies no withholding tax if the EU’s Interest and Royalties Directive is applicable or if the withholding tax rate should be reduced according to a tax treaty.

It may be possible to reclaim interest withholding tax down to 0% in some instances.

There are no taxes in addition to withholding tax, although Danish investors have to include income in tax returns under general rules.

Stamp duties and transaction taxes

Denmark does not levy a stamp duty or financial transaction tax.

Anti-abuse rules

There are anti-abuse rules on hybrid structures and hybrid financing in Denmark.

The tax authorities are currently involved in several court cases to claim a requirement for beneficial ownership under Danish law/double tax treaties/ the Parent-Subsidiary Directive.

Danish tax at a company level

Company tax

Company tax is levied in Denmark at a rate of 25%. There are no further municipal, local, social or trade taxes. There is no special company tax rate for SMEs, as defined in EU legislation, or for any other small companies based on other criteria.

Deductibility of interest

Subject to restrictions, net interest expenses on both related and unrelated-party loans are tax-deductible in Denmark.

Unrelated-party loans

The restrictions broadly consist of three elements:

- Net financing costs of up to DKK 21.3 million (approximately €2.86 million) are fully deductible
- Interest ceiling: Net financing costs exceeding DKK 21.3 million and 3% (2013) (3.5% in 2012) of the tax base of certain operating assets, plus 10% of the tax basis of controlled foreign subsidiaries will not be deductible
- An EBIT rule provides that EBIT income cannot be reduced by more than 80% by net financing expenses
Denmark

Net financing costs consist of, inter-alia:

- Taxable income and all interest expenses
- Certain commissions
- Taxable gains and deductible losses on claims
- Debts and financial contracts included in the Gains on Securities and Foreign Currency Act
- Taxable gains on shares and deductible losses on shares, including taxable dividends

Net financing costs are calculated on a consolidated basis for Danish groups and pro-rata for the consolidated period.

Related-party loans
Thin capitalisation rules restricting interest expenses on certain controlled debt exceeding a 4:1 debt:equity ratio still apply. The effect of Danish thin capitalisation rules is that deduction is denied for interest expenses and capital losses of controlled debt where this ratio is not met.

Restrictions in deductibility only apply to interest expenses and capital losses related to the proportion of the controlled debt that should have been injected as equity instead of debt in order to meet the 4:1 safe haven.

Danish taxation of employees

Income tax for private individuals
Individuals are progressively taxed in Denmark:

- Income up to DKK 389,000 (approximately €52,176) is subject to an average taxation of 42%, depending on the municipality
- Income in excess of DKK 389,000 is subject to an extra 15% taxation

These rates include municipality and social taxes.

Social security payments
Employees
Social security contributions in Denmark are paid through regular income taxes at 7% of personal income.

Employers
Employers also have to pay social security contributions in Denmark at a rate of 8% of gross income ie, before deductions of any kind.

Capital gains tax for private individuals
For private individuals, income from shares not exceeding DKK 48,300 (approximately €6,478) is subject to 27% taxation. Income exceeding DKK 48,300 is subject to 42% taxation.

Special carried interest tax rules apply. These imply an effective tax of 56.5% on carried interest.

The taxation of stock options
Employee stock options covered by the Tax Assessment Act, section 28 stock options, are taxed upon exercise as professional income.

Stock options acquired at fair market value are taxed when the underlying stocks are sold as capital gains.

There is no tax relief for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options in Denmark.

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<thead>
<tr>
<th>Taxation of stock options</th>
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</tr>
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<td>Employee stock options</td>
<td>Upon exercise</td>
<td>As professional income</td>
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<tr>
<td>Stock options acquired at fair market value</td>
<td>When the underlying stocks are sold</td>
<td>As capital gains</td>
</tr>
<tr>
<td>Tax relief for the grantor</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

Danish fiscal incentives

Fiscal incentives at a fund level
There is a special tax exemption in Denmark for investments in venture entities which, under certain conditions, may allow investors to realise gains as tax-exempt. However, the scope of these rules is very narrow, and they are not applied in practice.
Fiscal incentives at a company level

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With effect from 2012, companies in Denmark may apply for a (tax-free) cash payment of 25% of certain research and development costs:

- The maximum cash payment is DKK 1.25 million (approximately €167,662) per year (i.e. 25% of DKK 5 million)
- The regime applies from the income year 2012
- The first payment by the tax authorities will be made in November 2013

Further, it is possible to write off 115% of the value of certain fixed assets acquired from 31 May 2012 until 31 December 2013.

Denmark also provides an expatriate tax regime:

- Qualifying persons are taxed at the flat rate of 26% for a maximum of 60 months
- Inward expatriates are also subject to 8% social security contribution (even if they are covered by the social security system in their home country)
- The total effective tax rate is 31.92%, substantially below the normal income tax rate

This is applicable to individuals who become residents for tax purposes when taking up employment in Denmark with a resident employer or with a Danish permanent establishment of a non-resident employer and to non-resident employees engaged in an approved research project.
Introduction

Estonia generally levies low tax apart from social security payments, which are high for a low-tax regime.

There are no specialised private equity or venture capital fund structures available. However, Estonian fund structures and the tax and legal situation surrounding them are favourable.

Estonia is one of the few EU countries in which no general fiscal incentives are available.

Estonian fund structures

Structures

There are no special structures for private equity and venture capital investments in Estonia. However, there are two types of investment fund which can be used for such investments:

- Public limited companies
- Contractual funds

Contractual funds are most commonly used.

Only investment funds that are established as public limited companies are treated as taxable persons in Estonia for income tax purposes.

Transparency

Tax transparency depends on the form of the fund.

- Contractual funds are not treated as independent legal persons but as pools of assets. Therefore, payments from contractual funds may be treated as interests taxable at the level of the investor.
- Payments from investment funds that are established as public limited companies are treated as interests subject to withholding tax or capital gains or dividends that are taxable at the level of the investment fund.

Absence of incremental tax (as compared to direct investments)

There are no incremental taxes in Estonia. Therefore, there is generally no difference if investors invest directly in the target companies or in the fund.

Permanent establishment

Generally, investing through investment funds that are established as public limited companies should prevent non-domestic investors from having a permanent establishment in Estonia.

On the other hand, any non-domestic investor investing through a contractual fund may be deemed to have a permanent establishment in Estonia (if it fulfils certain requirements).

This is because contractual funds may be considered to constitute a business entity through which the permanent economic activity of non-resident limited partners or the management company is carried out in Estonia.

Capital gains tax for non-resident investors

Capital gains on shares are generally not taxable in Estonia for non-residents.

However, there are two exceptions to this rule:

- Income tax at the rate of 21% of the gross amount is charged on gains derived by a non-resident from alienation of participation in partnerships or pools of assets or shares in a company (established in Estonia or elsewhere) holding more than 50% of their assets directly or indirectly in real estate located in Estonia during any preceding two years and in which the non-resident’s participation is or exceeds 10% at the time of the transfer.
- Gains received from payments made by a resident company upon reduction of share capital or upon redemption or return of shares are taxable with 21% income tax on the amount which exceeds the acquisition cost of the shares and that (or the underlying profit share) has not been taxed. Similarly, gains received from liquidation proceeds of a resident company are taxable with 21% income tax on the amount which exceeds the acquisition cost of the shares and that (or the underlying profit share) has not been taxed.
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>No</td>
</tr>
<tr>
<td>Public limited companies</td>
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<td>Contractual Funds</td>
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#### Taxation at a fund level

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<td>Capital gains tax</td>
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<td>Stamp duties or transaction taxes</td>
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<td>Anti-abuse rules</td>
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<td>Fiscal incentives</td>
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<td>Fund management No</td>
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#### Taxation at a company level

<table>
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</thead>
<tbody>
<tr>
<td>Company tax</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Special tax regime for SMEs or other small companies</td>
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<tr>
<td>Deductibility of interest</td>
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<td>Unrelated-party loans Yes, subject to restrictions</td>
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#### Taxation of employees

<table>
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<tr>
<td>Income tax</td>
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<tr>
<td>Special tax regimes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>

#### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th></th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Cooperative external research</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Innovative spin-out</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Young and innovative companies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>

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1. Although withholding tax is not imposed on the distribution of dividends paid to residents or non-residents, withholding tax of 21% does apply in certain cases (see below).
2. As of 2013, the employer pays unemployment contribution of 1% and withholds the employee’s unemployment contribution of 2% from his or her gross salary. The minimum rate for social security amounts to 36% (33% + 1% + 2%) and the maximum rate to 38% (36% + 2%). See below.
3. Options are taxable at the level of the employer as fringe benefits at the moment options are exercised or transferred (sold). This means that both income tax at the rate of 21% of the gross amount and social tax at the rate of 33% of the gross amount must be paid by the employer.
Estonia

### Estonian tax at a fund level

#### VAT on management fees

There is no VAT on management fees charged to the fund (or equivalent if structured differently, e.g., as a profit share for the fund manager).

According to Subsection 16 (21) 11) of Value Added Tax Act, VAT is not imposed on the supply of the following financial services: management of investment funds (provided for in the Investment Funds Act) and other investment funds of a contracting party to the EEA Agreement and subject to financial supervision, including the provision of services related to the management of funds to the funds in the case of transfer of duties of a management company.

#### Capital gains tax

There is no separate capital gains tax in Estonia. Capital gains are treated as ordinary income and taxed at a flat rate of 21%. This is a state tax; no municipal or local taxes apply. Furthermore, there are no differences in taxation according to different holding periods.

Capital gains are subject to the same income tax rate as dividend income in Estonia.

There are participation exemptions available for resident legal persons and non-resident legal persons acting through their permanent establishment in Estonia. For example, when a resident company distributes dividends received from its subsidiary where it has at least a 10% participation, the further distribution is exempt of tax if the subsidiary is either (a) resident in Estonia, another EEA state or Switzerland, or (b) resident outside those countries but was subject to tax on its profits or the dividends received by the parent were subject to withholding tax.

There is no effective tax rate as such after the application of the participation exemption, so that when redistribution of dividends is subject to participation exemption, the redistributed dividends are tax-exempt (and not subject to a different tax rate).

Finally, the tax liability of a domestic investor is the same if the gain is not realised from a direct investment but from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor. In both cases, the gain of the resident investor is subject to income tax at the rate of 21%.

#### Withholding taxes

Estonia does not impose withholding tax on the distribution of dividends paid to residents or non-residents.

However:

- All profit distributions (including dividends) are taxed at a rate of 21/79 of the net amount, which is slightly over 26.6% (or 21% of the gross amount) at the level of investment funds founded as public limited companies
- Withholding tax of 21% applies to interest payments made to resident individuals by investment funds founded as public limited companies
- Withholding tax of 21% applies to the part of interest paid to non-residents by investment funds founded as public limited companies that significantly exceeds the arm’s length interest amount (see below). Only a contractual investment fund (a pool of assets) cannot act as a withholding agent. An investment fund founded as a public limited company, on the other hand, is a legal person who acts as a withholding agent (according to Section 40 (1) of Income Tax Act).

#### Stamp duties and transaction taxes

There are no stamp duties or transaction taxes in Estonia.

#### Anti-abuse rules

There is a general anti-abuse rule in Section 84 of the Taxation Act. This states that if it is evident from the content of a transaction that the transaction is performed for the purposes of tax evasion, the conditions that correspond to the actual economic content of the transaction shall apply for tax purposes.

#### Taxation of contractual real estate funds

The Estonian government submitted a draft for changing the income tax act so that gains of Estonian contractual real estate funds would be taxable at the fund level. As a result, contractual real estate funds would be treated as taxable persons (in relation to real estate income) as of 1 January 2014.

In effect, the tax obligation will be shifted from the investor level to the fund level but the total tax obligation will not change.

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4 However, Estonia is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
**Estonia**

### Estonian tax at a company level

#### Company tax

The corporate income tax (CIT) rate in Estonia is 21%. It should be noted that the income tax is calculated on the net amount of profit distributions by applying the tax rate 21/79.

As of 2015, the CIT rate will be reduced to 20/80. This means that all profit distributions will be taxed at a rate of 20/80 of the net amount starting from 1 January 2015.

There are no municipal, local or trade taxes effective in Estonia.

#### Deductibility of interest

Net interest expenses on both related and unrelated-party loans are tax-deductible in Estonia.

Transfer pricing rules must be followed for transactions between related parties.

Interest payments to non-residents (whether they are related to the resident company or not) have to be on market conditions. Otherwise (i.e. when the agreed interest rate substantially exceeds the market rate), the part of interest that significantly exceeds the arm's length interest amount is subject to withholding tax.

#### Interest paid to non-residents

Interest paid to non-residents by an Estonian investment fund may be taxed with 21% income tax if it significantly exceeds the amount of interest payable on a similar debt obligation under the market conditions during the period of occurrence of the debt obligation and payment of the interest.

In that case, income tax is levied on the difference between the interest received and the interest payable according to market conditions on similar debt obligations.

If interest is paid by a contractual investment fund then the obligation to pay income tax lies with the non-resident. However, if the interest is paid by an investment fund founded as a public limited company (legal person) then withholding tax of 21% (which may be subject to reduction under double taxation treaties) applies to the part of interest paid to non-residents that significantly exceeds the arm’s-length interest amount.

### Estonian taxation of employees

#### Income tax for private individuals

The income tax rate for individuals is 21%. There are no municipal, local or trade taxes effective in Estonia for individuals.

#### Social security payments

Social security payments are divided between employers and employees.

A resident and a non-resident operating in Estonia as an employer must pay mandatory social security contributions (including social tax, unemployment insurance premium and funded pension payment) on the gross salary of each employee.

- The social tax is paid at a rate of 33% on all payments made to employees for salaried work (including fringe benefits)
- Unemployment insurance payments are shared between the employer and the employee. As of 2013, the employer pays an unemployment contribution of 1% and withholds the employee's unemployment contribution of 2% from his or her gross salary.

<table>
<thead>
<tr>
<th>Social security payments</th>
<th>Employee</th>
<th>Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unemployment insurance premium</strong></td>
<td>2% - withheld from the employee's gross salary</td>
<td>1% of the gross salaries of the employees</td>
</tr>
<tr>
<td><strong>Contribution to a mandatory funded pension</strong></td>
<td>2% - withheld from the gross salary</td>
<td></td>
</tr>
<tr>
<td><strong>Social tax</strong></td>
<td></td>
<td>33% on the gross amount of salaries and other remuneration paid to employees and emoluments paid to members of management or controlling bodies</td>
</tr>
</tbody>
</table>

As a principle, only active income is taxable with social security taxes. Thus, remuneration for employment is taxable with all the above mentioned social security taxes.

He unemployment insurance premium is not paid on emoluments made to members of management or controlling bodies. The employer is obligated to withhold contributions to a mandatory pension fund only for resident employees. Other income, such as capital gains, is exempt from social security taxes.
Capital gains tax

Generally, capital gains are not taxable for (resident) legal persons in Estonia as long as the profits are not distributed. All profit distributions (including dividends) are taxed at a rate of 21/79 of the net amount which is slightly over 26.6% (or 21% of the gross amount). This is the CIT, which is paid by the resident legal person making the distribution. Withholding tax is not imposed (in addition to CIT at Estonian company level) on the distribution of dividends paid to residents or non-residents.

Gifts made by resident legal persons or non-residents through, or on account of, their permanent establishments (situated in Estonia) are subject to income tax at the rate of 21/79 on the net amount.

In addition, social tax at a rate of 33% will apply if shares are provided free of charge or with a price below the market value to companies’ own employees.

The taxation of stock options

Granting or vesting an option does not trigger a tax obligation for the individual. As a general rule, 21% income tax is charged on gains from the sale or exchange of any transferable and monetarily appraisable objects (such as stock options, shares in a company, etc.).

As such, income tax is payable upon the gain received from the sale of stock options. If the option is not sold but used to buy the underlying assets (ie, exercised), the purchase price of the option is included in the purchase price of the stocks and may be deducted from the selling price of the stocks when computing the gain.

Stock options provided by employers

Special rules are effective for stock options provided by employers free of charge or at a beneficial price.

Both income received from the transfer of share options granted by the employer and acquisition of a holding that constitutes the underlying assets of the option are treated as fringe benefits and taxed at the level of the employer. This means that when option shares are sold to the employee, both income tax and social tax must be paid on the difference between the strike price (the price paid by the employee) and the market value of the shares.

When the option is transferred (not exercised), both income tax and social tax must be paid on the market value of the option. However, if options are exercised more than 3 years after they were granted, no tax is paid by the employer. In other words, options will not be taxable as fringe benefits if the period from grant to exercise is at least 3 years. This exception does not apply when options are transferred (sold).

Investment account

A resident individual taxpayer may choose to use an investment account⁶ to postpone his or her tax obligation. In order to benefit from the scheme, financial assets should be acquired using the funds on an investment account. Any income received should be immediately transferred to the account.

There is no other tax relief.

### Taxation of stock options

<table>
<thead>
<tr>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the stock options are sold</td>
<td>Income tax (21%)</td>
</tr>
</tbody>
</table>

### Special rules for certain types of company

Yes - Special rules are effective for stock options provided by employers free of charge or at a beneficial price. Options are taxable at the level of the employer as fringe benefits at the moment options are exercised or transferred (sold). This means that both income tax at the rate of 21% of the gross amount and social tax at the rate of 33% of the gross amount must be paid by the employer. However, options will not be taxable as fringe benefits if the period from grant to exercise is at least 3 years.

### Tax relief for the grantor

No - although a resident individual taxpayer may choose to use an investment account to postpone his or her tax obligation.

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5. The obligation to withhold this premium for employees terminates when the insured person reaches a pensionable age or is granted an early-retirement pension.
6. A separate, ordinary bank account used only for transactions related to financial investments. An account may be opened in a credit institution or its permanent establishment of a state which is a contracting party to the EEA Agreement or a member country of OECD.

### Special tax regimes

A basic exemption of €1,728 per year is available to all resident individuals. Additional exemptions are provided for parents, pensioners and resident individuals receiving compensation for an accident at work or an occupational disease.

A number of costs are tax-deductible, such as mortgage interest, training expenses, gifts, donations, payments for voluntary pension funds and mandatory social security taxes or contributions paid in a foreign state.
Introduction
The *kommandiittiyhtiö* is the standard limited partner structure.

It is nevertheless not ideal for some fund of fund structures and for investors from non-treaty countries. Investing through debt instruments in the Ky is currently an increasing trend.

Finland is among the countries in Europe with few fiscal incentives.

Personal income tax rates are moderate or high, but a lighter regime is available for foreign key employees. The corporate income tax rate is planned to be decreased to 20% from the current 24.5%.

Finnish fund structures

**Structure**
The most commonly used fund structure in Finland for private equity and venture capital investments is the *kommandiittiyhtiö* (limited partnership, Ky).

**Transparency**
A Ky is transparent for both domestic and non-domestic investors. However, it is treated as a calculation unit, affecting certain aspects of the taxation of the limited partners, especially domestic investors.

**Absence of incremental tax (as compared to direct investments)**
For individuals, the Ky fund may attract incremental tax due to the fact that each individual partner’s share in the fund profits is divided into earned income and capital income, while direct investment would be fully considered as capital income. Usually, this is solved by using a holding company as the fund investor.

For domestic companies and for foreign companies from tax treaty countries the fund structure does not generally entail incremental tax compared to direct investments (however, see below concerning permanent establishments). The tax-exempt share sales are not available when the Ky sells shares (however the exemption is not available in all other share sale cases, either).

**Permanent establishment**
In most cases no permanent establishment will be constituted for non-domestic investors and fund managers based on the specific provisions in the Finnish Income Tax Act.

However, as significant exceptions, a permanent establishment may be constituted in Finland for:
- A limited partner located in a non-tax treaty country
- A foreign fund investing in the Ky and being a foreign limited partnership, even if its limited partners reside in a tax treaty jurisdiction
- Investors or foreign funds that make the actual investment decisions in Finland or permanently use a related Finnish advisor.

**Capital gains tax for non-resident investors**
Based on domestic law, capital gains from Finnish real estate companies and real estate may, in certain situations, be taxed in Finland. The final outcome varies based on the tax treaty in question.

Investors from tax treaty countries (not having a permanent establishment in Finland) cannot be taxed on other capital gains received from Finland.

**Undue restrictions**
The fund is considered to be free from undue restrictions.
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td><strong>Kommanditityyhtiö</strong> <em>(Limited Partnership, Ky)</em></td>
<td>Yes (as a calculation unit it may affect nevertheless the taxation to some extent)</td>
<td>Yes</td>
<td>Yes/partly possible</td>
<td>Usually no (when a tax treaty applies)</td>
<td>No (except concerning real estate and real estate companies or in the case of a permanent establishment)</td>
</tr>
</tbody>
</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>Payment</th>
<th>Reclaim</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
<th>Capital tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>VAT on management fees</td>
<td>Generally no</td>
<td>Yes (if fund liable to VAT)</td>
<td>Yes</td>
<td>No</td>
<td>Investors</td>
<td>24.5%</td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
<td>Fund management</td>
<td></td>
</tr>
<tr>
<td>Withholding tax</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Taxation at a company level

<table>
<thead>
<tr>
<th>Special tax regime for SMEs or other small companies</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Related-party loans</td>
</tr>
<tr>
<td></td>
<td>Unrelated-party loans</td>
</tr>
<tr>
<td></td>
<td>Yes (conditionally/restricted)</td>
</tr>
</tbody>
</table>

#### Taxation of employees

<table>
<thead>
<tr>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
<th>Fiscal incentives at a company level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min. 16.25%</td>
<td>Min. 7.79% (employee) + approximately 22.25% (employer)</td>
<td>Min. 30%</td>
<td>Min. 16.25% (no social security contribution)</td>
<td>Yes</td>
<td>Business R&amp;D expenditure</td>
</tr>
<tr>
<td>Max. 53.75% (+max. 2.2% church tax)</td>
<td>Max. 9.14% (employee) + approximately 22.25% (employer)</td>
<td>Max. 32%</td>
<td>Max. 53.75% (+max. 2.2% church tax; no social security contribution)</td>
<td>Yes (temporarily)</td>
<td>R&amp;D capital expenditure</td>
</tr>
</tbody>
</table>

#### Fiscal incentives at a company level

- **Business R&D expenditure**: Yes (temporarily)
- **R&D capital expenditure**: Yes
- **Contracting researchers**: No
- **Technology transfer**: No
- **Cooperative external research**: No
- **Innovative spin-out**: No
- **Young and innovative companies**: No
Finnish tax at a fund level

VAT on management fees
In general, management fees are not subject to VAT.

The question with regard to fees relating to real estate property funds is a bit unclear at the moment.

Capital gains tax
Even though taxation applies at the level of investors, the Ky is treated as a calculation unit. Capital gains received by the Ky form part of its business (or other) profit which is allocated to be taxed in the hands of the investors.

It may be noted that exemptions on share sales are not available when a Ky sells shares.

For Finnish companies, capital gains received through a Ky do not enjoy any special treatment as they are just included in the share of profits of the Ky allocated to be taxed in the hands of the investors; no tax-exemptions on e.g. target share sales are available. Disposal of the interest in Ky or liquidation of the Ky triggers capital gains taxation (general rules, no incentives, certain restrictions on the deductibility of capital loss).

Exemptions on share sales may nevertheless be used by any Finnish companies e.g. below the fund level, provided certain conditions are met, e.g. that:

- The target is a resident company (other than a real estate company), or a qualifying non-resident company
- The shares formed part of the seller's fixed assets and the seller owned at least 10% of the share capital in the company directly and continuously for at least 1 year
- The selling company is not regarded as carrying on private equity activities

These rules apply correspondingly in the case of liquidation.

For private individuals, capital gains from the disposal of target shares may, in some cases, be treated entirely as capital income (i.e. not be divided into capital income and earned income like fund profits in general for Finnish private individuals). For the rules applicable to capital gains on the disposal of fund interest or liquidation of the fund, see “Capital gains tax for private individuals” below.

As explained above, capital gains are usually tax-exempt for foreign investors.

Actual distributions from the Ky to the investors do not generally affect their taxation, as the taxation is based on the calculative shares in the profit of the Ky.

Withholding taxes
Assuming that the exemption concerning fund investors from a tax treaty country is applicable, such investor is taxed as if having received the income directly and not through a fund. For a foreign investor, capital gains are usually not subject to Finnish taxation, and interest payments are exempted from withholding tax. In practice, qualifying foreign investors may have to pay withholding tax only on dividends received from Finnish companies.

Dividends and royalties are subject to withholding tax at a rate of 24.5%, unless an exemption or lower rate applies under domestic law or under a tax treaty. In the case of dividends, for private persons, the withholding tax rate is 30%.

Under the domestic law implementing the provisions of the EU Parent-Subsidiary Directive, outbound dividends are exempt from withholding tax if the recipient is an EU company (referred to in Article 2 of the Directive) which directly holds at least 10% of the capital of the paying company. No minimum holding period is required. In addition, dividends paid to such a company located within the EEA, which can be regarded similar to a domestic entity to which the dividend could be paid tax-exempt, are likewise exempt from withholding tax subject to certain conditions.

Stamp duties and transaction taxes
A transfer tax of 1.6% on the purchase price of shares is levied on the buyer. The amount of transfer tax levied on the transfer of shares of a housing company or a real estate company is 2%. The tax is paid on the price free of debts. Transfer tax is payable on domestic shares only with the exception of certain foreign real estate holding companies.

For Finnish real estate the rate of transfer tax is 4% of the transfer price.

Anti-abuse rules
General anti-abuse (substance over form) and transfer pricing rules are in force in Finland. In addition, also CFC rules exist.
Finnish tax at a company level

Company tax

Company tax is levied at 24.5%. (The rate is planned to decrease to 20% as of 2014.)

Deductibility of interest

Net interest expenses on both related and unrelated-party loans are generally tax-deductible in Finland.

However, limitations to the deductibility of interest in business taxation have been enacted and will enter into force for tax year 2014. Limitations, which are applicable to related-party corporations, partnerships and Finnish permanent establishments of corresponding foreign entities, will be applied only if the interest expenses exceed the interest income received by the company. If the net interest expenses exceed 30% of the company’s adjusted business profits, interest may become non-deductible. A general safe haven of €500,000 applies. However, interest expenses will remain fully deductible if the equity ratio of the company is equal to, or higher than, the consolidated equity ratio of the group. Unlimited carry forward of non-deductible interest is allowed.

Furthermore, the loans from related parties have to fulfil arm’s length conditions.

Finnish tax authorities have recently shown increased interest in:

- Debt push-down structures
- Debt allocations
- The arm’s length nature of interest rates

Social security payments

Employees

The general social security contribution rate is 7.79%.

The social security rate for employees over 53 years old is 9.14%.

Finnish social security contributions consist of insurance premiums for:

- Pension (5.15% / 6.5%)
- Unemployment (0.6%)
- Health insurance and daily allowance premium (2.04%)

Employers withhold the social security contributions and remit the payment to the Finnish authorities and insurance institutions.

Employers

Employers’ social security contributions amount to approximately 22.25%. The aggregate amount varies e.g. depending on the total wages paid and type of work. The employers’ contributions are:

- Health insurance (2.04%)
- Unemployment insurance (0.8% / 3.2%)
- Pension insurance (on average 17.35%)
- Group life insurance (on average 0.07%)
- Accident insurance (approximately 0.3 – 4%; on average 0.9%).

Capital gains tax for private individuals

Capital income such as interest income, capital gains and dividends (for most part) are taxed as capital income. The capital tax rate for private individuals is 30%. This increases to 32% for capital income exceeding €50,000 during a calendar year.
Private individuals are entitled to subtract either the actual acquisition cost and selling expenses or the so-called “deemed acquisition cost”, whichever is higher. The deemed acquisition cost is dependent on the actual holding time (20% of the selling price if the shares or other assets are held for less than 10 years, 40% if the shares or other assets are held for 10 years or longer).

No selling expenses or acquisition expenses can be deducted when using the deemed acquisition cost.

Capital gains from the disposal of target shares by a Ky may, in some cases, be treated entirely as capital income in the hands of a Finnish private individual as fund investor (i.e. not be divided into capital income and earned income like fund profits in general).

70% of dividends received from a publicly listed company are taxed as capital income and 30% is tax-exempt.

A tax exemption for dividends distributed by a non-listed company applies to an amount equal to 9% of the annual return calculated on the mathematical value of the shares, up to a maximum amount of €60,000. If the dividend exceeds the annual return, 70% is taxed as earned income and 30% is tax-exempt. The dividend taxation is planned to change somewhat as of 2014. Even though the fund profits (which may contain dividends) are allocated to be taxed in the hands of the investors, the tax exemptions explained above are taken into account in the taxation of the investors.

The taxation of stock options

Stock options are taxed in Finland when the options are exercised as earned income (at a progressive rate of up to approximately 50%). No social security payments are due.

There are no special rules on taxation of stock options for certain types of companies. Also, no tax relief arises for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options in Finland.

However, the company may deduct the stock purchase price in situations where the company purchases stock from the market in order to provide it to its employees (as employee incentive).

### Timings for tax relief

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When the option is exercised</td>
<td>As earned income (no social security contribution is due)</td>
</tr>
</tbody>
</table>

### Special rules for certain types of company

<table>
<thead>
<tr>
<th>Tax relief for the grantor</th>
<th>No</th>
</tr>
</thead>
</table>

### Special tax regimes

Foreign qualifying key employees (ie, specialists and executives) may apply for a special 35% flat tax rate for work performed in Finland if:

- The expert becomes tax-resident in Finland
- A cash salary of at least €5,800 is earned
- The work requires special expertise

An application must be filed within 90 days of moving to Finland. The foreign expert’s tax card is effective for 48 months. After this, normal progressive tax rates are applied.

### Finnish fiscal incentives

#### Fiscal incentives at a fund level

Finland does not provide fiscal incentives at a fund level.

However, a temporary tax incentive for business angels will provide a possibility to deduct half of the amount invested in a qualified company from his or her capital income. The minimum deduction is €5,000 and maximum €75,000 if invested only in one company, or €150,000 if invested in various companies.
Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>No</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

Generally, R&D expenses may be deducted freely either during the financial year when accrued or during several tax years (provided corresponding depreciations have also been made in for accounting purposes).

However, a maximum depreciation rate of 20% applies for buildings that are used exclusively for research operations.

A new temporary tax incentive for R&D has been introduced to support growth-oriented product development. Limited liability companies are, under certain conditions, entitled to an additional 100% deduction on wages directly linked to company’s own R&D operations. The maximum deduction per tax year is €400,000 and the minimum is €15,000.
Introduction
France has a well developed selection of structures for private equity and venture capital investment.

However, taxes are high in France, levying one of the highest capital gains tax rates for both firms and individuals in Europe. Also corporate income and withholding tax rates are among the highest in Europe.

On the other hand, fiscal incentives in France are among the most widely available in Europe.

French fund structures

Structures
The most commonly used fund structure in France for private equity and venture capital investment is the Fonds communs de placement à risques (FCPR).

The other structures in place are:
- Fonds communs de placement pour l’innovation (FCPI)
- Fonds d’investissement de proximité (FIP)
- Sociétés de capital risque (SCR)

Transparency
Each of these fund structures is tax-transparent for domestic and non-domestic investors. In other words, the FCPR (for example) is not itself subject to any taxation and the French tax authorities “look through” the FCPR for the purpose of determining the type of income received by the investor when the FCPR makes a distribution. On the other hand, corporate investors investing in a fund that does not qualify for the tax favourable regime, or if said corporate investors do not elect for the favourable tax regime, are taxed each fiscal year on a “mark-to-market” basis even if the fund makes no distributions. This is less favourable than a direct investment, although it is merely a timing difference.

Tax transparency, however, does not mean that investors are taxed on a look-through basis: they are taxable only when the FCPR makes a distribution (subject to the mark-to-market tax treatment applicable to corporate investors in the above cases).

Permanent establishment
These structures do not constitute a permanent establishment in France by law. In other words, an investment by a foreign investor in an FCPR will not create a permanent establishment in France.

Capital gains tax for non-resident investors
Foreign investors are generally not subject to capital gains tax in France on the sale of shares of a French company unless they hold, or have held at any time in the past 5 years, directly or indirectly, shares entitling them to more than 25% of the profits of that French company (Article 244 bis B of the FTC). The percentage of ownership is computed on a look-through basis, i.e., each shareholder is deemed to own his/her pro-rata share of each portfolio company and this is added to any shares of the portfolio company that the investor may own directly (such as, in cases of co-investment).

Under Article 244 bis A of the FTC, capital gains earned by non-resident shareholders upon the sale of shareholdings in French real property holding companies are subject to French withholding tax at the rate of 33.33%, and also to corporate tax (Article 209.I of the FTC).

Undue restrictions
The structures are considered to be free from undue restrictions.

French tax at a fund level

VAT on management fees
Management fees are in principle exempt from VAT.
## France

### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic</td>
<td>Domestic</td>
<td>Domestic</td>
<td>Non</td>
<td>No (under certain circumstances)</td>
<td>No</td>
</tr>
<tr>
<td>Non-domestic</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No (under certain circumstances)</td>
<td>No</td>
</tr>
</tbody>
</table>

#### Taxation at a fund level

- **VAT on management fees**: No
- **Capital gains tax**: Min. 33.33% Max. 36.1%
- **Withholding tax**: Min. 0% Max. 30%
- **Stamp duties or transaction taxes**: Stamp No Transaction No
- **Anti-abuse rules**: Yes
- **Fiscal incentives**: Investors Yes Fund management No

#### Taxation of employees

- **Income tax**: Min. 0% Max. 49%
- **Social security**: Min. 51.8% Max. Variable
- **Capital gains tax**: Min. 15.5% Max. 62%
- **Tax on stock options**: Min. 44% Max. 59%
- **Special tax regimes**: Yes

#### Fiscal incentives at a company level

- **Business R&D expenditure**: Yes
- **R&D capital expenditure**: Yes
- **Contracting researchers**: Yes
- **Technology transfer**: Yes
- **Cooperative external research**: Yes
- **Innovative spin-out**: No
- **Young and innovative companies**: Yes

---

1. Assuming that non-cooperative states rules do not apply.
2. France has an extensive social security system levied on employers and employees in an approximate ratio of 2:1.
Capital gains tax

Capital gains derived by French domiciled individuals or France-headquartered companies are, in principle, liable to income tax. However, there are specific tax rates for capital gains on the disposal of shares (see below).

Capital gains are taxed at the standard corporate tax rate of 33.1/3% plus surtaxes depending on the size of the company’s turnover.

Provided some conditions are met by the venture capital investment funds and the investor (50% invested in eligible companies, 5-year holding period, etc), the proceeds received by a corporate investor are first treated as a non-taxable repayment of his initial contribution in the fund and any excess amount is taxable at a rate of 0% or 15%, depending on the nature of the fund’s assets.

French source capital gains derived by non-resident individuals or companies are exempt from withholding tax except for the transfer of immovable property (or shares of real estate companies) or a participation exceeding 25% of the shares in a French resident company.

France levies withholding taxes on dividends at a rate of 15% for non-profitable organisations, 21% for EU individuals and 30% for others, subject to treaty. Following EU cases, no withholding tax applies on dividend payments to foreign UCITS provided some conditions are met.

However, there is no withholding tax on interest (except when paid in non-cooperative countries).

Withholding tax applies unless a treaty reduction applies.

Anti-abuse rules

There are anti-abuse clauses in some tax treaties or under domestic law which may deny withholding tax exemption on dividends.

General anti-avoidance rules also apply.

French tax at a company level

Company tax

The standard corporate income tax rate is 33.33% but depending on the size of turnover and profits, additional contributions at 3.3% or 5% apply on the amount of corporate income tax due.

Consequently, the company tax rate in France ranges from 33.33% to 36.1%.

In addition, as indicated above, subject to some exceptions, a new 3% tax applies on dividends distributed by French companies, which may increase the amount of corporate income tax due by the distributing company.

The local tax, contribution économique territoriale (CET), is not included in the corporate income tax rate.

The French tax code provides preferential treatment for long-term capital gains derived from the disposal of a participation, subject to holding conditions. For example, if shares representing at least 5% of the subsidiary’s voting share capital were held for 2 years, a lump sum of 12% of gross capital gains is used as the tax base (ie, is taxed at the standard corporate income tax rate).

Company tax for SMEs

A special tax regime is in force in France for SMEs with a reduced corporate income tax rate of 15% for profits of up to €38,120.

Beyond this amount the standard rate at 33.33% applies. Local tax is not included.

SMEs are not subject to the 3% tax on distributions.

Furthermore, there are specific regimes for newly incorporated companies (“entreprises nouvelles”) and innovating companies (“jeunes entreprises innovantes”). See below.

Deductibility of interest

Unrelated-party loans

Net interest expenses on unrelated-party loans are tax-deductible in France.
Related-party loans

Net interest expenses on related-party loans are also tax-deductible in France, subject to thin capitalisation rules and certain anti-abuse provisions. In this respect, the Fourth Amended Finance Bill for 2011 introduced an anti-avoidance rule particularly concerning LBO transactions. This rule limits the deductibility of financial expenses related to the acquisition of participating interests when the purchaser cannot prove that the decisions relative to these securities are actually made by it (or by a company established in France that belongs to the same economic group) and that it exerts control over or an influence on the target company.

Furthermore, the finance law for 2013 has put in place a global cap on the deduction of financial charges. This is a fixed cap at 85% of the net financial charges for the financial years closed on 31 December 2012 and in 2013 and, finally, at 75% for the financial years open as from 1 January 2014. Thus, a company closing its financial year on 31 December will have to add back 15% of its net financial charges in order to determine its taxable result for the financial years of 2012 and 2013 and, finally, at 25% as of 2014. In any case, a threshold (£3 million of net financial charges) is specified, below which the scheme would not be applicable.

Stamp duties and transaction taxes

France alternately levies stamp duties or a financial transaction tax of 0.1% on the sale of stocks (actions) in companies headquartered in France (3% on the sale of shares - parts sociales - and 5% for real estate companies).

French taxation of employees

Income tax for private individuals

A sliding scale applies to income derived by private individuals from 0% to 49% (45%+4%), plus social taxes and local taxes on property values.

Social security payments

France has an extensive social security system levied on employers and employees in an approximate ratio of 2:1. A tax credit (CICE) applies on low salaries.

Capital gains tax for private individuals

There is a specific tax rate in France for capital gains on the disposal of shares. A distinction should be made between a business portfolio and a private portfolio of shares.

For a business portfolio

- Long-term capital gains are taxed at a reduced rate of 16%, plus special social contributions of 15.5%, making an effective rate of 31.5%.
- Short-term gains are taxed on a sliding scale from 0% to 49%, plus social contributions.

For a private portfolio

The tax treatment of capital gains on the sale of securities and of rights in companies has undergone important modifications. These affect equally the distributions of capital gains by FCPRs and the distributions of capital gains by SCRs which are, in principle, subject to the same regime. The reform does not affect the favourable regime for fiscal FCPRs.

The rate of taxation on certain capital gains on the sale of shares realised in 2012 has increased to 24% (as opposed to the previous 19%). The overall taxation rate of these capital gains is therefore at a maximum of 43.5%, taking into account the social taxes of 15.5% and the tax on high incomes of a maximum of 4%.

Since 1 January 2013, these capital gains are taxable at the progressive rate of income tax. Furthermore, to partly make up for the cost of this reform, CSG (social contribution) on these capital gains will become partially deductible from taxable income (to a maximum of 5.1%).

In any case, the capital gains benefit from a reduced tax liability. This varies according to the length of time the shares in question are held for:

- A 20% reduction for holdings of at least 2 years but less than 4 years (marginal effective tax rate of 53%)
- A 30% reduction for holdings of at least 4 years but less than 6 years (marginal effective tax rate of 48.5%)
- A 40% reduction for holdings of at least 6 years (marginal effective tax rate of 44%)

The holding duration begins from the date of subscription of the shares’ acquisition (if FCPRs or SCRs are involved, the date of subscription of or the acquisition of the shares issued by the FCPR/SCR will be taken into account).

This reform reinforces the existing gap with exoneration schemes such as the PEA (plan to invest in shares) or the “fiscal” FCPR.
By way of exception, the preferential tax treatment for entrepreneurs (mentioned in Article 200 A, 2 bis of the French Tax Code) allows, under certain conditions, the taxation of capital gains at a flat rate of 19%. This regime can be applied to sales achieved in 2012.

Furthermore, a tax reduction regime applies under certain conditions to retiring managers.

A deferral regime for re-investment also exists.

The capital gains realised by non-residents who hold more than 25% of the interests in a French company remain subject to taxation at a flat rate of 19% until 31 December 2012, increased to 49% (45% + 4%) for gains realised from the 1 January 2013.

The specific regime applicable to gains on the sale of share subscription warrants of entrepreneurs (BSPCE) is not affected by the reform.

For capital gains derived by an individual, social levies must be added to the income tax rate at the aggregate rate of 15.5%, the breakdown of which is the following:

- Contribution sociale généralisée (CSG) (8.2%)
- Contribution pour le remboursement de la dette sociale (CRDS) (0.5%)
- Prélèvement social (PS) (4.5%, plus surtaxes of 0.3% and 2%)

It is worth mentioning that there is a tax exemption for individual limited partners of an FCPR on capital gains derived from the disposal of shares in funds, if the following conditions are satisfied:

- Shares in the FCPR are subscribed at the outset when they are issued (not purchased)
- At least 50% of the fund’s assets must be invested in eligible companies
- The LP makes a commitment to hold fund shares for 5 years
- The LP holds less than 25% of shares of investee companies
- The LP has reinvested in the FCPR incomes received from the funds during the holding period

Even so, the capital gain is subject to social contributions (15.5% as of 1 January 2013).

**The taxation of stock options and free shares**

A new tax regime applies to options on shares and to free shares attributed from 28 September 2012. However, the previous tax and social regime continues to be applicable after 28 September 2012 to the shares attributed before this date.

Under the new regime, the acquisition gain realised at the time of the acquisition of stock-options or at the time of the acquisition of free shares is taxable on the progressive scale of income tax under the category of “salaries and wages”. This acquisition gain is taxable on the date of sale of these shares.

The potential loss on the acquisition of the shares may be offset against the gain realised upon the sale of these shares.

The CSG (social contribution) levied on the acquisition gains is partially deductible from the taxable income (at a rate of 51%).

The vesting period, which used to condition the application of the taxation flat rates, is no longer applicable to the extent that the acquisition gain is henceforth subject to the salaries and wages scheme. However, the specific rate of salary contribution depends on compliance with the vesting period deadline.

All amounts of tax are increased by social charges and a flat social tax rate of 10%.

A separate regime applies to carried interest. The initial finance bill for 2013 envisaged a general application of employment income to the carried interest distributed by FCPRs, SCRs or other European capital investment entities. However, this reform has now been ruled out. Carried interest can therefore still be taxed, under certain conditions, according to the capital gain regime, provided the principles described above are complied with.

**Taxation of stock options**

- The acquisition gain realised at the time of the acquisition of stock options (or free shares) is taxable on the progressive scale of income tax (salaries and wages). This acquisition gain is taxable on the date of sale of these shares.
- The potential loss on the acquisition of the shares may be offset against the gain realised upon the sale of these shares.
- The CSG (social contribution) levied on the acquisition gains is partially deductible from the taxable income.
- All amounts of tax are increased by social charges and a flat social tax rate of 10%.
Special tax regimes
A splitting system applies to make income tax proportional to the number of people that make up the tax household. It takes into account marital status, dependent children, disability and unemployment. Some tax allowances may therefore apply on taxable income.

French fiscal incentives

Fiscal incentives at a fund level
Individuals are entitled to a tax deduction equal to 18% of the amount invested in the FCPI up to €12,000 or €24,000 depending on the investor’s marital status (i.e. a tax deduction capped at €2,160 or €4,320).

Tax reductions are also provided on wealth tax (a tax credit of 50% of investment, capped at €18,000) if the entity has not elected to pay income tax.

These tax reductions are restricted to French domiciled tax payers and subject to holding conditions.

The tax incentive for investing in an FCPR has been repealed.

Fiscal incentives at a company level

A research and development tax credit (CIR) for R&D expenses is available in France. This includes sub-contracted expenditures and incentives for contracting researchers.

Declining balance depreciation is also available for R&D capital expenditure.

Further, subject to prerequisites, royalty income is subject to reduced taxation:

- For a company subject to corporate income tax, 15% plus surtaxes of 3.3% or 5%, depending on the size of turnover
- For an individual business or sole proprietorship, 16% plus social contributions

The financial bill for 2012 introduced new restrictions on applying these tax incentives to intra-group transfers.

Jeunes Entreprises Innovantes
France provides a fiscal incentive to support young companies in their early development phase in the form of the Jeunes Entreprises Innovantes (JEI) scheme.

The JEI scheme provides temporary corporate and local tax exemptions for new and small companies in which research and development expenditures representing at least 15% of overall charges are deductible from taxable income.
Introduction

Germany generally does not provide major obstacles for investors into Germany, although there are restrictions on certain activities and these should be considered.

German fund structures

Structures

The most commonly used fund structure in Germany for private equity and venture capital investments is the GmbH & Co KG (a German limited partnership (KG)). This is usually structured so that it is qualified as non-trading for tax purposes by the German tax authorities. Please note that due to a recent court decision, current practice is sometimes debated but the German authorities are generally adhering to their practice.

Transparency

A GmbH & Co KG that is qualified as non-trading for tax purposes by the German tax authorities is totally tax-transparent for both domestic and non-domestic investors. The investors in a GmbH & Co KG are taxed as if they have invested directly in the target companies.

Absence of incremental tax (as compared to direct investments)

The non-trading GmbH & Co KG structure ensures that no additional (corporate) income or trade taxes are levied at a fund level. In principle, this is an efficient structure even though it does not have a special tax regime in order to reduce taxes. No detrimental effects at the investor’s level arise from the structure.

Permanent establishment

Permanent establishment in Germany does not depend on the fund structure itself but on the activity carried out by the fund. The fund would only be regarded as fully transparent, and consequently a permanent establishment would not be constituted, if the fund’s activities were such that the fund was not trading or deemed as trading.

Capital gains tax for non-resident investors

Capital gains of non-residents are taxable in various situations at investor level if the investor held, indirectly, through the transparent fund, 1% or more of the shares of a company with its seat or place of management and control in Germany within the last 5 years before disposal and if the investor is not treaty-protected.

However, where the seller is a corporation and the shares were not held for short-term trading purposes, the capital gain would be 95% tax-exempt (an effective taxation of approximately 0.8%).

Undue restrictions

Funds can be structured efficiently through German fund structures. However, please note that, in order to claim a “non-trading” status, the fund would have to comply with the prerequisites set forth by the German Ministry of Finance.

German tax at a fund level

If the fund is tax-transparent no taxes arise at fund level. Any income determined at fund level would be allocated to the investors and taxed at investor level.

VAT on management fees

The VAT treatment of management fees becomes relevant at the level of the management company.

In general, management services are subject to German VAT (unless the services are not performed in Germany). There is no VAT exemption on management fees available.

VAT on management fees can be recuperated if the services and supplies provided to the fund management company are subject to German VAT, i.e., are within the scope of German VAT. However, this is subject to a facts and circumstances test.
## Summary

### Fund structures

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<th>Permanent establishment</th>
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<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor type</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
</tr>
</tbody>
</table>

**German Limited Partnership (GmbH & Co. KG, non-trading)**

- Yes | Yes | Yes | Yes | No, if non-trading | Yes | No

### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>Payment</th>
<th>Reclaim</th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<td>Max. 26.375%</td>
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### Taxation at a company level

<table>
<thead>
<tr>
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<th>Special tax regime for SMEs or other small companies</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Min. 22.825%</td>
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<td>Related-party loans</td>
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<tr>
<td></td>
<td>Max. 32.975%</td>
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### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Min. 0%</td>
<td>Min. 0%</td>
<td>Min. 26.375%</td>
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</tr>
<tr>
<td></td>
<td>Max. 47.475%</td>
<td>Max. 40.75%</td>
<td>Max. 28.485%</td>
<td>Max. 47.475%</td>
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### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th></th>
<th>Business R&amp;D expenditure</th>
<th>R&amp;D capital expenditure</th>
<th>Contracting researchers</th>
<th>Technology transfer</th>
<th>Cooperative external research</th>
<th>Innovative spin-out</th>
<th>Young and innovative companies</th>
</tr>
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<tr>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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</tr>
</tbody>
</table>

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1. Please note that a decree by the German Federal Ministry of Finance sets certain requirements for a fund being recognised as non-trading, which differs from typical private equity standards.
2. Real Estate Transfer Tax may become applicable if real estate (or shares in a real estate company) is transferred in the course of the transaction.
3. Combined corporate and trade tax rate.
4. Combined employer and employee contributions.
Capital gains tax

Capital gains (irrespective of the holding period) as well as dividends are generally taxable at the level of the investor. Withholding tax might be imposed in various situations.

The tax rate and tax basis depends on whether the investor is an individual or a corporation and whether - if the investor is an individual - the investment (through the transparent fund) is treated as business income or capital income.

The description below is based on the assumption that all investors are corporations. In principle, it does not matter whether the investment is made directly or through a tax-transparent partnership.

Technically, capital gains from the sale of shares by a domestic corporate seller (that is not a life or health insurance company) are generally tax-exempt (even if realised indirectly only due to a sale by a transparent GmbH & Co KG private equity fund).

However, 5% of the capital gain is added as a non-deductible business expense for corporate income tax (CIT) and trade tax (TT) purposes at the level of the respective company. This results in an effective tax rate of between 1.14% and 1.65% consisting of:

- CIT of 15%, plus a 5.5% solidarity surcharge
- TT, varying from 7.0% to up to 17.15%

No holding period requirements exist, but the capital exemption would not apply for short-term trading.5

The same principles apply for a sale by non-German resident corporates. In this case, the capital gain might only be subject to tax if the seller directly (or indirectly through a transparent fund) held at least 1% of the target’s share capital within the last 5 years before disposal and no exemption under a tax treaty is available.

Withholding taxes

In general, withholding tax is levied on dividends,6 royalties and, in certain cases, on interest7 paid by the portfolio companies directly or through a tax-transparent fund to foreign shareholders. The rate is 25%, plus 5.5% solidarity surcharge thereon, ie, in total 26.375%.

Exemptions may be available under the EU Parent-Subsidiary Directive or double tax treaties, but various prerequisites need to be considered, including anti-abuse provisions.

The exemption under the EU Parent-Subsidiary Directive is, according to the German tax authorities, not available if the dividend payment is received through a transparent GmbH & Co KG.

Where an exemption certificate is provided after withholding tax has been paid, an application for recovery is possible. A refund may be granted for up to 4 years after the year in which the withholding tax triggering fund flow was conducted.

Stamp duties and transaction taxes

Together with other member states, Germany is about to introduce a financial transaction tax. The European Commission published a proposal on 14 February 2013.

Anti-abuse rules

There are various anti-abuse rules in Germany, including CFC-legislation, anti-treaty shopping provisions and misuse of legal structuring.

- According to the CFC legislation, where more than 50% of a non-German company is owned by parties that are unlimited tax payers in Germany, the non-German company’s income is qualified as non-active in accordance with the German Foreign Tax Act. In addition, where the non-German company is resident in a country that is considered as low-taxed (ie, the effective tax burden is in total below 25%), the passive income of the non-German company is allocated to the German shareholders on a pro-rata basis, irrespective of whether it is distributed to them or not and it is taxed as fully taxable income. Subsequent dividend payments would be disregarded for German tax purposes.
- As referred to above, the anti-treaty shopping provisions apply where there is a potential exemption from withholding tax on dividends and royalties paid to a foreign shareholder by a German company, eg due to a double-taxation treaty or the EU Parent-Subsidiary Directive. The provisions are only applicable for payments to a foreign (interposed) shareholder whose own shareholder would not qualify for the same withholding tax exemption if the interposed shareholder would not have been interposed.
  - Withholding tax exemptions would in this case not apply to the extent the foreign shareholders’ income is not derived from the shareholders’ own business activities, and
  - If there is no economic or otherwise relevant reason for an interposed foreign shareholder, or

5 Please note that a shareholding threshold is currently being considered, but this will presumably only be introduced with respect to dividends.
6 Please note that payments from a GmbH & Co KG do not qualify as dividends but as withdrawals and are therefore not subject to withholding tax.
7 No withholding tax on interest payments in case the loan is not profit-participating.
Germany

- The foreign shareholder lacks an adequate business, respectively that business does not take part in general commerce activities.

  In accordance with section 42 of the German General Tax Code, legal structuring measures are disregarded for tax purposes if they were only implemented in order to gain tax advantages that were not intended in the respective case and if there is no non-tax reason for the structuring measure.

German tax at a company level

**Company tax**

CIT is levied at 15%, plus a 5.5% solidarity surcharge thereon, a total of 15.825%.

TT depends on the TT-multiplier of the respective municipality where the business (a permanent establishment) is located and ranges from 7.0% to 17.15%.

Please note that municipalities are free to set their multiplier; there is no maximum multiplier but a minimum multiplier of 200%, leading to a minimum TT of 7.0%. However, there is currently no municipality with a TT-multiplier of more than 490% (Munich has the highest, which results in the above-mentioned 17.15% TT rate).

**Deductibility of interest**

The deductibility of interest expenses is subject to various German rules; most notably, the interest barrier rule needs to be considered:

  - A business’s interest expenses are fully deductible up to the amount of the business's interest income
  - Exceeding interest expenses (net interest expenses) are fully deductible if the net interest expenses remain below the threshold of €3 million (the interest deduction cap)
  - Otherwise, such as if the interest deduction cap is exceeded, net interest expenses are fully deductible if:
    - The business is not part of an affiliated group; or
    - If it is part of an affiliated group, the equity ratio of the company is no more than 2 percentage points below the equity ratio of the entire affiliated group (the equity test). Shareholdings are not taken into account for the equity test. Please note that in the case of loans by affiliates (including shareholders) to corporations, these exemptions do not apply.

  If the equity test is not met, net interest expenses are only deductible up to 30% of the business’s EBITDA adjusted for tax purposes (the tax EBITDA test)

  Non-deductible net interest expenses under the interest-stripping rules are carried forward indefinitely (the interest carry-forward).

  The interest carry-forward is also taken into account for purpose of the interest deduction cap in future years.

If the tax EBITDA test is applied, unused tax EBITDA may be carried forward for up to 5 years.

German taxation of employees

**Income tax for private individuals**

Private individuals are subject to a progressive personal income tax rate capped at 42% (plus the rich man’s tax of an additional 3% where income exceeds €250,000 for singles or €500,000 for jointly-assessed couples). A 5.5% solidarity surcharge is added to any income tax, resulting in a maximum personal income tax burden of 47.475%.

Income up to €8,130 per year is tax-free.

Individuals are generally not subject to TT unless income is derived from a trade or business in Germany, upon which TT between 7.0% and 17.15% is applied (see above).

**Social security payments**

Social security is levied if a private individual is a full-time employee (and neither a freelancer nor unemployed).

Social security contributions in 2013 include:

  - Unemployment insurance at 3% of gross income (capped at €69,600 per year for Western Germany/€58,800 per year for Eastern Germany). 1.5% is paid by the employee, 1.5% by the employer.
  - Health insurance at 15.5% of gross income (capped at €47,250 per year for 2013). 8.2% is paid by the employee, 7.3% by the employer (there is an option for private insurance if income exceeds €45,900 a year)
Germany

- Nursing insurance at 2.05% of gross income. 1.025% is paid by the employee, 1.025% by the employer (capped at €47,250). Additional 0.25% for childless employees above the age of 23 (borne solely by the employee).
- Pension insurance at 18.9% of gross income (capped at €69,600 per year for Western Germany/€58,800 per year for Eastern Germany). 9.45% is paid by the employee, 9.45% by the employer.
- Insolvency fund levy at 0.15% of gross income (capped at €69,600 per year for Western Germany/€58,800 per year for Eastern Germany). The full amount is paid by the employer.

In total, German employees may have to deduct up to 20.425% of their gross income for social security contributions.

**Capital gains tax for private individuals**

Private individuals’ capital gains from the sale of shares in custody with a domestic payment agent (such as a bank) are generally subject to a 25% withholding tax plus a 5.5% solidarity surcharge (a total of 26.375%). If the shares are not held with a domestic payment agent, the capital gains tax would be levied with the income. Any expenses are disregarded but a lump sum (€801) is applied. No TT would be levied.

If the private individual held at least 1% of the shares at any point in time within the last 5 years, the capital gains are subject to general income taxation instead of the withholding tax approach but a 40% tax exemption is applied. This means that 60% of the capital gain is subject to the income tax rate of up to 45%, plus 5.5% solidarity surcharge (to a maximum of 47.475%), which would result in an effective maximum tax rate of 28.485%. In this case, 60% of any expenses would be taken into account. No TT would be levied.

**The taxation of stock options**

The granting of stock options is subject to taxation as wage income at the point when the employee actually realises a gain. This is when i) the stock options are sold by the individual (prior to exercise) or ii) the stock options are exercised and the stocks are transferred to the individual.

There is no special tax relief for the grantor. However, the costs resulting from the granting/exercising of the stock options would be tax-deductible if borne by the grantor.
Introduction

Greece provides two vehicles for venture capital investment with differing characteristics in terms of tax transparency.

In general, taxation in Greece is highly variable with the highest withholding tax levied in Europe but the second lowest capital gains tax rate for companies.

Further, whilst Greece levies the lowest capital gains tax on individuals in Europe, it also levies the third highest income tax rate in Europe.

However, the Greek Government has announced a complete reformation of the Greek tax system, which is anticipated to be processed in 2013.

Greek Fund Structures

Structure

The most commonly used domestic fund structure for investment in private equity and venture capital is the Greek closed-end venture capital mutual fund (AKES). This is regulated by law 2992/2002, article 7.

Greece also provides the closed-end “EKES”, regulated by article 8 of Law 2367/1995 (as amended by article 21 of Law 2789/2000).

Transparency

A closed-end mutual fund AKES is not subject to any kind of taxation. Any income the unit holders realise in their capacity is subject to tax in their hands as co-owners and co-beneficiaries of the fund’s assets.

On the other hand, dividends distributed by an EKES fund (except from the part deriving from dividends received by Greek AE1 or EPE2 entities) are subject to taxation at the level of the EKES and thus any income arising as above for the shareholders of EKES is exempt from any kind of taxation at their level.

Absence of incremental tax (as compared to direct investments)

The AKES does not offer domestic or non-domestic investors the same taxation as compared to the situation that such investors would invest directly in the target companies.

However, an EKES fund structure does not give rise to incremental tax on the income of domestic and non-domestic investors (of all types) compared to the case where they would have held a direct investment in the target companies.

Permanent establishment

Taking into consideration that residency for Greek tax purposes is determined on the basis of the entity’s legal seat or the place of effective management, an AKES structure does not entail for the management company the existence of a permanent establishment in Greece. If the effective management of the management company does not take place in Greece, no permanent establishment should be acquired.

As a result, participation of non-resident unit-holders in a closed-end mutual fund investing in companies (AKES) should not entail the creation of permanent establishment in Greece.

In general, foreign enterprises are regarded as having a permanent establishment in Greece if the enterprise, inter alia:

- Maintains one or more branches, agencies, offices in Greece
- Transacts business or offers services through a representative in Greece who is authorised to negotiate and conclude contracts on behalf of the foreign enterprise

Similarly to the AKES case, no permanent establishment issues are expected to arise in the case of an EKES fund structure.

1 Company limited by shares (Anonymos Eteria)
2 Limited liability company (Eteria Periorismenis Ethynis)
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td>Closed ended venture capital Mutual Fund (AKES)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>EKES</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th>VAT on management fees</th>
<th>Payment</th>
<th>Reclaim</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Capital gains tax</th>
<th>20%</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Withholding tax</th>
<th>Min. 15%</th>
<th>Max. 25%</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Stamp duties or transaction taxes</th>
<th>Stamp</th>
<th>Transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Anti-abuse rules</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Fiscal incentives</th>
<th>Investors</th>
<th>Fund management</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

#### Taxation at a company level

<table>
<thead>
<tr>
<th>Company tax</th>
<th>26% + 3%³</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Special tax regime for SMEs or other small companies</th>
<th>No³</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Deductibility of interest</th>
<th>Related-party loans</th>
<th>Unrelated-party loans</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes, subject to restrictions</td>
<td>Yes</td>
</tr>
</tbody>
</table>

#### Taxation of employees

<table>
<thead>
<tr>
<th>Income tax</th>
<th>Min. 22%</th>
<th>Max. 42%⁵</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Social security</th>
<th>43.96%⁶</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Capital gains tax</th>
<th>Min. 0.2% (listed)/5% (non-listed)</th>
<th>Max. 20% (non-listed)/20% + 0.2% (listed)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Tax on stock options</th>
<th>Upon exercise: max. 46%</th>
<th>Upon subsequent sale: min. 0.2% / max. 20% capital gains tax + 0.2% stock exchange transaction duty</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Special tax regimes</th>
<th>Yes</th>
</tr>
</thead>
</table>

#### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Business R&amp;D expenditure</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>R&amp;D capital expenditure</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Contracting researchers</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Technology transfer</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Cooperative external research</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Innovative spin-out</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Young and innovative companies</th>
<th>Yes</th>
</tr>
</thead>
</table>

---

³ A corporate 3% supplementary tax applies to gross rental income, provided that the company is in a tax-profit position.

⁴ However, there is a special tax regime for general partnerships (OE), limited partnerships (EE), civil societies engaged in business or profession, civil or non-profit companies, joint or invisible companies and joint ventures that do not maintain double-entry books. This would also apply to SMEs.

⁵ An additional solidarity contribution from 1% to 4% will be imposed on income earned in financial years 2010 to 2014 (5% for high-ranking state officers).

⁶ 27.46% is paid by the employer and 16.5% is paid by the employee.
Greece

**Capital gains tax for non-resident investors**

According to the recently introduced amendments in the tax law, capital gains tax applies to all transfers of shares in domestic companies (listed and non-listed) at the rate of 20%, if the shares have been acquired from 1 July 2013 onwards. Such withholding extinguishes any further income tax liability for the individual; while depending on the double tax treaty in place the capital gains tax rate may be reduced or even eliminated.

**Undue restrictions**

According to law 2992/2002, an AKES invests only in Greek capital companies that are not issuers of securities traded on the stock exchange.

Furthermore, an AKES is not allowed to:

- Invest more than 20% of its assets in securities from the same issuer
- Invest in securities of an issuer that is an affiliated company to one of the unit-holders
- Invest in securities of an issuer whereby 25% of the share capital of the issuer is owned by an individual unit-holder, his spouse, or relatives up to the third degree, or jointly by unit-holders, their spouses or relatives up to the third degree, or jointly relatives of the unit-holder up to the third degree

According to law 2367/1995, an EKES has several restrictions of a similar nature as to the percentage of investments, etc.

**Greek tax at a fund level**

**VAT on management fees**

In principle, management fees relating to an AKES/EKES are exempt from VAT without the right to recover input VAT. Accordingly, the VAT corresponding to the expenses incurred for the management of AKES/EKES cannot be recuperated.

However, if the AKES/EKES also engages in other activities that are subject to VAT (i.e., providing the right to recover corresponding input VAT) then AKES/EKES will be able to recover input VAT of the expenses incurred for these activities. In addition, an AKES/EKES has the right to recuperate, on a pro-rata basis, input VAT incurred on expenses that relate to both activities (i.e., those that provide the right to recover input VAT and those that do not).

**Capital gains tax**

The taxation of capital gains for legal entities or individuals (Greek or foreign) derived from the sale of non-listed shares of SA companies has recently been amended (see above).

According to the recently introduced amendments in the tax law, capital gains tax applies to all transfers of shares in domestic companies (listed and non-listed) at a rate of 20%, if the shares have been acquired from 1 July 2013 onwards. Such withholding extinguishes any further income tax liability for the individual; while depending on the double tax treaty in place the capital gains tax rate may be reduced or even eliminated.

**Withholding taxes**

Income earned on dividends is subject to withholding tax at a rate of 25%. This is reduced to 10% for dividend distributions approved by the competent corporate body from 1 January 2014 onwards.

From 1 January 2013 onwards, interest income earned by non-domestic investors from deposits and REPOS is subject to withholding tax at a rate of 15% if the relevant income is earned in Greece.

Also, a withholding tax at a rate of 33% is imposed on securities income other than dividends if acquired by foreign entities that do not have a permanent establishment in Greece. All these taxes are definite and no other local tax should apply.

A further reduction on these taxes may apply on the basis of an applicable double tax treaty with Greece, the EU Parent-Subsidiary Directive (90/435/EEC) and the European Directive on Interest and Royalties (2003/49/CE).

**Stamp duties and transaction taxes**

A 1% to 3% stamp duty (plus charges of 20% in favour of OGA) is applied to some transactions.

A financial transaction tax of 0.2% is applied on the actual price for the sale of shares of domestic SA companies listed on the Athens Stock Exchange (art. 13, par. 2, Law 2238/1994).

The above is not an exhaustive list. Greece is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
Greece

Anti-abuse rules
No anti-abuse rules apply in Greece.

Greek tax at a company level

Company tax
The nominal company income tax (CIT) rate in Greece is 26% as of 1 January 2013. This is the national uniform corporate tax rate and no other local taxes should apply.

Nevertheless, in addition to this rate, a corporate 3% supplementary tax applies to gross rental income provided that the company is in a tax-profit position.⁹

Special company tax
Further to the new tax law 4011/2013, the corporate tax rate for general partnerships (OE), limited partnerships (EE), civil societies engaged in business or profession, civil or non-profit companies, joint or invisible companies and joint ventures that do not maintain double-entry books are taxed for income up to €50,000 at a tax rate of 26%. The excess is taxed at a rate of 33%.

When the above do maintain double-entry books, their total net income is subject to tax at a rate of 26% and an additional tax of 10% applies in case of profit distribution.

Deductibility of interest
No restrictions apply to the deductibility of interest from loans from unrelated parties.

For interest from related-party loans thin capitalisation and transfer pricing restrictions exist.

Greek taxation of employees

Income tax for private individuals

Employment income
The income tax scale and corresponding tax rates for income earned from 1 January 2013 onwards are as follows:

<table>
<thead>
<tr>
<th>Taxable income bracket</th>
<th>Tax rate</th>
<th>Total tax on total income (EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0–€25,000</td>
<td>22%</td>
<td>5,500</td>
</tr>
<tr>
<td>€25,001–€42,000</td>
<td>32%</td>
<td>10,940</td>
</tr>
<tr>
<td>Exceeding</td>
<td>42%</td>
<td></td>
</tr>
</tbody>
</table>

Rental income
Rental income tax rates range from 10% to 33% (for taxable income above €12,000).

It should be noted that different tax scales apply for income earned from private businesses or freelancers.

Freelance professional income
This income is taxed on the basis of the new progressive tax scales for freelance professionals with no tax-free bracket. More specifically:

- For income up to €50,000, the applicable tax rate is 26%
- For the part of the income exceeding €50,001, the applicable tax rate is 33%

An additional solidarity contribution will be imposed on income earned in financial years from 2010 until 2014 (ie, fiscal years 2011 until 2015). The respective special solidarity contribution is imposed on all taxpayers in Greece irrespective of their tax residence status. In particular, the special solidarity contribution has been introduced by virtue of article 29 of Law 3986/2011 and it is imposed on individuals with annual income exceeding €12,000.

The rates of solidarity contributions are as follows:

<table>
<thead>
<tr>
<th>Income bracket</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€12,001–€20,000</td>
<td>1%</td>
</tr>
<tr>
<td>€20,001–€50,000</td>
<td>2%</td>
</tr>
<tr>
<td>€50,001–€100,000</td>
<td>3%</td>
</tr>
<tr>
<td>€100,001+</td>
<td>4%</td>
</tr>
</tbody>
</table>

⁹ If the company is in a tax-loss position in a particular year, no supplementary tax is imposed.
**Greece**

A solidarity contribution at a rate of 5% is imposed on annual income of high-ranking state officers (i.e., the president of the parliament, ministers, general and special ministerial secretaries, etc).

As of January 2012, solidarity contribution should be withheld via payroll.

### Special tax regimes

The amount of tax calculated based on the applicable tax scale (for all types of income taxed at the level of the individual) is reduced by €200 for the taxpayer and each of his/her dependants on the condition that:

- They suffer from a 67% and above disability
- They are disabled authorities or soldiers
- They are victims of war
- They receive a pension from a state fund as disabled or victims of national resistance or civil war

### Tax credits and Allowances

The increase in the tax-free bracket for dependent children has been abolished. A special child support allowance has been introduced and it is based on the number of dependent children at €40 per month per dependent child. Furthermore, a special allowance has been introduced for families with 3 or more children, which is €500 per year per child, provided that the family annual income is up to €45,000.

A tax credit of €2,100 is given in full to employees and pensioners with an annual income of up to €21,000. For income exceeding €21,000, the amount of tax credit is limited to €100 per €1,000 of income and up to the elimination of the amount of €2,100.

This credit is conditional on the collection of a certain amount of receipts, which is set to 25% of the taxable income for each individual (e.g., a maximum of €10,500 per individual). Where the required amount is not collected, a penalty of 22% will apply on the remaining value of receipts not collected.

### Social security payments

The following rates apply if the principal social security fund is IKA:

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum monthly salary for employees insured for the first time after 1 January 1993</td>
<td>€5,546.80</td>
<td>€5,546.80</td>
</tr>
<tr>
<td>Maximum monthly salary for employees insured for the first time before 1 January 1993</td>
<td>€2,432.25</td>
<td>€5,546.80</td>
</tr>
<tr>
<td>Employee’s rate</td>
<td>16.50%</td>
<td>16.50%</td>
</tr>
<tr>
<td>Employer’s rate</td>
<td>28.56%</td>
<td>27.46%&lt;sup&gt;10&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

In Greece, there is no uniform social security system so different reporting obligations apply for other social security funds.

As of 1 January 2013, the maximum monthly salary is equal for all insured employees (either no distinction between before or after 1 January 1993). Until now, no change of the maximum monthly salary for insured employees for the year 2013 has been announced. Any relevant announcement is normally made in April of the respective year.

### Capital gains tax for private individuals

The taxation of capital gains arising from the sale of shares differs on the basis of the timing when they were acquired. More specifically:

#### Non-listed shares

- Gains from the sale of non-listed shares in Greek SA companies (which are acquired by any means from 1 July 2013 onwards) are taxed in the hands of individuals (Greek or foreign) at a rate of 20% unless a more beneficial tax rate is provided under a tax treaty with Greece.

Where the respective shares have been acquired before 1 July 2013, a 5% transfer tax is imposed on the amount between the sale and the imputed value of the shares (as calculated with a specific formula provided by the Ministry of Finance). Where there is a tax treaty with Greece, then its provisions (if more beneficial than the domestic tax law) should apply accordingly.

Both taxes mentioned above exhaust the tax liability of the individual.

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<sup>10</sup> Valid as of 1 November 2012.
**Listed shares**

- Shares acquired from 1 July 2013 onwards: Gains from the sale of listed (in Greece or abroad) shares are taxed at the level of Greek individuals at a rate of 20%. For foreign individuals, the gains from the sale of Greek listed shares are subject to the same capital gains tax of 20%. This withholding exhausts the tax liability of individuals. In addition a 0.2% stock exchange transaction duty also applies.
- Listed shares acquired before 1 July 2013 are subject only to a 0.2% stock exchange transaction duty

**The taxation of stock options**

The taxable event for Greek tax purposes occurs when a stock option is exercised. At that time, the maximum applicable income taxes for the individual would be: 42% (the maximum personal income tax rate - depending on the income declared by the individual) plus 4% (the maximum solidarity surcharge rate - depending on the income declared by the individual), ie 46% in total.

No social security contributions are due on income from stock options.

The benefit resulting from the exercise of stock options is classified as:

- Employment income where the individual is an employee of the company at the date of exercise
- A freelance professional income where the individual is no longer an employee at the date of exercise

The later tax treatment applies on condition that the legal ownership of the shares is effected upon exercise. This is the date on which the employees become the holders of record of the securities.

Greek regulations make the distinction between:

(i) Stocks that are issued following an increase of share capital and sold to employees at a pre-agreed price
(ii) Stocks that are bought by the issuing company and sold to employees at a pre-agreed price

In the former case (i), no employment income is acquired. Employees acquire income from capital gain when the stock is sold and the relevant tax is imposed at the time of sale.

Taxation of subsequent gain from the sale of shares depends on:

- Whether the shares are listed or not
- The date they were acquired by the employee

To this effect, for:

- Non-listed shares acquired as of 1 July 2013 onwards: the gain on the transfer of shares of companies not listed on the Athens or any other internationally-recognised stock exchange is subject to 20% tax. This tax extinguishes any further income tax liability for the individual.
- Non-listed shares acquired up to 30 June 2013: the transfer of shares of companies not listed on the Athens or any other internationally-recognised stock exchange is subject to 5% transfer tax. This tax extinguishes any further income tax liability for the individual.
- Listed shares acquired up to 30 June 2013: the subsequent sale is subject to 0.2% tax, applied to the sale proceeds
- Listed shares acquired as of 1 July 2013 onwards: the gains from the subsequent sale are subject to 20% tax. This withholding extinguishes any further income tax liability for the individual. Furthermore, a 0.2% stock exchange transaction duty on the sale proceeds applies.

On the other hand, where charge-back is effected and the plan is administered through the use of treasury stock (case (ii)), the difference between the price at which the employee is entitled to acquire the shares and their market value on exercise date constitutes employment income for the employee.

For foreign entities, the transfer of shares from a company to the employees of its Greek subsidiary is considered as employment income.

Any subsequent sale of the stock/shares is taxed as above.

There are no special rules on stock options for certain types of company, and no tax relief for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options in Greece.
### Taxation of stock options

**Timing**
When the option is exercised

The later tax treatment applies on condition that the legal ownership of the shares is effected upon exercise.

**Method**
As employment income. The max. applicable income tax can amount to 46% (42% max. personal income tax rate plus 4% max. solidarity surcharge rate).

- For non-listed shares: min. 5% transfer tax (acquired up to 30 June 2013) and max. 20% (acquired as of 1 July 2013)
- For listed shares: min. 0.2% tax (acquired up to 30 June 2013) and max. 20% + 0.2% stock exchange transaction duty (acquired as of 1 July 2013)

### Special rules for certain types of company
- No

### Tax relief for the grantor
- No

### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>Yes</td>
</tr>
</tbody>
</table>

R&D expenditures are tax-deductible expenses from the gross income of the business in the year of their realisation. According to the new tax law N 4110/2013, the amount of realised expenses for scientific and technological research, which are deductible, is increased by a percentage of 30%.

Also, R&D capital expenditures are tax-deductible expenses from the gross income of the business, deducted equally in 3 years starting from the year in which they are realised.

Subsidies and grants are provided for the employment of personnel devoted to a particular innovative programme. Incentive law 3908/2011 refers to all the conditions under which these subsidies are provided.

Subject to conditions, tax exemptions are provided for the value of new technology (purchased or transferred) equipment.

Fiscal incentives are also foreseen under the general provisions applying for all types of spin-outs for companies on the basis of the incentive law 2166/1993.

Finally, from time to time, there are several EU programmes that could provide incentives for young and innovative companies in their early development phase.

Fiscal incentives are provided through specific provisions as part of the Greek Income Tax Code and as part of the currently applicable Incentive Law 3908/2011 on the basis of age and/or size of the company, number of employees, innovative nature of business, etc.
Introduction

Hungary provides 2 vehicles for private equity and venture capital investments. Both are transparent and free from undue restrictions. The new Hungarian real estate investment trust is another attractive vehicle for investments in Hungary.

Tax rates are generally low, although high social security charges are levied.

Hungary levies no withholding tax. Further, it provides some of the most extensive fiscal incentives for investee companies in Europe.

Hungarian fund structures

Structures

Hungarian fund vehicles regulated by domestic law (Act on Fund Administration and Forms of Collective Investment) include private equity funds and investment funds.

Description

Hungarian registered funds are exempt from corporate income taxes, which is favourable for fund investors. However, it is still common to use a non-Hungarian fund vehicle and to establish a taxable entity, such as a limited liability company (Kft.) or company limited by shares (Zrt.) as an acquisition vehicle for private equity and venture capital investments.

Transparency

Private equity funds are transparent for domestic and non-domestic investors. This transparency is reached through tax exemption at the fund level.

Absence of incremental tax (as compared to direct investments)

No incremental taxes are levied in connection with private investment funds.

Investors are subject to taxes either way, i.e., whether they invest through private equity funds or directly in the target companies.

There may be an exception for foreign corporate shareholders of Hungarian real estate holding entities. For direct investments, shareholders may be subject to Hungarian withholding tax if they are residents in a country with which Hungary has no double tax treaty or the treaty allows withholding tax to be levied. If the foreign company invests through a Hungarian fund, the withholding tax might not be due. A tax benefit for direct investment by domestic corporate investors is related to registered shareholdings (please see details under the capital gains section).

Domestic investors

There are no exempt investors. Individuals are taxed at 16% personal income tax (for long-term investment contracts; if the term of investment is longer than 3 years but shorter than 5 years, the tax rate is 10% and if the term of investment is 5 years or more, the tax rate is 0%). Domestic corporate investors are taxed according to the general rules.

Non-domestic investors

An exemption applies to non-domestic individual investors that are EU residents for return on capital and capital gains from UCITS funds; otherwise the provisions of the double tax treaty apply. No withholding tax is levied on non-resident corporate investors as a general rule.

Permanent establishment

The management of Hungarian investment funds can only be carried out by investment fund managers as defined by law. These investment fund managers are either companies limited by shares or branch offices. These entities must have a main office in Hungary, which establishes a tax residence. As a result, the non-domestic fund managers themselves are not subject to Hungarian taxes, but the entities they establish under Hungarian law are.

Capital gains tax for non-resident investors

Hungary imposes tax on capital gains from the sale of shareholdings of Hungarian-resident companies with real estate in Hungary (where the value of the real estate exceeds 75% of the value of assets), provided there is no double-tax treaty with the country where the foreign shareholder is established, or the double-tax treaty allows the taxation in Hungary.
### Summary

#### Fund structures

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<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor type</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
</tr>
<tr>
<td>Private equity fund</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Investment fund</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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</tr>
</tbody>
</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>19%</td>
<td>No</td>
<td>Stamp</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
<td></td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Transaction</td>
<td></td>
<td>No</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>

#### Taxation at a company level

<table>
<thead>
<tr>
<th></th>
<th>Company tax</th>
<th>Special tax regime for SMEs or other small companies</th>
<th>Deductibility of interest</th>
<th>Taxation of employees</th>
<th>Fiscal incentives at a company level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>19% + max 2% (local business tax)</td>
<td>Yes</td>
<td>Related-party loans</td>
<td>Income tax</td>
<td>Business R&amp;D expenditure</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Yes, subject to restrictions</td>
<td>Social security</td>
<td>R&amp;D capital expenditure</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Yes, subject to restrictions</td>
<td>Capital gains tax</td>
<td>Contracting researchers</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tax on stock options</td>
<td>Technology transfer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Special tax regimes</td>
<td>Cooperative external research</td>
</tr>
<tr>
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<td></td>
<td>Innovative spin-out</td>
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<tr>
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<td></td>
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<td></td>
<td>Young and innovative companies</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>
Hungary

Undue restrictions
The investment vehicles are considered to be free from undue restrictions.

Real estate investment trusts
Effective as of 27 July 2011, the concept of real estate investment trusts (REITs) was introduced into Hungarian legislation. Public limited companies with a minimum starting capital of HUF 10 billion (approximately €36 million) may request registration as a REIT if the conditions set by the law are met. Furthermore, REITs are able to hold shares in a project company (SPV).

The activities of a REIT or its subsidiary SPV are limited to holding and managing real estates. However, these activities are exempt from corporate income tax and local business tax if redistribution criteria are met.

Hungarian tax at a fund level

VAT on management fees
The fund management company does not have to pay VAT on management fees. According to the Hungarian Act on VAT, management of investment funds is a VAT-exempt transaction.

Capital gains tax
Capital gains of domestic private shareholders are taxed at a 16% personal income tax rate.

Special situations include:
- Special rules apply to investments based on long-term investment contracts: if the investment term is 3 years the tax rate is 10% and tax exemption applies to investments with a 5-year term.
- Capital gains of corporate shareholders are taxed as part of their profits for the respective year at the corporate income tax rate of 19% (for a tax base above HUF 500 million/approximately €1.64 million).
- Where a domestic investor acquires a shareholding in a company that exceeds 30% and registers its shares with the Hungarian tax authority within 60 days, the capital gains on the disposal of shares reduces the corporate income tax base. Therefore, the profit would be tax-exempt.

If a shareholding is in a Hungarian real estate holding entity, capital gains tax at 19% might be due (if the treaty allows).

Municipal taxes could be an issue only if a shareholder is taxable in Hungary and it has a core business of investing in various financial assets.

There is no difference in the tax liability of a domestic investor between when the gain is realised from a direct investment or from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the investor. The legal title of the income might differ but there is no difference in the tax liability.

Withholding taxes
Hungary does not levy any withholding taxes on dividends or other forms of income, with the exception of capital gains from the disposal of shares of a Hungarian real estate holding company. However, for tax transparent funds, Hungarian personal income tax with a 16% tax rate might apply to foreign private shareholders, depending on the provisions of the double-tax treaty.

Stamp duties and transaction taxes
Real estate transfer tax (RETT) is levied in Hungary upon the sale of Hungary-located real properties or shares representing such real properties. Extensive exemptions and reductions are available.

Anti-abuse rules
There are general anti-avoidance rules in Hungary. Notably, there is an “anti-abuse of rights” doctrine and a “substance over form” principle but these are rarely used by the tax office.

Hungarian tax at a company level

Company tax
The statutory corporate income tax rate in Hungary is 19% (for a tax base above HUF 500 million).

In addition to corporate income tax, a local business tax on the gross trading margin can be levied at a maximum rate of 2%, depending on the municipality where the company resides.
Hungary

**Company tax for SMEs**

Corporate income tax is reduced to 10% for a tax base of up to HUF 500 million (approximately €1.64 million). This is not only for SMEs.

**Deductibility of interest**

**Unrelated-party loans**

Interest expenses on unrelated-party loans are generally deductible for corporate income tax purposes. However, rules on thin capitalisation (where there is a debt to equity ratio of 3:1) apply with the exception of bank loans and certain other items.

**Related-party loans**

Interest expenses on related-party loans are also deductible for corporate income tax purposes. However, transfer pricing regulations apply in addition to the rules on thin capitalisation.

**Hungarian taxation of employees**

**Income tax for private individuals**

Income tax is levied in Hungary at 16%. The previously existing tax brackets (annual income below and above HUF 2,424,000/€7,965) were abolished from 1 January 2013.

**Social security payments**

In Hungary, 27% social tax is levied on the employer.

Social security contributions are paid by the employee at 18.5%.

Certain capital gains and/or dividend items might be subject to the capped 14% social security charge (see below).

**Capital gains tax for private individuals**

Capital gains are generally taxed (as income) at 16% and are subject to a 14% healthcare charge, which is payable up to HUF 450,000 (€1,479).

Certain long-term investments in various funds may be exempt at the level of a Hungarian private shareholder.

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**The taxation of stock options**

Stock options are taxed as part of the consolidated tax base when the option is exercised.

There are no special rules on stock options for certain types of companies in Hungary.

No tax relief exists for the grantor of stock options.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special rules for certain types of company</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Tax relief for the grantor</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

**Hungarian fiscal incentives**

**Fiscal incentives at a fund level**

Hungary does not provide fiscal incentives at a fund level, nor any specially agreed tax treatment for fund managers or the fund itself to invest in private equity and venture capital.

**Fiscal incentives at a company level**

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>Yes</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>Yes</td>
</tr>
</tbody>
</table>
The direct costs of basic research, applied research and experimental research incurred in the course/scope of a company’s business activity are double deductible for corporate income tax purposes.

Further allowances are granted for R&D executed together with higher education institutions, the Hungarian Academy of Sciences and certain research centres. These are capped at HUF 50 million (€164,305).

For larger R&D projects implemented in Hungary, tax credits may be accessed at 80% of the tax payable for up to 9 tax years.

Companies may reduce their corporate income tax base by 50% of gross royalty income, including (in certain cases) income from the disposal of intangible assets. However, the total reduction may not exceed 50% of the pre-tax profit of the company.

The capital gains on the sale of intellectual property are tax-exempt if the IP was registered with the tax authority within 60 days of its acquisition.
Introduction

Ireland offers a number of fund structures (regulated and unregulated) which involve differing rules and tax regimes. The most recent addition (in the Finance Bill 2013) is a new framework for the regulated investment limited partnership (ILP), which is now transparent for Irish tax purposes. Finance Bill 2013 also relaxed some of the conditions for the carried interest tax regime. It also introduced an Irish REIT structure.

Personal taxes in Ireland are generally slightly above average. However, they are particularly high on stock options.

On the other hand, Irish fiscal incentives are some of the most beneficial in Europe.

Irish fund structures

Structures

The most common structure in Ireland is the unregulated limited partnership under the Limited Partnerships Act, 1907.

Certain regulated fund structures, such as UCITS (undertakings for collective investment in transferable securities) and qualifying investment funds (QIF) may also be suitable depending on the circumstances. The regulated ILP may also be suitable.

Transparency

A limited partnership is tax-transparent for domestic and non-domestic investors. The limited partnership is recognised under the laws of a number of countries, including the United States, as a tax-transparent entity. The regulated ILP is also now tax-transparent (following the Finance Act 2013).

Regulated Funds

UCITS and QIFs are not considered to be tax-transparent in Ireland for either resident or non-resident investors. However, they provide "gross roll-up" tax treatment (ie, income and gains are not subject to Irish tax at a fund level) and no withholding taxes apply on outward payments from the funds to non-resident investors (subject to completion of the necessary non resident declarations).

The rates of exit tax on distributions to Irish investors are different to the normal rates of tax that apply to income and gains in Ireland (lower than the normal income tax rates for many taxpayers and slightly higher than the normal tax rates on gains). However, they exceed the standard withholding tax rate on interest and dividends (20%).

- Tax at a rate of 33% is levied by the fund on the payment of income distributions to domestic investors (other than corporate investors). This compares to the maximum rate of income tax and social security on non-fund investments of 55%.
- Tax at a rate of 36% is levied by the fund on the effective gain made by a domestic investor (other than a corporate investor) for cancellations/redemptions/repurchases or transfers of units. This compares to a current rate of 33% on other capital gains made by individual investors.
- A special rate of exit tax of 25% applies to investors that are companies. Generally, an Irish investor will have no further tax liability other than that which is withheld by the fund (apart from the potential for tax on a foreign currency gain).

1 Ireland has a favourable taxation regime for UCITS and other types of Central Bank regulated funds. All Irish funds (UCITS or non-UCITS) regardless of how they are constituted are subject to the same taxation regime so long as they are designated as Investment Undertakings under the relevant section of the TCA. The ILP will not be treated as an Investment Undertaking for tax purposes following changes in Finance Bill 2013.
Certain domestic investors are exempt from the exit tax. These would include pension funds, charities and other regulated investment funds.

Any non-domestic investor in a UCITS/QIF should not be liable to exit tax on completion of the necessary non-resident declaration forms and has no requirement to self-account for any tax on the distribution/gain. It is possible to gain an exemption from the requirement to obtain non-resident declaration forms in certain cases for funds not marketed in Ireland. No stamp duty is payable on the issue, transfer or redemption of shares/units in a regulated fund. Irish stamp duty may apply to purchases of Irish land or shares by the fund.

**Unregulated limited partnerships**

This is treated as tax-transparent for Irish purposes (see above). The limited partners are taxed on their share of the income and gains of the partnership (as if it were a direct investment). An Irish resident would be taxed at 33% on capital gains and up to 55% on income.

Irish withholding tax may arise on dividends or interest payments made by Irish companies. If tax is withheld, a non-resident partner may need to seek a refund. The acquisition of an interest in the limited partnership is liable to Irish stamp duty. There are no specific VAT exemptions for services received.

**Permanent establishment**

As a limited partnership is usually a non-trading entity, investment in the entity should not create a permanent establishment for non-domestic investors.

If a fund management company operates from outside Ireland, it generally should not give rise to a permanent establishment in Ireland. Most Irish double taxation agreements adopt the permanent establishment article as set out in the OECD model treaty.

If personnel are based in Ireland, this will create a taxable presence to the extent income is attributable to those activities.

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**Summary**

**Fund structures**

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Limited Partnership</strong></td>
<td>Yes</td>
<td>Non-domestic</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>(unregulated)</strong></td>
<td>Yes</td>
<td>Non-domestic</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Undertakings for Collective Investment in Transferable Securities (UCITS)</strong></td>
<td>No</td>
<td>No</td>
<td>Yes (subject to 8-year rule)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>(regulated – company or fund)</strong></td>
<td>No</td>
<td>No</td>
<td>Yes (subject to 8-year rule)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Regulated non-UCITS collective investment schemes including Qualifying Investor Funds (QIFs) which will be re-cast as Qualifying Investor AIFs (“QIAFs”) under the AIFMD regime</strong></td>
<td>No</td>
<td>No</td>
<td>Yes (subject to 8-year rule)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Investment Limited Partnership (ILP)</strong></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>(regulated)</strong></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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</tbody>
</table>
### Ireland

<table>
<thead>
<tr>
<th>Taxation at a fund level</th>
<th>Taxation of employees&lt;sup&gt;4&lt;/sup&gt;</th>
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</thead>
<tbody>
<tr>
<td><strong>Regulated</strong></td>
<td></td>
</tr>
<tr>
<td><strong>VAT on management fees</strong></td>
<td>Payment No</td>
</tr>
<tr>
<td><strong>Capital gains tax</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Withholding tax</strong></td>
<td>33/36% (non resident exemption)</td>
</tr>
<tr>
<td><strong>Stamp duties or transaction taxes</strong></td>
<td>Stamp Yes</td>
</tr>
<tr>
<td><strong>Anti-abuse rules</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Unregulated Limited Partnership</strong></td>
<td></td>
</tr>
<tr>
<td><strong>VAT on management fees</strong></td>
<td>Payment Yes</td>
</tr>
<tr>
<td><strong>Capital gains tax</strong></td>
<td>33% (for partners on certain assets)</td>
</tr>
<tr>
<td><strong>Withholding tax</strong></td>
<td>None as transparent</td>
</tr>
<tr>
<td><strong>Stamp duties or transaction taxes</strong></td>
<td>Stamp Yes</td>
</tr>
<tr>
<td><strong>Anti-abuse rules</strong></td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Fiscal incentives at a company level</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business R&amp;D expenditure</strong></td>
</tr>
<tr>
<td><strong>R&amp;D capital expenditure</strong></td>
</tr>
<tr>
<td><strong>Contracting researchers</strong></td>
</tr>
<tr>
<td><strong>Technology transfer</strong></td>
</tr>
<tr>
<td><strong>Cooperative external research</strong></td>
</tr>
<tr>
<td><strong>Innovative spin-out</strong></td>
</tr>
<tr>
<td><strong>Young and innovative companies</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Taxation at a company level</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Company tax</strong></td>
</tr>
<tr>
<td><strong>Special tax regime for SMEs or other small companies</strong></td>
</tr>
<tr>
<td><strong>Deductibility of interest</strong></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th><strong>Taxation of employees&lt;sup&gt;4&lt;/sup&gt;</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income tax</strong></td>
</tr>
<tr>
<td><strong>Social security</strong></td>
</tr>
<tr>
<td><strong>Capital gains tax</strong></td>
</tr>
<tr>
<td><strong>Tax on stock options&lt;sup&gt;9&lt;/sup&gt;</strong></td>
</tr>
<tr>
<td><strong>Special tax regimes</strong></td>
</tr>
</tbody>
</table>

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2 Additional surcharge of 20% applies to investment income of certain private companies which is not distributed.
3 Start-up companies can avail of a relief scheme that gives SMEs an exemption from corporation tax, which applies for the first 3 years of trading. The Seed Capital Scheme (SCS), in conjunction with its associated scheme, the Business Expansion Scheme (BES), are tax relief incentive schemes for investors in trading companies that apply for the first 3 years of trading.
4 Not all of salary will be taxed at stated rates.
5 The minimum income tax rate consists of 20% income tax and 4% Universal Social Charge (USC).
6 This rate consists of 41% income tax plus 7% USC.
7 The 8.25% social security would apply to an individual earning €18,304-€18,512 and consists of 4% employee social security and 4.25% employer contribution. Lower rates can apply to individuals earning less than €18,304.
8 The 14.75% rate refers to 4% employee contribution and 10.75% employer contribution that would apply to an individual earning more than €18,512.
9 Tax on stock options would be income tax (20%/41%), USC (generally 7%, subject to potential application of lower rates as outlined below) and employee social security of 4% (no employer contribution applies). This amounts to the minimum rate of 31% (20% plus 7% plus 4%) and maximum of 52% (41% plus 7% plus 4%).
UCITS/QIF is resident in Ireland for Irish tax purposes; however, non-resident investors are not subject to Irish taxes provided the non-resident declarations are in place.

**Capital gains tax for non-resident investors**

Capital gains tax may arise for investors where a transparent fund is used.

Non-Irish residents are only liable to capital gains tax on the disposal of specified assets or assets situated in Ireland that are used in or for the purposes of a trade.

Irish resident, non-domiciled individuals are liable for capital gains on non-Irish assets if the proceeds of these gains are remitted into Ireland.

In certain circumstances, temporary non-residents will also be charged capital gains tax on the disposal of shares in certain companies, which occurred during a period of temporary non-residence.

**Restrictions**

- QIF and UCITS are subject to regulatory and legal restrictions.
  - However, these are generally regarded as no less restrictive than their equivalent in competitor jurisdictions.
- Limited Partnerships are not subject to any undue restrictions on the types of investment they can make.

**Irish tax at a fund level**

**VAT on management fees**

Irish tax legislation provides that the management of certain collective investment undertakings (as defined under Irish law) is VAT-exempt.

Where a fund does not fall within a statutory VAT exemption, with the appropriate partnership structure, the fund management company typically does not have to charge VAT on management fees.

There is a significant body of case law and revenue practice surrounding this area and the ultimate VAT treatment of the management fees will depend on the facts of each case.

To the extent that VAT is charged to a fund, VAT is recoverable, depending on the activities of the fund. Where the fund is engaged in certain qualifying activities, VAT can be recoverable based on its non-EU activities as a portion of total activities.

**Capital gains tax**

Ireland levies capital gains tax at 33% on the person disposing of the asset.

A domestic investor is liable to capital gains tax at 33% on direct investments or through a transparent structure. A capital distribution from a UCITS/QIF is liable to tax at 36%.

A non-domestic investor in a transparent structure is only liable to capital gains tax on specified assets, such as Irish real estate.

Where a parent company in a trading group disposes of a company in which the parent holds at least 5% of the ordinary share capital for at least 12 months, a participation exemption is available provided that certain conditions are met. This allows a company to realise a capital gain on the sale without incurring capital gains tax. Shares deriving their value or the greater part of their value directly or indirectly from “specified assets” are not eligible for this relief.

**Withholding taxes**

Ireland levies withholding taxes on dividends, interest and royalties at 20%.

There are a number of exemptions from withholding tax for non-residents (generally where the non-resident is in a country with which Ireland has a double tax treaty).

Withholding tax on dividends can generally be recovered by non-residents where they are resident in a country that has a double taxation treaty, or a company that is controlled by residents in a treaty state (and not controlled by Irish residents) or is controlled by a company whose shares are quoted on a recognised stock exchange in a treaty state.

In the case of withholding taxes levied on payment made to transparent entities such as limited partnerships, there may be practical issues to be overcome in reclaiming the tax.

There are no other taxes on outbound payments from Ireland.

**Stamp duties and transaction taxes**

Stamp duty applies to transfers of commercial Irish property and certain other assets at a rate of up to 2% and on the transfer of Irish registered shares at 1%.

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10 Land or mineral rights in Ireland (or shares deriving their value from these assets).
Non-Irish registered shares, qualifying intellectual property and certain loan assets, *inter alia*, are exempt from stamp duties.

**Anti-abuse rules**

There are no anti-abuse rules. General principles of taxation apply.

**Irish tax at a company level**

**Company tax**

The corporation tax rate for trading activities of companies is 12.5%.

Income earned by companies not related to their trading activities is taxed at 25%. Examples of this include rental income, investment income or interest income. A surcharge of 20% applies to undistributed investment income in certain cases.

**Dividends:**

- Dividends from one Irish company to another are exempt from corporate income tax (CIT).
- The taxation of foreign dividends received by an Irish resident company depends on the type of profits out of which the paying company pays the dividend. Dividends out of trading profits are taxed at 12.5%; otherwise the rate is 25%.
- Portfolio dividends (dividends received from an interest of less than 5% in a company resident in the EU or double tax treaty country) are taxed at 12.5%.
- Portfolio dividends received by a financial trader and considered a trading receipt are exempt from CIT.

Local authorities in Ireland levy a small charge known as “rates”, based on the area and location of a business premises. Other than this, no local taxes are collected in Ireland, with the exception of a local property tax.

The local property tax (LPT) is payable on the market value of residential property. It will come into effect from 1 July 2013.

**Deductibility of interest**

A trading company can deduct interest expenses on related and unrelated-party debt as long as the interest is incurred wholly and exclusively for the purposes of its trade.

Property rental companies can deduct interest on loans used to purchase, improve, alter or refurbish a rental property.

Interest can also be deducted on unrelated and related-party loans used for non-trading purposes by a borrowing company where the company uses the borrowed funds to invest in trading or rental companies, or holding companies of such companies. This relief is subject to detailed conditions.

Ireland does not have thin capitalisation rules.

Subject to a number of exceptions, interest on related-party borrowings used to directly (or indirectly in some instances) finance the purchase of certain assets from related parties is not deductible.

Exceptions include borrowings used to:

- Purchase a trade that was previously outside the Irish tax net
- Purchase trading stock
- Purchase certain intellectual property assets
- Acquire assets for the purposes of a leasing trade

Similar restrictions exist for interest deductibility on related-party borrowings used to acquire shares from a related party.

Ireland has an attractive “securitisation” regime that permits companies holding certain qualifying financial assets to deduct all costs (including interest) charged to the company’s income statement.
Ireland

Irish taxation of employees

**Income tax for private individuals**
Income tax on taxable income is levied at two rates: 20% and 41%. There are various credits that may reduce these taxable amounts, dependent on the circumstances of each individual case.

A single person is taxable at 20% on the first €32,800 and at 41% thereafter.

The standard rates of universal social charge (USC) in 2013 are:
- 2% on income up to €10,036
- 4% on income between €10,036 and €16,016
- 7% applies to most individuals with income levels above €16,016.

It is possible for a lower rate of USC to apply in certain cases. For example, a lower 4% USC rate applies to individuals over 70 years of age and certain holders of medical cards. A medical card is available to certain individuals with low income and capital and to persons entitled under EU Regulations.

There is also a surcharge of 3% on individuals who have non-PAYE income that exceeds €100,000 in a year.

**Social security payments**
Pay-related social insurance (PRSI) is payable by individuals on their income at 4%. Employers must pay employer PRSI at up to 10.75%.

There are certain job incentive schemes that can give an exemption from employer social security.

**Capital gains tax for private individuals**
The standard capital gains tax rate applies to private individuals at 33%.

A reduced effective rate can apply where entrepreneurs who are at least 55 years of age dispose of shares in a trading company or the holding company of a trading group.

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The treatment of unapproved share option schemes under Irish tax legislation can vary depending on the duration of the option. There is no upfront charge on the grant of a share option unless it is capable of being exercised later than 7 years after grant.

When an option is exercised under a share option scheme, income tax is levied on the share option gain, ie, the difference between the price of the option and the market value of the shares acquired at the date of exercise. Where income tax was chargeable at the grant of the option, a credit for this tax may be taken against the tax due upon the exercise of the option.

USC and employee PRSI also apply to gains on unapproved share options. Where employees forfeit their options, no income tax or CGT is levied. No employer PRSI applies to shares provided to employees (10.75% on other forms of remuneration).

Whilst income tax and USC charges are regarded as relevant tax on share options (RTSO) and are payable within 30 days of exercise, employee PRSI is payable via the payroll system and should be withheld by the employer and remitted to the revenue with the company’s monthly P30 return.

Once the shares acquired under a share option scheme are disposed of, CGT may arise. The cost of the share for CGT purposes is its market value at date of exercise of the option, ie, the exercise price plus the share option gain that was subject to income tax on exercise.

A previous revenue-approved share option scheme is no longer in existence.

Sometimes “share clog” schemes are used in Ireland to reduce the employee taxes on the receipt of shares. Under these arrangements, the employee may receive ownership of the shares today but the shares are held in trust so the employee cannot sell them for a certain number of years. The legislation then allows a reduction in the taxable value of the shares received by the employee to take account of the restriction. The maximum reduction is 60% for shares restricted for 5+ years.

Finally, there are no special rules on stock options for certain types of company. In terms of tax relief for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options in Ireland, as mentioned above, there is an employer PRSI (social security) exemption. If an employer pays an employee normal salary, he is liable for employer PRSI at 10.75%. Where an employee exercises a share option, taxes are due by the employee but there is no employer PRSI charge.
Ireland

Taxation of stock options

<table>
<thead>
<tr>
<th>Unapproved share option schemes</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When the option is exercised(^\text{11})</td>
<td>Income tax is levied on the share option gain (USC and employee PRSI also apply)(^\text{12})</td>
</tr>
<tr>
<td></td>
<td>Where employees forfeit their options</td>
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</tr>
<tr>
<td></td>
<td>Once the shares acquired under a share option scheme are disposed of</td>
<td>CGT may arise</td>
</tr>
</tbody>
</table>

| Special rules for certain types of company | No |
| Tax relief for the grantor | Yes - Where an employee exercises a share option, taxes are due by the employee but there is no employer PRSI (social security) charge |

Irish fiscal incentives

**Fiscal incentives at a fund level**

**Investors**

Under the Employment and Investment Incentive Scheme (EIIS), qualifying investors are eligible to a tax deduction for the cost of investing in certain companies, where the funds invested are used by the investee company to increase the number of employees or on R&D expenditure.

A revenue-approved fund can invest directly on behalf of its investors by holding the relevant shares as a nominee of the investors.

**Carried Interest**

The Irish carried interest rules apply to profits from investment in certain private companies engaged in R&D or innovation activities. The rules provide for a preferential capital gains tax rate of 15% for individuals and 12.5% for companies on carried interest once certain criteria are satisfied. These criteria are relaxed under the Finance Bill 2013 as follows:

- The investment must now remain in place for at least 3 years (previously 6)
- The Bill extends the scope of the relief so that it is not limited to carried interest derived from investments in companies at the start-up phase only
- The Bill links the relief to the overall performance of the investment portfolio of the qualifying venture capital fund rather than to individual investments
- The relief, which is currently available to companies and partnerships, is extended to individual venture fund managers under the Bill

**Fiscal incentives at a company level**

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
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<tr>
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<td>The creation or spin-out of innovative firms from their parent</td>
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</tr>
</tbody>
</table>

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\(^{11}\) There is no upfront charge on the grant of a share option unless it is capable of being exercised later than 7 years after grant.

\(^{12}\) Where income tax was chargeable at the grant of the option, a credit for this tax may be taken against the tax due upon the exercise of the option.
An R&D tax credit is available at 25% of qualifying R&D expenditure. The tax credit is in addition to the corporate tax deduction available at 12.5% for qualifying incremental expenditure above the 2003 level of expenditure by that company. The first €200,000 is allowable regardless of the 2003 level. Therefore, relief is available at the effective rate of 37.5% for incremental expenditure on R&D.

If the credit exceeds a company’s tax liability, any excess may be refunded over 3 years, subject to conditions.

Irish tax legislation provides a tax credit for a proportion of expenditure incurred on the construction or refurbishment of a building or structure that is to be used at least 35% for R&D activities in a defined 4-year period.

The company is entitled to a tax credit of 25% of the cost of construction or refurbishment, which will be allowed over a period of 4 years as a credit against corporation tax. Unlike relief for revenue expenditure, relief for capital expenditure is not based on the incremental expenditure above 2003 levels. The qualifying expenditure is based on the level of qualifying R&D carried on by the company in the building as a proportion of the total activities of the company.

A new reward mechanism was introduced for “key employees” who have been involved in the R&D activities of a company and meet other conditions. This credit is effectively a reallocation of the R&D credit available to the company to its employee(s). The employee(s) have their taxable income for a period reduced by the amount of the R&D credit available to the company. In addition, the credit available to the company against its corporate taxes is reduced by the amount allocated against the employee’s tax liability.

The purchase of certain qualifying IP by a corporate can qualify for tax depreciation. There is also a specific exemption from stamp duty on the acquisition of certain IP assets.

There is a relatively limited scope for relief for subcontracting R&D activities under the companies’ R&D tax credit regime. Where a payment is made by a company (which carries out R&D activities itself) to a university in the EEA to enable the university carry out R&D for the company, R&D credit relief will be available under the R&D credit regime on the greater of €100k or 5% of the amount paid to the university in the relevant accounting period. Similar payments made to unconnected parties who are not universities can also qualify in a similar manner, capped at the greater of €100k or 10% of the amount paid to the third party.

It is possible to achieve a spin-out of a firm or a business without triggering Irish taxes by relying on a number of reorganisation reliefs. Most companies not controlled by Irish residents can exit certain valuable assets (eg, intellectual property) from Ireland without an exit charge, if appropriate steps are taken.

Young and innovative companies

Renewable energy relief: until 31 December 2014, relief in the form of a tax deduction from total profits is available for investments by companies in the ordinary share capital of Irish tax-resident companies existing solely for the purpose of undertaking a qualifying renewable energy project (solar/wind/hydro power/bio-mass projects) where the shares are held for at least 5 years. Conditions apply:

- Investment must be in new ordinary shares in a company set up to undertake the renewable energy project
- The investment for which relief can be given is capped in the case of any project at the lower of 50% of all capital expenditure (excluding land and net of grants) on the project, or €9.525 million
- Investment by any one company or group of companies in more than one energy project for which relief can be given is capped at €12.7 million per annum
- There are certification procedures to avail of this relief

Start-up company relief: A relief available for start-up companies which can be worth up to €40,000 in corporate tax savings in each of the first 3 years of trading.

Full relief is only available where the company’s tax liability does not exceed €40,000 in a period, and marginal relief applies where the corporation tax liability is between €40,000 and €60,000. No relief is available:

- if the company’s tax liability is over €60,000
- in respect of a trade set up by a new company that was already carried on by a pre-existing company
- to companies involved in dealing in or developing land, to companies involved in exploration and extraction of natural resources or to companies carrying on a profession, providing professional services or holding an office or employment – so-called “service companies”.

The relief is linked to the employer PRSI paid by the company, with a cap of €5,000 in tax relief per employee. The company must have at least 8 employees to qualify for full relief.

The Finance Bill 2013 has introduced an ability to carry unused credits forward for this relief.
Introduction

While taxation in Italy is in general high, taxation at a fund level is low. Italy provides some of the most extensive fiscal incentives in Europe.

Italian fund structures

Structures

The typical structure available in Italy for private equity and venture capital investments is the Fondo Chiuso (closed-end fund), although in principle other vehicles may be used.

The legislation introducing Italian closed-end funds was enacted with Law No. 344 of August 14, 1993.

All the provisions of Law No. 344/1993 as well as those regulating civil law aspects of investment funds have been repealed and replaced by Legislative Decree No. 58 of February 24, 1998, (the “Consolidated Act on Financial Brokerage Activities”: “Testo Unico delle disposizioni in materia di intermediazione finanziaria”).

Transparency

Fondo chiuso is exempt from income taxes. Investors are taxed at distribution. Foreign investors from White List countries (a group of countries that allows an adequate level of information exchange with Italy, listed in a Decree issued by the Italian Minister of Economy) are exempt from any taxation in Italy under certain conditions.

Absence of incremental tax (as compared to direct investments)

As a general rule, in relation to domestic tax-exempt investors and domestic individual investors, this fund structure does not give rise to incremental tax. Incremental tax may occur for corporate investors.

For non-domestic investors, the fund structure should not incur incremental tax.

Permanent establishment

Fondo chiuso does not constitute per se a permanent establishment.

Capital gains tax for non-resident investors

Under this fund structure, there are no other circumstances where non-resident investors are subject to tax on capital gains from the sale of underlying investments by the fund.

Undue restrictions

Fondo chiuso is subject to regulatory and legal restrictions. Under Italian law, the fondo chiuso represents an undivided pool of assets set up and managed by an Italian management company (the SGR), which acts on behalf of the investors and in their best interest. The SGR, in the legal form of a società per azioni, must be authorized by the Bank of Italy and is subject to supervision.

Italian tax at a fund level

VAT on management fees

The management fees charged by the management company to the fund are exempt from Italian VAT.

Capital gains tax

The fund is exempt from corporate income tax (IRES). As a result, no income tax applies at the fund level, except for some final withholding taxes and substitutive taxes at a rate of 20% in certain limited cases of passive income in the hands of the fund.

The treatment below regards capital gains realised by Italian companies.

Italy taxes capital gains under corporate income tax.
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic</td>
<td>No</td>
<td>Yes (not for corporate investors)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Non-domestic</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>No</td>
<td>Min. 0%</td>
<td>Stamp Yes</td>
<td>Yes</td>
<td>Investors Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Max. 20%</td>
<td>Transaction Yes</td>
<td></td>
<td>Fund management Yes</td>
</tr>
</tbody>
</table>

#### Taxation at a company level

<table>
<thead>
<tr>
<th></th>
<th>Min. 27.5% Max. 38% (for non-operating companies)</th>
<th>Min. 20% Max. 21.38% - 22.37%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special tax regime for SMEs or other small companies</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Deductibility of interest</td>
<td>Related-party loans Yes, subject to restrictions</td>
<td>Unrelated-party loans Yes, subject to restrictions</td>
</tr>
</tbody>
</table>

#### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Min. 23% Max. 43% - 45%²</th>
<th>Min. 10% Max. 40%³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital gains tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax on stock options</td>
<td>Min. 23% Max. 43% - 46%⁴</td>
<td></td>
</tr>
<tr>
<td>Special tax regimes</td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>

#### Fiscal incentives at a company level

|                                |                           |                     |
| Business R&D expenditure       | Yes                       |                     |
| R&D capital expenditure       | No                        |                     |
| Contracting researchers       | Yes                       |                     |
| Technology transfer           | Yes                       |                     |
| Cooperative external research | Yes                       |                     |
| Innovative spin-out           | Yes                       |                     |
| Young and innovative companies | Yes                       |                     |

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1. The fund is not subject to any income tax (capital gains included).
2. Including additional municipality and regional taxes. Furthermore, a 3% tax rate is due as a solidarity contribution on taxable income exceeding €300,000 from 1 January 2011 to 31 December 2013.
3. Social security contribution range depends on several circumstances, splitting between employer and employee (respectively about 2/3 and about 1/3).
4. A 10% surcharge applies on income from employment deriving from bonuses and stock options paid to managers of the financial sector exceeding 100% of the fixed salary.
Capital gains realised by limited liability companies resident in Italy and derived from the sale of participations are 95% exempt from IRES if the following requirements are met:

- The participation has been held continuously for at least a year
- The participation is classified as a fixed asset in the first financial statement closed after the participation was acquired
- The participation is not held in a company resident in a country on the black list of tax havens annexed to Italy’s CFC legislation
- The company held carries out a business activity

The last two conditions must have been satisfied over the last 3 years (or less if the company’s life is shorter) preceding the sale.

As a consequence of the application of the participation exemption, capital gains are taxed at an effective rate of 1.375%. Dividends received by Italian companies are subject to the same effective tax rate.

If one of the conditions listed above is not met, the capital gain is included in the ordinary income for corporate income tax purposes and may be taxed over 5 years in equal instalments if the shares have been held for 3 years.

Capital gains realised by non-residents are not subject to tax in Italy if:

- The shares traded are listed on a regulated market and do not exceed 2% of the voting rights or 5% of share capital; or
- The shares traded are not listed and do not exceed 20% of the voting rights or 25% of the share capital and the shareholder is resident for tax purposes in a White List country

Capital gains realised on qualified shareholdings by non-residents are subject to tax in Italy.

### Withholding taxes

Dividend payments to limited liability companies resident in Italy are 95% exempt from IRES and are not subject to any withholding tax. As a consequence, dividend payments are taxed at an effective rate of 1.375%.

Dividend payments to non-resident companies are subject to a withholding tax of 20% or:

- If the company is resident in an EU state or EEA state included on the Italian White List, 1.375%
- If the company (i) is resident in an EU state, (ii) is subject to tax without possibility of an option or of being exempt and (iii) holds directly more than 10% of the voting rights for a minimum period of 12 months, 0%

The dividend withholding tax rate may also be reduced under the conventions for the avoidance of double taxation (if applicable).

Non-Italian shareholders (other than pension funds and shareholders resident in non-White List countries) may claim the refund of the tax paid abroad, up to 1/4 of the withholding tax, if they prove that they paid taxes definitively on the dividends through a certificate issued by the foreign tax authorities.

EU pension funds are subject to an 11% final withholding tax on dividends.

Interest payments (on loans) from Italian companies to non-Italian-resident recipients are, in principle, subject to Italian withholding tax at a rate of 20%. The withholding tax rate may be reduced or eliminated under the conventions for the avoidance of double taxation (if applicable) or under EU Directives. Interest payments from treasury bonds are subject to a 12.5% withholding tax.

Royalties paid to non-resident companies are subject to a final 30% withholding tax on the taxable amount. The withholding tax rate may be reduced or eliminated under the conventions for the avoidance of double taxation (if applicable) or under EU Directives.

### Stamp duties and transaction taxes

Stamp duty is due on the periodical statements sent by financial intermediaries to customers. Duties are levied on financial instruments at the end of the period covered by the statement at the following rates:

- 0.10% for 2012 (minimum €34.20, maximum €1,200)
- 0.15% for 2013 onwards (minimum €34.20, maximum €4,500 for investors other than individuals)

Starting from 1 March 2013, a transaction tax is due, inter alia, on the transfer of the ownership of shares and other financial instruments issued by Italian resident companies at a rate of 0.2% (0.22% for 2013) applied on the value of the transaction due by the party in favour of which the transfer is done. The tax rate is halved under certain conditions.
It is to be noted that the transfer of the ownership of shares or units in undertakings for collective investment is excluded from the scope of the tax. Other specific exclusions and exemptions are provided by the law. Furthermore, the transaction tax does not apply to the transfer of units of limited liability companies.\(^5\)

**Anti-abuse rules**

There are general anti-abuse provisions in Article 37-bis and paragraph 3, Article 37 of Presidential Decree no. 600/1973. Italy’s Supreme Court has highlighted a general anti-avoidance principle in the constitution.

**Italian tax at a company level**

**Company tax**

The corporate tax (IRES) rate is 27.5%.

The corporate income tax rate is increased by 10.5% for non-operating companies.

There is an additional regional tax on productive activities (IRAP). For managing companies, IRAP is 4.65% but regions may apply an increase of up to 1%.

Municipal authorities levy tax on the possession of immovable property at various rates, depending on the municipality. The rate is set by each municipality with a range of between 0.4% and 0.76%.

**Deductibility of interest**

Interest expenses are fully deductible up to the amount of interest income. Any excess of interest expenses over interest income is deductible up to 30% of the gross operating income (EBITDA) derived through the ordinary activity of the company. It is important to note that this rule applies to interest from loans of any type, regardless of whether granted by related or unrelated parties.

The portion of interest expenses exceeding 30% of EBITDA, and thus non-deductible in the period, can be carried forward to subsequent tax periods and deducted according to the same criteria (ie, to the extent of 30% of each year’s EBITDA).

From the third tax period subsequent to that in progress on 31 December 2007 (ie, 2010 for those whose financial year follows the calendar year), the portion of EBITDA not used up in the deduction of interest expenses and financial charges pertaining to that period, may be added to the EBITDA of subsequent tax periods.

This limitation does not apply to banks, financial intermediaries, insurance companies and holding companies of banking and insurance groups. In particular, for the above-mentioned entities, interest expenses are deductible up to 96% of their amount.

**Italian taxation of employees**

**Income tax for private individuals**

The following brackets are applied:

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0–€15,000</td>
<td>23%</td>
</tr>
<tr>
<td>€15,001–€28,000</td>
<td>27%</td>
</tr>
<tr>
<td>€28,001–€55,000</td>
<td>38%</td>
</tr>
<tr>
<td>€55,001–€75,000</td>
<td>41%</td>
</tr>
<tr>
<td>€75,000+</td>
<td>43%</td>
</tr>
</tbody>
</table>

Additional regional taxes range from 1.23% to 2.03%, depending on the region in which an individual permanently lives.

A municipal tax is levied on the possession of immovable property at various rates, depending on the municipality, between 0.4% and 0.76%.

From 1 January 2011 to 31 December 2013, a 3% tax rate is due as a solidarity contribution on taxable income exceeding €300,000.

**Social security payments**

A complicated system of social insurance covering life insurance, health, maternity, disability, unemployment and family allowances is in operation for all employees in Italy. Contributions are withheld from the employees’ salaries.

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\(^5\) Italy is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
Italy

The contributions can be between approximately 10%-40% of total gross salary of the employee, depending on the type and size of the business and the rank of employee. The social security contribution range depends on several circumstances, splitting between employer and employee (respectively, about two-thirds and about one-third).

A system of social insurance covering life and health insurance is also in operation for taxpayers engaged in a business or profession. The size of this contribution made varies according to earnings.

**Capital gains tax for private individuals**

Capital gains realised by individuals are subject to a substitute tax of 20% or are taxable on 49.72% of the total amount at the individual's income tax rate (IRPEF).

There are no other taxes to add to this rate.

**The taxation of stock options**

Capital gains tax is levied on stock options in Italy when the option is exercised. If the option is exercised, the positive difference between the normal value of shares received by the employee and the option exercise price is taxed as employment income. Tax relief is provided for the grantor of stock options if a relevant cost is sustained.

A 10% surcharge applies on income from employment deriving from bonuses and stock options paid to managers in the financial sector.

**Italian fiscal incentives**

**Fiscal incentives at a fund level**

Profits of closed-end funds distributed to non-resident investors mentioned in Art. 6, paragraph 1, D.Lgs. no. 239/1996 (“qualified investors”) are not subject to taxation in Italy (and therefore no withholding tax applies).

“Qualified” investors are:

- Investors resident in countries listed in the White List
- International entities or bodies established according to international conventions implemented in Italy
- Institutional investors, not subject to tax, established in a White List country
- Central banks and bodies that manage the official reserves of a country (sovereign wealth funds)

Furthermore, according to Law Decree No. 98/2011 and the related implementing decree, profits (income from capital) deriving from the participation in “venture capital” funds, defined as such funds investing at least 75% of their capital in unlisted SMEs in their early stages of business activities are excluded from income taxes in the hands of the investors. The tax incentive is granted under certain conditions.

**Fiscal incentives at a company level**

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According to Law Decree no. 78/2010, researchers returning to Italy to work receive a 90% income tax exemption for 3 years after returning to Italy.

**Special tax regimes**

There is a special tax rate of 5% on income for private individuals under 35 years old that started a new activity after 2008.
Furthermore, pursuant to Law Decree no. 70/2011, a corporate income tax credit is provided for R&D expenses incurred in connection with agreements with universities and public research entities. The tax credit is granted up to 90% of the incremental amount of the investment against the average expenses for research made between 2008 and 2010, subject to certain conditions.

According to Law Decree no. 201/2011, an allowance for corporate equity (a so-called “Ace”) is granted under certain conditions to companies, commercial entities and permanent establishments of non-resident entities subject to corporate income tax. The incentive consists of a corporate income tax deduction of the notional yield of the new share capital. The notional yield rate is 3% for the tax years 2011 to 2013. As from 2014, the rate will be determined by a decree made by the Minister of the Economy and Finance, issued by 31 January of each year. The new share capital is determined according to the modalities provided by the rule.

The same benefit applies to individual entrepreneurs and partnerships, according to the provisions indicated by the implementing decree issued on 14 March 2012.

New Law Decree no. 83/2012 provides a series of fiscal incentives for a broad range of activities.6 However, the implementation of these incentives has yet to be established by decree.

A tax credit is available for 35% of expenses, up to a maximum of €200,000 per year per company, for hiring new specialist personnel with a PhD or a degree in sciences.

Moreover, according to Law Decree No. 179/2012, several tax incentives for “innovative” start-up companies and “promoter” companies are granted under certain conditions. In particular, inter alia, for tax periods 2013, 2014 and 2015, individuals investing in “innovative” start-up companies directly or through an undertaking for collective investment (which invests mainly in “innovative” start-up companies) benefit from a tax credit equal to 19% of the invested amount (up to €500,000 of the invested amount per year) provided that the investment is maintained for at least two years. Analogously, corporate investors are allowed to deduct from the taxable income an amount equal to 20% of the invested amount (up to €1.8 million of the invested amount per year).7

Young and innovative companies

Losses related to a new business activity during the first 3 taxable periods may be carried forward and offset against corporate taxable income.

In addition, an exemption is granted for capital gains realised by individuals on the disposal of participations in companies and partnerships (other than a simple partnership) provided that:

› The entity had been established within the preceding 7-year period
› The participation disposed of was held for at least 3 years
› The capital gains realised are re-invested within 2 years in another resident company or partnership operating the same business sector
› The resident company or partnership was established within the preceding 3-year period

The amount of the exemption is subject to limitations according to the costs incurred by the company in:

› The purchase of depreciable assets
› The production of depreciable assets
› Research and development activities

6 Including inter alia experimental research and development, social innovations, technology transfers, the creation or spin-out of innovative firms, and the training of specialist personnel through grants.
7 The effectiveness of both described tax incentives is subject to the authorization of the European Commission.
Introduction

Latvia provides 2 suitable fund structures for private equity and venture capital investment; both are tax-transparent for domestic investors and do not create a permanent establishment. In addition, a private limited liability company is often used for investments in Latvia.

Latvian tax is generally low; in combination with some fiscal incentives, this provides an attractive investment environment.

Latvian fund structures

Structures

The following collective investment structures (partnerships) are available in Latvia:

- Pilnsabiedrība (general partnership)
- Komanditsabiedrība (limited partnership) - more frequently used

In addition, regular private limited liability companies (Sabiedrība ar ierobežotu atbildību (SIA)) are often used.

Transparency

While Latvian partnerships are tax-transparent for domestic investors, this is not the case for non-domestic investors.

Limited liability companies established in Latvia are treated as resident taxpayers.

Absence of incremental tax (as compared to direct investments)

For domestic investors, investments through partnerships are tax-transparent, ie, the taxable income becomes taxable only in the hands of the investors and therefore subject to personal income tax of 24% or corporate income tax of 15%, and the final taxation depends on the type of the income.

Although the partnership is tax transparent, it still has to calculate taxable income in accordance with the same rules as regular companies, the difference being that the taxable income is not taxed for the partnership but instead included in the taxable incomes of the partners. Where the income of a partnership consists of non-taxable income (eg, dividends, capital gains from the sale of the shares) it does not increase the taxable base of the partner. So for domestic investors, the final taxation, when using a partnership for investments in Latvia, should not create any incremental tax.

However, for non-domestic investors (both corporate and individual), a withholding tax will be applied upon the distribution of the profit, irrespective of the composition of the partnership’s income. This may lead to some additional taxation if the distributable income is generally not taxable (eg, dividends from a portfolio company or capital gains from the sale of the shares).

Permanent establishment

For non-domestic partners in a partnership, their share of the income would be taxable in Latvia upon the distribution (15% for corporate partners, 24% for individual partners). However they are not otherwise subject to domestic tax in Latvia, if operating through a partnership, unless there are other preconditions for a permanent establishment.

There is no clear guidance; however, since income tax is withheld from the taxable amount attributable to non-residents, there would not be an obligation to register a permanent establishment.

To clarify the situation, an advance ruling may be requested from the tax authority.

In accordance with the law, permanent establishment is created under the following conditions:

1) If all of the following conditions are complied with simultaneously:

- The non-resident uses a specific place for activities in Latvia
- The place for activities is permanently utilised or is established for the purpose of being utilised permanently
- The place for activities is utilised for the performance of business activities (commercial activities)
**Summary**

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td>Pilnsabiedriba (General Partnership)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Komandītsabiedriba (Limited Partnership)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>SIA (Private Limited Liability Company)</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment</td>
<td>Yes, unless qualifies for an exemption&lt;sup&gt;1&lt;/sup&gt;</td>
<td>Min. 0%</td>
<td>Max. 15%</td>
<td>Stamp</td>
<td>Yes</td>
<td>Investors</td>
<td>Related-party loans</td>
</tr>
<tr>
<td>Reclaim</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Transaction</td>
<td></td>
<td>Fund management</td>
<td>Unrelated-party loans</td>
</tr>
</tbody>
</table>

### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
<th>Fiscal incentives at a company level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>24%</td>
<td>Min. 32.17%&lt;sup&gt;4&lt;/sup&gt;</td>
<td>15%</td>
<td>24% and social security payments, unless exemption applies</td>
<td>No</td>
<td>Business R&amp;D expenditure</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Max. 35.09%&lt;sup&gt;5&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td>R&amp;D capital expenditure</td>
</tr>
</tbody>
</table>

### Taxation at a company level

<table>
<thead>
<tr>
<th></th>
<th>Company tax</th>
<th>Special tax regime for SMEs or other small companies</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15%</td>
<td>Yes</td>
<td>Related-party loans</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Yes, subject to limitations</td>
</tr>
</tbody>
</table>

### Notes

1. Unless gains from the sale of a Latvian real estate or participation in Latvian real estate company and the purchaser is Latvian entity, in which case 2% tax from such remuneration shall be withheld.
2. A company established in Latvia will be a Latvian tax resident.
3. VAT exemption would apply if the respective services qualify as services (including intermediary services) related to investments in the capital and storage, alienation and management of the securities (shares, bonds, mortgage bonds, etc), as well as issue of the securities.
4. This rate is applicable for self-employed persons. For regular employees, the minimum rate is 35.09%; lower rates may be available for other categories (e.g., retired employees) or if the employer is a foreign resident.
5. Employer’s part = 24.09%, Employee’s part = 11%.
and/or

2) If the non-resident performs in Latvia at least one of the following activities:

- Uses construction sites or performs building, assembly or fitting activities or performs supervision or consultative activities related to construction sites or other mentioned activities.
- Uses the equipment or installations, drilling platforms and special ships intended for the research or acquisition of natural resources, or carries out supervisory or consultative work related thereto;
- Within a time period, which together exceeds 30 days in any 6-month period provides services, including consulting, management and technical services, utilising his or her employees or associated personnel;
- Uses the activity of a natural, legal or other person for the benefit of his or her business activities (commercial activities) if the person referred to has been granted and regularly exercises (more than once in a taxation period) authorisations to enter into contracts in the name of a foreign undertaking;
- In addition should also take into account the provisions of the Tax Convention, if such is concluded with the relevant country.

Capital gains tax for non-resident investors

Non-resident entities will generally not be subject to tax for their capital gains from the sale of shares in Latvian companies, unless real estate located in Latvia or the shares of a real estate company are being sold (ie, a company where more than 50% of the assets is directly or indirectly composed of real estate located in Latvia) to a Latvian entity, in which case this remuneration would be subject to 2% tax in Latvia.

Undue restrictions

There are no undue restrictions in Latvia.

Latvian tax at a fund level

VAT on management fees

VAT is levied on management fees in Latvia. This VAT is recoverable.

However, if the services qualify as financial services (including intermediary services) related to investments in the capital and maintenance, alienation and management of securities (shares, bonds, mortgage bonds etc), as well as the issue of securities, they would be exempt from VAT.

Therefore, VAT application depends on the scope of the services provided.

Capital gains tax

There is no separate capital gains tax for companies. Income from capital gains for companies is included in the taxable income. The tax rate is 15%.

However, as of 1 January 2013 capital gains from the sale of capital shares are tax-exempt for Latvian companies (except for the income from the sale of shares of companies in tax havens).

For partnerships, the partnership itself would not be subject to capital gains tax, but domestic partners are liable for its taxable income (at the 15%/24% rate). Foreign partners are liable to 15%/24% withholding tax upon distribution of the profit.

Since the partnership distributes profit or loss (taxable amount) among members, who afterwards are responsible for paying income tax themselves, domestic partners are liable to tax only when the partnership distributes a taxable income. When the profit of a partnership does not constitute taxable income (eg, capital gains from the sale of shares) domestic partners are not liable to tax for this share of profit.

Withholding taxes

The dividends distributed by a portfolio company to a partnership or to a limited liability company are not subject to withholding tax.

The partnerships further distribute the profit or loss (taxable amount) among members, who afterwards are responsible for paying income tax themselves. Thus, domestic partners are liable to tax only if the partnership distributes a taxable income. However if a partnership profit does not constitute taxable income (eg, dividends, capital gains from the sale of the shares) domestic partners would not be liable to tax for the profit.

However, if partners are non-residents, upon the distribution the partnership withholds corporate income tax of 15% (if distributed to a corporation) or personal income tax of 24% (if distributed to individuals), irrespective of what type of income the respective payment is. Taxes are definite.
As of 1 January 2013, all dividends distributed by Latvian companies to non-resident companies (except for those located in tax havens) are tax-exempt in Latvia. However, this does not apply to the distributions from partnerships.

As of 2014, the tax exemption will also apply to the interest payments (currently the interest paid to affiliated companies is taxable) and royalties distributed from Latvian companies to non-resident companies (except to companies in tax havens). For EU companies, the respective exemption comes into force from 1 July 2013.

Similarly, the dividend income received by Latvian companies is tax-exempt (except for dividends from tax havens). For individuals, the dividends are subject to 10% tax in Latvia.

**Stamp duties and transaction taxes**

No stamp duties or transaction taxes are levied in Latvia.

**Anti-abuse rules**

If the participation of a particular partner, which is not an individual, reaches a threshold of 25% and the partner is not incorporated under EU member state laws, it must identify and notify the partnership on its beneficial owner(s) (individual(s)) or provide reasonable explanations that the information cannot be obtained. In addition, if a person holds in a partnership at least 25% on behalf of another person, it must notify the partnership thereof. The same applies also to the shareholders of capital companies. Accordingly, the companies must submit this information to the Commercial Register, although this has restricted access.

In addition, transfer pricing rules and arm's length principles apply in Latvia. As of year 2013, the principle of a controlled foreign company has also been introduced in relation to the taxation of private individuals. Accordingly, the individuals will have to account for their income from participation in an entity established in a tax haven (provided that its shares are not listed in regulated markets of EU or EEA).

**Latvian tax at a company level**

**Company tax**

The corporate income standard flat tax rate is 15%. In addition, a coefficient of 1.5 is applied for the expenses, or part of the expenses, that are not directly related to the taxpayer’s commercial activity. This also applies to losses resulting from the maintenance of the taxpayer’s social infrastructure objects (except donations, which are subject to tax relief).

**Company tax for SMEs**

Entrepreneurs (individuals, as well as companies) complying with certain criteria may operate in a form of a microenterprise (mikrouzņēmums). The criteria are that:

- The shareholders (if applicable) are private individuals
- The turnover of a calendar year does not exceed LVL 70,000 (€99,568)
- There are no more than 5 employees
- Members of the board of a company are the shareholders of the respective company

These companies may register as the payers of the microenterprise tax. The tax is 9% of turnover. However, where any of the above described criteria is breached, surcharges apply (up to 20%).

The microenterprise tax includes: mandatory social contributions, personal income tax and business risk duty for the employees and corporate income tax or personal income of the payer (depending on the form).

**Deductibility of interest**

There are thin capitalisation rules in Latvia.

- These restrict the deductibility of interest payments proportionally to the average amount of debt liability (for which the interest is calculated) that exceeds 4 times the equity capital of the taxpayer at the beginning of the taxable period, as reduced by the fixed asset revaluation reserve and other reserves not formed from distributable profits
- In addition, the tax amount of the deductible interest is restricted to the amount that exceeds the amount, calculated by applying 1.2 times the average short-term interest rate of the credit institutions, as determined by the Central Bureau of the Statistics
The taxpayer calculates the non-deductible amount of the interest with both methods. The taxable income shall be increased by the highest of these amounts.

However, the above requirements are not applied and interest expenses are fully deductible when the loan is from: a registered credit institution of Latvia; another European Economic Area state or a country with which Latvia has a valid tax convention; the Latvian State Treasury; North Investment Bank; European Reconstruction and Development Bank; European Investment Bank; European Council and Development Bank; or the World Bank. In addition to the above, the thin capitalisation rules (first calculation requirement) are also not applied on interest payments for loans received from financial institutions that are residents of Latvia, another European Economic Area state or a country with which Latvia has a valid tax convention and which provide crediting or financial leasing services, supervised by the relevant institutions.

Latvian taxation of employees

**Income tax for private individuals**

The personal income tax flat rate is 24%. There are no add-ons.

Social contributions are calculated separately.

In addition, a monthly 0.25 LVL is paid for each employee as a business risk fee.

**Future developments**

There are plans to reduce the personal income tax gradually to 20% by year 2015 (in 2014 it will be 22%).

**Social security payments**

Social contributions are payable on employment income or the income of self-employed persons.

The standard rate is 35.09%, divided as follows:

- Employer’s rate: 24.09%
- Employee’s rate: 11%

Where the employer is not a Latvian taxpayer, the tax generally would be deducted by the employee.

If a foreign employee is employed in Latvia by a foreign employer, the social contributions might be subject to EU regulations, and depend on the length of the assignment. The standard rate for foreign employees employed by a foreign employer is 33.19%.

For self-employed individuals, the standard rate is 32.17%.

Individuals may also make voluntary social contributions.

The rate of social contributions may differ depending on the employee’s status (such as for retired or disabled employees).

**Capital gains tax for private individuals**

Capital gains tax for individuals is 15% (flat rate). There are no add-ons.

There is no difference in taxation based on different holding periods, except for the gains from real estate, which has been in the individual’s ownership for more than 60 months and has been his/her declared residential address at least 12 months before the sale. In these cases, the gains are exempt from the capital gains tax.

**The taxation of stock options**

As of year 2013, specific rules governing the taxation of stock options have been introduced. Under general circumstances, the income gained by an employee from the exercise of stock options is subject to personal income tax, as well as social security payments. However, if the stock option scheme meets certain criteria, it may qualify for an exemption. These are that:

- The minimum holding period of the stock options (the period from the date of granting the share options to the date of its exercise) is at least 36 months
- The employee is in an employment relationship with the company granting the share options during the period of holding the share options or share options are granted by the employer’s affiliated company. This also applies if, during the respective period, the employee continues to work for the employer’s affiliated company, as well as if he/she has retired (including, prematurely).
- The employer has provided to the State Revenue Service information in relation to the share option scheme (as required by the law)
Any further gain from the alienation of the shares acquired from such share options will be taxable as regular capital gains (provided, however that if upon the exercise of a share option a tax has been withheld, the acquisition value of the respective shares for the purposes of a further sale will be determined as the market value at the date of the option exercise).

Finally, there are no special rules on stock options for certain types of company (i.e. the rules apply to all companies equally) and, apart from the exemption described above, there is no specific tax relief for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options.

### Taxation of stock options

<table>
<thead>
<tr>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the option is exercised</td>
<td>Income gained is subject to personal income tax and social security payments</td>
</tr>
</tbody>
</table>

| If the stock option scheme meets certain criteria, it may qualify for an exemption | Any further gain from the alienation of the shares | Taxed as regular capital gains |

| Special rules for certain types of company | No |
| Tax relief for the grantor | No – however, exemptions are available |

### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>No</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

### Tax depreciation

Certain intangible investments (patents and trademarks registered after 1 January 2009) and investments in fixed assets (new technology equipment, acquired or developed after, from years 2009 to 2013) - are subject to an additional ratio for tax depreciation purposes.

### Free economic areas

Companies operating in one of the established free economic areas and complying with certain criteria may benefit from specific tax rebates.

### Certain long-term investments

Tax relief is available on some long-term investments. Requirements for the company to apply the tax relief include:

- Initial long-term investments have to exceed LVL 3 million (€4,267,180)
- Initial long-term investments are invested within 5 years following the date when the Cabinet of Ministers has made a decision to support the particular investment
- Initial long-term investments are made in the supported priority industries, as defined by law
- The aim of the investments is to support the start of a new business or modernise an existing one
- The immovable property (where the investments are invested or which is used for the business in which the investments are made) is owned by the company or there are long-term rent agreements signed (at least 13 years after initiation of the project)
- The programme of long-term investment has been prepared and submitted to appropriate authorities

There is a tax relief of 25% of the amount invested for investments of up to LVL 35 million (€49,783,800), and 15% on excess over LVL 35 million. The relief can be carried forward for 16 subsequent years.

### Special tax regimes

Latvia has no special tax regimes. However, certain categories (e.g., retired individuals) may be subject to a different social contribution rate for their employment income, and there may be some differences in the allowances (e.g., for the employees of a microenterprise).

### Latvian fiscal incentives

#### Fiscal incentives at a fund level

Latvia does not provide any form of fiscal incentive at a fund level.
Introduction

Lithuania provides a broad range of domestic fund structures for private equity and venture capital investment. The most common is the trust/common fund. Further, foreign investment and pension funds established outside the EU/EEA are treated as taxable entities in Lithuania.

Lithuanian tax is generally low with the second lowest taxes on corporate income and taxation of stock options in Europe. In combination with extensive fiscal incentives, this provides an attractive investment environment.

Lithuanian fund structures

Structures

The following collective investment undertakings are available in Lithuania:

- Trust or common fund
- Investment company with variable capital
- Closed-end investment company
- Closed-end trust or common fund

The trust/common fund is the most commonly used.

Transparency

An investment fund established under Lithuanian law is not treated as a taxable entity in Lithuania.

Absence of incremental tax (as compared to direct investments)

Furthermore, it does not give rise to incremental tax for domestic investors as compared to the situation that such domestic investors would invest directly in the target companies.

According to the recent official commentaries of the tax authorities, an investment or pension fund established or organised in a member state of the European Union and the European Economic Area is not considered as a taxable entity in Lithuania. Other foreign investment and pension funds are treated as taxable entities in Lithuania. Consequently, foreign investment and pension funds are subject to withholding taxes in Lithuania.

Permanent establishment

Collective investment undertakings prevent non-domestic investors and fund managers from being subject to domestic taxes as a result of a permanent establishment in Lithuania (by law).

Capital gains tax for non-resident investors

Capital gains derived by non-residents from the sale of shares in Lithuanian companies are not taxable in Lithuania.

However, non-residents are taxed on capital gains from the disposal of immovable property located in Lithuania.

Undue restrictions

Lithuanian funds are considered to be free from undue restrictions.

Lithuanian tax at a fund level

VAT on management fees

In the way funds are normally structured, there is no VAT on management fees charged to the fund.

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1 The Law on Corporate Tax of the Republic of Lithuania defines immovable property as an object which is immovable by nature, i.e. land or any other object that cannot be transferred from one location to another without changing its nature or substantially reducing its value.
### Lithuania

#### Summary

**Fund structures**

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Non-domestic</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

**VAT on management fees**

- No

**Capital gains tax**

- Maximum 15%

**Withholding tax**

- Min. 0% Max. 15%

**Stamp duties or transaction taxes**

- Stamp No
- Transaction No

**Anti-abuse rules**

- Yes

**Fiscal incentives**

- Investors Yes
- Fund management Yes

**Taxation at a fund level**

- Income tax Min. 5% Max. 20%
- Social security Min. 35.3%² Max. 41.6%³
- Capital gains tax Min. 0% Max. 15%
- Tax on stock options Min. 0% Max. 15%⁴
- Special tax regimes Yes

**Taxation at a company level**

- Company tax Min. 5% Max. 15%
- Special tax regime for SMEs or other small companies Yes
- Deductibility of interest Related-party loans Yes, subject to limitations
  Unrelated-party loans Yes, under certain conditions

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² This is only for owners of individual companies.
³ 30.98%-32.6% is paid by the employer; 9% by the employee. This includes social security and health insurance contributions.
⁴ Under certain conditions, the same taxation as the taxation of employees may be applied, including social security contributions.
Capital gains tax

Generally, capital gains of Lithuanian entities are included in the taxable income for corporate income tax (CIT) purposes.

Capital gains are not taxed if:

- They are derived from the transfer of shares of an entity that is registered in Lithuania or another EEA country, or a country with which Lithuania has a double tax treaty and is subject to corporate income tax or equivalent tax.
- Participation requirement: more than 25% of shares were held continuously for at least 2 years. If a transfer of shares takes place in the course of a reorganisation, the minimum holding period is 3 years.

The tax liability of a domestic investor is not different if the gain is not realised from a direct investment but from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor.

Please see above for the treatment of capital gains derived by non-residents.

Withholding taxes

Lithuania levies the following withholding taxes:

- Dividends at 15% - As of 1 March 2012, it has been possible to pay interim dividends in Lithuania.
- Interest at 10%
- Royalties at 10%
- Real estate at 15% - Non-resident companies are subject to a 15% withholding tax rate on income from the sale, transfer or rent of real estate situated in Lithuania.

The following exemptions apply:

- Dividends paid to a company holding not less than 10% of the shares granting the same percentage of votes for at least 12 months are tax-exempt.
- Interest paid to an EEA company or a company registered in a double tax treaty country is tax-exempt.
- Royalties paid to associated EU companies are exempt from withholding tax.

The withholding tax rates may be reduced, based on the double tax treaty provisions. In order to recoup the tax withheld, a written request has to be submitted to the tax authorities.

Stamp duties and transaction taxes

No stamp duties or transaction taxes are levied in Lithuania.

Anti-abuse rules

General anti-avoidance rules apply. In addition, the following are applied:

- Substance over form principle
- CFC (Controlled Foreign Company) rules
- Thin capitalisation
- Beneficiary owner concept

Lithuanian tax at a company level

Company tax

The taxable profit of Lithuanian and foreign corporate taxpayers is subject to a standard flat rate of 15%.

Deductibility of interest

Unrelated-party loans

Net interest expenses on unrelated-party loans are tax-deductible in Lithuania if the loan is taken for business purposes. Tax laws require that both related and unrelated parties have to determine an interest rate for the loan that corresponds to the actual market price.

Related-party loans

Net interest expenses on related-party loans are tax-deductible in Lithuania, subject to thin capitalisation rules.

5 Except for dividends paid to tax havens.
6 Two companies are deemed to be associated if one of them holds directly at least 25% of the capital of the other or a third EU company holds directly at least 25% of the capital of these two companies. A minimum holding period of 2 years is required.
According to Lithuanian thin capitalisation rules, a certain part of interest paid to a controlling lender may not be deductible for corporate income tax purposes. The non-deductible part of interest expenses is calculated based on a debt equity ratio of 4:1.

Thin capitalisation rules may be mitigated when a Lithuanian taxpayer proves that the same loan under the same terms would be available between independent persons.

**Lithuanian taxation of employees**

### Income tax for private individuals

The general income tax rate is 15%.

Income from profit distributions is subject to a 20% income tax rate.

Income from individual activities is taxed at a 15% rate or a 5% rate for certain non-intellectual activities.

### Social security payments

For employees working in Lithuania, the social security and health insurance contribution rates for 2012/2013 are as follows:

- Employer’s rate: 30.98% - 32.6% depending on the risk group (paid from company funds)
- Employee’s rate: 9% (withheld by the employer from the salary)

For individuals performing individual activities (i.e., self-employed persons) the rate of social insurance contributions is 28.5%, while the rate for mandatory health insurance contributions is 9%. The tax base for social security contributions is 50% of the total annual taxable income (i.e., total income minus deductible expenses) from individual activities but not more than LTL 71,424 (i.e., a maximum year tax base of approximately €20,679).

Rates slightly differ for, *inter alia*:

- Owners of individual companies (26.3% + 9%)
- Individuals holding a business certificate (a prescribed amount)
- Income from sports activities
- Performer’s income

### Capital gains tax for private individuals

There is no specific tax rate for capital gains in Lithuania. They are subject to the standard 15% income tax rate.

However, gains on shares sold not earlier than 366 days after their acquisition are exempt if the taxpayer has not owned more than 10% of the shares of the entity at any time during the 3-year period preceding the end of the tax year during which the disposal takes place and if the shares are not sold back to their issuer.

Please see above for the treatment of capital gains derived by non-residents.

### The taxation of stock options

Generally, stock options are taxed as employment income and are therefore subject to personal income tax and social security contributions.

- An employee is subject to personal income tax at the time of exercise on the difference between the fair market value (FMV) of the underlying shares and the exercise price paid by the employee.
- An employee is subject to personal income tax when the shares are sold. The taxable gain is the gross proceeds, less the acquisition costs and the expenses related to the disposal (commission fees and other taxes due). The acquisition price is considered as the FMV of shares at the exercise date when the shares are awarded and transferred to the employee.

However, gains on shares sold not earlier than 366 days after their acquisition are exempt provided certain conditions are met (see above).

There is no tax relief for the grantor of the stock options on the grant and/or exercise of stock options in Lithuania.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally as employment income (i.e., subject to personal income tax and social security contributions)</td>
<td>At the time of exercise and when the shares are sold</td>
<td>Employee will be subject to personal income tax</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tax relief for the grantor</th>
<th>Gains on shares sold not earlier than 366 days after their acquisition are exempt provided certain conditions are met</th>
</tr>
</thead>
</table>

| Tax relief for the grantor | No |

...
Lithuania

Special tax regimes

Special tax regimes may be applied in certain cases.

According to the tax payment procedure, personal income is divided into two classes.

- Income of Class A comprises income from which the income tax is calculated and paid to the budget by persons paying out income.
- Income of Class B comprises income from which the tax is calculated, paid to the budget and declared by an individual or a person authorized by him.

Shares received/acquired from the employer are treated as Class A income.

Shares received/acquired not from the employer are treated as Class B income (this is also applicable when the shares acquisition costs are compensated by the employer).

A resident of Lithuania who during the tax period received income attributed in accordance with the tax payment procedure to both Classes A and B must, after the end of the tax period and before 1 May of the calendar year following that tax period, either himself or through a person authorized by him submit an annual income tax return to the tax administrator for the previous tax period and declare therein all the income received during the previous tax period and the income tax calculated in respect of such income.

Lithuanian fiscal incentives

Fiscal incentives at a fund level

Investors

Various exemptions from capital gains and withholding taxation apply, as outlined above. According to the official commentaries of the tax authorities, foreign investment and pension funds, except investment or pension funds established or organised in a member state of the European Union and the European Economic Area, are treated as taxable entities in Lithuania, while Lithuanian investment and pension funds are not.

Fund managers

According to the Lithuanian Law on Corporate Income Tax, investment income, other than dividends and other distributed profits, of variable capital investment companies and closed-end investment companies (operating in accordance with the Lithuanian Law on Undertakings for Collective Investment), is not taxable.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>Yes</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Incentive for research and development

Expenses incurred for scientific research and experimental development purposes may be deducted 3 times for/in the tax period when they are incurred, provided that the R&D works are related to usual business activities. Specific rules and restrictions apply.

Investment incentive for certain groups of fixed assets (applicable 2009-2013)

Companies may reduce their taxable profits up to 50% by the amount of expenses incurred for investment for certain fixed assets. These include: machinery and equipment, computer hardware and software, communication equipment and acquired rights. Part of the acquisition costs of fixed assets, which has not been utilized during the taxable year, may be carried forward, but not for more than 4 years.

The tax authorities should be notified that the company is performing an investment project.

Free economic zones

A company with investments of €1 million or more operating in a free economic zone (FEZ) is exempt from CIT for 6 taxable years and is subject to a 50% reduced CIT rate for 10 subsequent years. In order to qualify, at least 75% of income in the tax year must be derived from:

- Production, manufacturing, processing or warehousing activities performed within an FEZ
- Wholesale trade in goods stored within an FEZ
- Services related to the above mentioned activities

Since 1 January 2012 are also included:

- IT
- Aircraft and spaceship maintenance

There is no real estate tax within an FEZ.
Luxembourg provides sophisticated investment fund structures for private equity and venture capital investment. While corporate tax rates in Luxembourg are not particularly low, Luxembourg investment fund vehicles benefit from extensive tax exemptions, which ensure an almost tax-neutral environment in Luxembourg at the level of both the fund vehicle and its investors.

Luxembourg fund structures

**Structures**
Luxembourg offers two legal and regulatory regimes that are particularly suitable for private equity and venture capital investment fund structures:

- **Société d'Investissement en Capital à Risque (SICAR)**
- **Fonds d’Investissement Spécialisé (specialised investment fund, SIF)**

**Description**
A SICAR is a lightly regulated PE/VC investment (fund) vehicle. The key qualification for electing SICAR status is that the capital of a SICAR is invested in “risk capital” assets.

A SIF is characterised by great structuring flexibility in terms of investment policy combined with a light regulatory regime.

Both the SICAR and SIF are restricted to well-informed investors (Institutional, professional and certain other investors) that are deemed to be more knowledgeable of the relevant asset class and related risks and therefore do not need the protection given to investors in retail funds.

**Transparency**
Whether a SICAR or a SIF is tax-transparent depends on what type of corporate entity it is incorporated as.

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**SICAR**
- A SICAR is tax-transparent for Luxembourg direct tax purposes if established in the form of a common limited partnership (Société en Commandite Simple - SCS or CLP) or in the form of a special limited partnership (Société en commandite spéciale - SCSp. or SLP).
- A corporate SICAR in the form of a public limited liability company (Société Anonyme - SA), private limited liability company (Société à Responsabilité Limitée - SARL), corporate partnership limited by shares (Société en Commandite par Actions - SCA) or co-operative company in the form of an SA (société coopérative organisée sous forme de société anonyme) is not tax-transparent for Luxembourg direct tax purposes.

**SIF**
- A SIF is tax-transparent for Luxembourg tax purposes if established in the form of a common fund (fonds commun de placement - FCP) or a common limited partnership (Société en Commandite Simple - SCS) or in the form of a special limited partnership (Société en commandite spéciale - SCSp. or SLP).
- A SIF is not transparent for Luxembourg tax purposes if established in the form of an investment company with variable capital (société d’investissement à capital variable – SICAV) or an investment company with fixed capital (société d’investissement à capital fixe - SICAF). SICAVs/SICAFs may take the form of a public limited liability company (SA), private limited liability company (SARL), corporate partnership limited by shares (SCA) or co-operative company in the form of an SA.

For non-domestic investors, the tax status of the Luxembourg vehicle (tax-transparent vs tax-opaque) should always be analysed and confirmed in the country of residence of the investors.

**Absence of incremental tax (as compared to direct investments)**

**Tax-transparent SICAR or SIF**
If a SIF or SICAR is tax-transparent (see above for more details), Luxembourg-resident investors should, from a Luxembourg tax point of view, be in the same position as if they had invested directly into the underlying target asset. In particular, a Luxembourg-resident investor should be able (subject to any applicable double tax treaties) to claim directly tax credits with respect to withholding taxes levied in respect of the underlying target asset.

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1 1,487 SIFs were registered as of January 2013, compared to 272 SICAR registered as of 11 February 2013.
## Summary

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Société d’Investissement en Capital à Risque (SICAR)</td>
<td>Yes²</td>
<td>Yes³</td>
<td>Yes⁴</td>
<td>Yes⁵</td>
<td>No</td>
</tr>
<tr>
<td>Fonds d’Investissement Spécialisé (Specialised Investment Fund, SIF)</td>
<td>Yes⁶</td>
<td>Yes⁷</td>
<td>Yes⁸</td>
<td>Yes⁹</td>
<td>No</td>
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</table>

### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
<th>Taxation at a company level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>Min. 0% Max. 29.22%</td>
<td>Min. 0% Max. 35%</td>
<td>Stamp</td>
<td>Transaction</td>
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<td>Min. 28.15% Max. 29.22%</td>
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<td></td>
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<td></td>
<td>Yes</td>
<td>No</td>
<td>Investors</td>
<td>Yes, subject to transfer pricing and thin capitalisation rules</td>
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</table>

### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
<th>Fiscal incentives at a company level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Min. 0% Max. 43.6%</td>
<td>Min. 25.12% Max. 27.35%⁸</td>
<td>Min. 0% Max. 43.6%</td>
<td>Min. 0% Max. 43.6%</td>
<td>Yes</td>
<td>Business R&amp;D expenditure</td>
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<td>Yes</td>
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<td>R&amp;D capital expenditure</td>
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<td>Contracting researchers</td>
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<td>Technology transfer</td>
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<td>Cooperative external research</td>
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<td>Innovative spin-out</td>
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<td>Young and innovative companies</td>
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</table>

### Deductibility of interest

<table>
<thead>
<tr>
<th></th>
<th>Related-party loans</th>
<th>Unrelated-party loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, subject to transfer pricing and thin capitalisation rules</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

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² Depends on how the SICAR is structured (i.e., only common (CLP) or special (SLP) limited partnerships are tax transparent).
³ Ultimately subject to residence country criteria and how the SICAR is structured.
⁴ Depends on how the SICAR is structured as well as on the tax status of the vehicle from the perspective of the source country.
⁵ Ultimately depends on how the SICAR is structured and the tax treatment of income and gains sourced from the SICAR in the investor’s country of residence as well as in the source country.
⁶ Depends on how the SIF is structured (i.e., only common (CLP) or special (SLP) limited partnerships and common funds (fonds commun de placement – FCP) are tax transparent).
⁷ Ultimately subject to residence country criteria and depends on how the SIF is structured.
⁸ Depends on how the SIF is structured as well as on the tax status of the vehicle from perspective of the source country.
⁹ Ultimately depends on how the SIF is structured and the tax treatment of income and gains from the SIF in the investor’s country of residence as well as in the source country.
¹⁰ For Luxembourg companies with a registered seat in Luxembourg City.
¹¹ The employee’s contribution can range between 12.67% and 14.90%; the employee pays 12.45%.
¹² In addition, a dependency contribution of 1.4% applies to the taxable income.
Whether or not a non-resident investor would be in the same position as if he had invested directly into the underlying target asset depends on the tax status (i.e., tax transparency vs tax opacity) of the SICAR or SIF from the perspective of the investor’s country of residence.

However, a SIF, even if it is set up as a tax-transparent vehicle, is in principle subject to an annual subscription tax of 1 basis point to be assessed quarterly on its net assets (see section on Luxembourg Tax at Fund level for more details).

The tax position of the SIF or SICAR (tax transparency vs tax opacity) from the perspective of the country where the underlying target asset is located may also have a negative or positive impact as to the overall tax neutrality when compared to a direct investment into the underlying target asset.

**Tax-opaque SICAR or SIF**

Whether or not the investment into a tax-opaque SICAR or SIF would lead to a higher or lower taxation compared to a direct investment into the underlying asset depends on a number of factors, including without limitation:

- For a non-resident investor: is the SICAR or SIF considered as tax-transparent or tax-opaque in the investor’s country of residence and can Luxembourg taxes levied at the level of the SICAR (corporate taxes) or SIF (subscription tax) be credited?
- Is the SICAR or SIF considered as tax-transparent or tax-opaque from the perspective of the country where the underlying target asset is located?
- Is the SICAR or SIF able to secure more beneficial tax treaty provisions compared to those applicable to the investor in the case of a direct investment into the underlying asset? For a variety of reasons (legal, commercial, regulatory or tax), target investments will often be acquired via one or more intermediate special purpose vehicles. If this is the case, the tax analysis will need to take the location and the characteristics of these intermediate vehicles into account.
- Can the investor benefit from tax exemptions with respect to distributions received from a SICAR or SIF? A Luxembourg-resident individual investor acting within the framework of his/her private wealth management benefits from a 10% final income tax charge on interest payments made by a SICAR or SIF. A Luxembourg company investing into a SICAR (but not a SIF) will be able to benefit from the Luxembourg participation exemption regime or, if the conditions for the participation exemption regime are not met, a 50% tax exemption on dividends received from the SICAR. Luxembourg-resident individuals benefit from a 50% tax exemption with respect to dividends received from a SICAR (but not from a SIF) and a tax allowance of €1,500 (€3,000 for couples assessed jointly) on dividends received from a SICAR or SIF.
- While both tax-opaque SICARs and SIFs operate in an almost tax-neutral environment in Luxembourg, they are nonetheless subject to certain taxes that may lead to an incremental tax. The SIF is in principle subject to an annual subscription tax of 1 basis point, but is exempt from corporate taxes and net wealth tax in Luxembourg. The SICAR is a fully taxable company, but is exempt (i) from Luxembourg net wealth tax and (ii) income and capital gains derived from transferable securities, such that, if structured properly, a SICAR will, in principle, not be subject to any Luxembourg corporate taxes, except for the minimum corporate income tax (CIT) (see hereafter for more information).

**Permanent establishment**

The investment by non-Luxembourg tax residents in a SIF or SICAR does not, on a stand-alone basis, constitute a permanent establishment in Luxembourg.

**Capital gains tax for non-resident investors**

Non-resident investors are not subject to Luxembourg income tax on capital gains realised upon the disposal or redemption of their shares in a SICAR or SIF, provided such participation is not held through a Luxembourg permanent establishment.

**Undue restrictions**

A SICAR and SIF are considered to be free from undue restrictions.

**Definitions**

1. According to Luxembourg domestic law (§16 of Tax Adaptation Law), a permanent establishment is any fixed piece of equipment or establishment which serves for the operation of an established business.

A permanent establishment includes, inter alia, a place where the top level management is located, branches, offices and other places of business that the entrepreneur (co-entrepreneur) or his permanent agent (for example someone with a power of attorney) uses to carry out the business.

Reference should be made to the definitions in Luxembourg’s double tax treaties, as these may restrict the taxation of income in some circumstances.
2. The CSSF (Commission de Surveillance du Secteur Financier) generally considers two main
criteria when assessing the qualifying risk capital features:

- Investment risk (ie, the risk of the investment is higher than normal business risk)
- Intention to realise the investment (ie, clear intention to develop and then realise
  the investment)

Luxembourg tax at a fund and investor level

Direct tax treatment of investment funds

SICAR
A tax-opaque SICAR is fully subject to Luxembourg corporate taxes (current combined rate
of 29.22% if its corporate seat is located in Luxembourg City). However, the tax-opaque SICAR
is exempt from net wealth tax as well as with respect to any income and capital gains derived
from transferable securities.

A tax-transparent SICAR is tax-neutral from a Luxembourg tax perspective.

SIF
The SIF, whether organised as a company or an FCP, is exempt from corporate tax and net
wealth taxes, but is subject to a 0.01% annual subscription tax applied to the net asset value
of the fund on a quarterly basis. Certain exemptions are available for this annual subscription tax.

VAT on management fees

The management of alternative investment funds in Luxembourg, including SICARs and SIFs13,
is VAT-exempt provided certain conditions are met.

Capital gains tax

There is no special Luxembourg capital gains tax. However, capital gains realised by Luxembourg-
resident or non-resident investors may, under certain circumstances, be subject, as applicable,
to Luxembourg income tax or corporate taxes at ordinary rates.

Non-Luxembourg resident shareholders (individuals and companies)
If a non-resident shareholder is tax-resident in a country that has a double tax treaty with
Luxembourg, the treaty generally allocates the taxation right to the country of residence
of the shareholder.

If a non-resident shareholder is tax-resident in a country that has no such double tax treaty
with Luxembourg or has not concluded any double tax treaty with Luxembourg, capital gains
on the sale of shares in a Luxembourg company are taxable in Luxembourg, if the non-resident
shareholder has held directly or indirectly (together with his spouse and minor children) a
stake of more than 10% of the shares in the Luxembourg company and if one of the following
conditions is met:

- The investor has disposed of the shares within a period of 6 months following the acquisition
- The investor has been a Luxembourg tax resident for more than 15 years but has become
  a non-resident less than 5 years prior to the disposal of the shares (together with his
  spouse and minor children)

A taxable gain is subject to 22.47% CIT if realised by a non-resident corporate shareholder.

This taxation is, however, excluded if the non-resident shareholder realises a gain upon
the disposal of a participation in a SICAR or a SIF.

Luxembourg-resident individual shareholders
See below.

Luxembourg-resident, fully taxable companies
Capital gains realised by a resident, fully taxable company are, in principle, fully subject to
corporate taxes (at the current combined rate of 29.22%14).

Capital gains derived by a Luxembourg-resident, fully taxable company from the disposal
of shares may be exempt from CIT and municipal business tax under the Luxembourg
participation exemption regime, subject to a recapture mechanism15.

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13 The same goes for pension funds subject to Luxembourg financial and insurance supervisory bodies, as well as securitisation vehicles located in Luxembourg.
14 Rate applicable to Luxembourg companies with registered seat in Luxembourg City.
15 This means that the exempt amount of a capital gain realised by a Luxembourg resident, fully taxable company from the disposal of shares in a qualifying participation is reduced by the amount of any expenses related to the participation, including decreases in the acquisition cost, that
have previously reduced the company’s taxable income.
Under the Luxembourg participation exemption, capital gains realised by a Luxembourg fully taxable company upon the disposal of shares are exempt from corporate taxes if the following conditions are met:

- The subsidiary is (i) a collective entity falling within the scope of Article 2 of the EU Parent-Subsidiary Directive, (ii) a fully taxable Luxembourg company or (iii) a non-resident joint-stock company which is fully taxable and subject (in its country of residence) to a tax corresponding to Luxembourg CIT;
- The shareholding reaches 10% or, alternatively, represents an acquisition cost of at least €6 million;
- The shareholding has been (or will be) maintained for an uninterrupted period of at least 12 months.

The participation in a tax-opaque SICAR is eligible for the participation exemption, whereas a participation in a tax-opaque SIF is not. However, a Luxembourg fully taxable company may claim the benefit of the participation exemption with respect to qualifying shareholdings held through a tax-transparent vehicle, e.g., a SIF organised as an FCP.

**Withholding taxes**

**Dividends**

If a Luxembourg company distributes dividends, the dividend payment will, in principle, be subject to a 15% dividend withholding tax. This rate can be reduced by an applicable double tax treaty or the Luxembourg participation exemption.

Dividends distributed by a Luxembourg fully taxable company are exempt from dividend withholding tax under the Luxembourg participation exemption regime, if the following conditions are met:

- The parent company is (i) a company resident in an EU member state and falls under article 2 of the EU Parent-Subsidiary Directive, (ii) a Luxembourg fully taxable company, (iii) a Swiss-resident joint-stock company subject to CIT in Switzerland without benefiting from any exemption, (iv) a joint-stock company resident in an EEA country, or (v) a collective entity resident in a treaty country, to the extent that the entity is fully taxable and subject (in its country of residence) to a tax corresponding to Luxembourg CIT;
- The parent company holds directly, or indirectly through a tax-transparent entity, a shareholding of at least 10% in the share capital or, alternatively, incurs an acquisition cost of at least €1.2 million;
- The shareholding is held for an uninterrupted period of at least 12 months.

Contrary to a SIF, a SICAR is eligible to receive dividends from a Luxembourg fully taxable company free from dividend withholding tax if the minimum holding requirements for the participation exemption are met.

Where there is uncertainty over the holding period, it is also possible to levy the prescribed withholding tax and later claim a refund if the minimum holding period is actually reached after the dividend has been paid.

**SIF/SICAR**

Dividends distributed by a SIF or SICAR are generally not subject to the Luxembourg 15% dividend withholding tax, irrespective of the residence and tax status of the recipient.

**Interest**

Payments of interest to non-resident companies are not subject to withholding tax unless:

- they are paid on certain profit sharing bonds;
- they are paid to a silent partner (“bailleur de fonds”) receiving a profit-sharing return;
- they are not at arm's length; or
- they are recharacterised as a hidden profit distribution, e.g., because of non-compliance with the Luxembourg thin capitalisation rules. In this case, a withholding tax of 15% applies unless a lower double tax treaty rate applies. For hidden dividend distributions, the recipient may also benefit from the Luxembourg participation exemption regime.

There is also no Luxembourg withholding tax upon repayment of the principal.

However, Luxembourg is subject to the provisions of Chapter III of the EU Savings Directive (2003/48). Paying agents established in Luxembourg are required to withhold a 35% withholding tax on interest and other similar income paid by them to individual residents or so-called residual entities resident/established in another EU member state or certain associated and dependent territories unless the beneficiary of the interest payments elects for an exchange of information. While under current law, dividends distributed by a SICAR or a SIF do not fall within the scope of application of the Directive, payments made by a SIF structured as an FCP may under certain conditions fall within the scope of application of the Directive and may become subject to taxation at source.

The Luxembourg law of 23 December 2005 (the “Relibi Law”) introduced a 10% withholding tax on interest payments made by Luxembourg-established paying agents to Luxembourg-resident individuals.
Luxembourg

Royalties
Luxembourg does not levy withholding tax on royalties. This applies to payments to all companies (not only EU ones).

Director's fees
Remuneration paid to members of the supervisory board or to directors for supervisory activities (tantièmes) is subject to a withholding tax levied at a rate of 20%.

Stamp duties and transaction taxes
Luxembourg levies a €75 registration duty upon incorporation of a Luxembourg company and subsequent amendments of the Articles of Association. The registration in Luxembourg of agreements may trigger fixed or ad valorem registration duties, depending on the nature of the document registered.

For example, the registration of a loan agreement (on a voluntary basis, or if required as a result of court proceedings in Luxembourg, or if the document is presented to a Luxembourg public authority) would be subject to a registration duty of 0.24% of the payment obligations mentioned in the loan agreement.

Anti-abuse rules
There are no specific anti-avoidance provisions, except for general abuse of law provisions. Luxembourg has introduced formal transfer pricing rules applicable to companies granting intra-group financing, which should a priori not be applicable to SIFs or SICARs. In general, OECD transfer pricing guidelines are followed in practice.

Luxembourg tax at a company level

Company tax
The aggregate corporate tax rate (including municipal business tax rate) in Luxembourg City is 29.22%.

For municipal business tax purposes, a tax allowance amounting to €17,500 for entities subject to CIT and €40,000 for tax-transparent partnerships is deducted from the tax base.

The aggregate CIT rate consists of three elements:
- CIT at 21% (when the tax base is less than €15,000, this is reduced to 20%\*)
- EFS (employment fund surcharge) of 1.07% (7% of CIT)
- MBT (municipal business tax) of 6.75% (in Luxembourg City).

A minimum CIT equal to €3,000 (€3,210 including a 7% surcharge for the employment fund) applies to companies the assets of which are composed of more than 90% of fixed financial assets, intra-group receivables, cash at bank and bank deposits. Companies that do not fall within the scope of the €3,000 minimum CIT are subject to a minimum CIT, ranging between €500 (€535 including the surcharge) and €20,000 (€21,400 including the surcharge) depending on the total amount of the commercial balance sheet (the maximum amount of €20,000 is applicable to companies whose balance sheet exceeds €20 million). In accordance with a newsletter issued by the Luxembourg tax administration on 21 December 2012, the net book value of assets the income of which would not be taxable in Luxembourg in accordance with applicable double tax treaties entered into by Luxembourg should be excluded to compute the applicable minimum CIT.

The minimum CIT represents an advance tax payment for future fiscal years, ie, the Luxembourg company is entitled to a corresponding tax credit if, and to the extent that, the CIT liability for a given fiscal year exceeds the minimum corporate income due for that fiscal year. The minimum CIT is not refundable.

Deductibility of interest
In principle, interest expenses are tax-deductible at the level of a Luxembourg company if the expenses are exclusively caused by the enterprise and if they comply with the arm’s length principle. A Luxembourg company providing intra-group financing activities may further need to comply with the applicable Luxembourg transfer pricing rules.

However, expenses directly related to exempt income are only deductible to the extent that they exceed exempt income in a given accounting period.

There are no formal thin capitalisation rules in Luxembourg. However, the Luxembourg tax administration has developed its own criteria. In practice, it requires a debt to equity ratio of 85:15 (interest bearing debt/equity+interest-free debt) for the financing of shareholdings. In some circumstances, such as when interest-free debt or royalty-free licenses are granted by a portfolio company to an affiliated entity, market conditions may be restated, ie, the tax basis would be increased by a deemed arm’s length interest or royalty.

\* When a company realizes a profit of less than EUR 15,000 the aggregate corporate income tax rate therefore amounts to 28.15% in Luxembourg City.
Luxembourg taxation of employees

**Income tax for private individuals**

The income tax rate for private individuals is progressive in Luxembourg. It varies in 19 bands from 0% on income below €11,265 to 40% on income over €100,000.

A surcharge amounting to 7% (of the computed income tax liability) for taxable income not exceeding €150,000 in tax classes 1 and 1a or €300,000 in tax class 2 (9% in excess of these bounds) is levied as a contribution to the unemployment fund.

The maximum marginal income tax rate thus amounts to 43.6%.

**Social security payments**

Social security contributions are levied, covering insurance for health, accidents and dependency, as well as pension and disability contributions. In total, these range from 25.12% to 27.35% with the employer contributing 12.67% to 14.90% and the employee paying 12.45%.

Contributions (except for dependency) are levied on the employee’s gross salary up to a ceiling, which is periodically adjusted to the cost of living index. As of 1 January 2013, the maximum annual ceiling amounts to €112,451.28 at index 756.27.

**Capital gains tax for private individuals**

There is no special capital gains tax in Luxembourg. The taxation depends on whether it is (i) speculative income or (ii) concerns a significant holding/participation.

As such, capital gains realised on the sale of a shareholding are taxed as income under the following limits:

<table>
<thead>
<tr>
<th>Holding Size</th>
<th>Holding Period</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 10%</td>
<td>&lt; 6 months</td>
<td>Ordinary income tax grid (maximum rate of 43.6%)</td>
</tr>
<tr>
<td>&lt; 10%</td>
<td>&gt; 6 months</td>
<td>Exempt from income tax</td>
</tr>
<tr>
<td>&gt; 10%</td>
<td>&lt; 6 months</td>
<td>Income tax rate to a maximum of 40%, plus a surcharge for the unemployment fund</td>
</tr>
<tr>
<td>&gt; 10%</td>
<td>&gt; 6 months</td>
<td>Half the income tax rate to a maximum of 20%, plus a surcharge for the unemployment fund</td>
</tr>
</tbody>
</table>

A dependency contribution of 1.4% also applies to the taxable income.

Speculative gains (ie, realised within 6 months) are not taxable if they do not exceed in total €500 per year.

**The taxation of stock options**

Luxembourg makes a distinction between transferable stock options and non-transferable stock options, including phantom options.

**Transferable stock options**

The employee is regarded as receiving a taxable benefit in kind at the date of grant of the stock options. The benefit in kind is normally taxable as employment income and as such, submitted to the ordinary progressive tax rate (a maximum of 43.6%) and to social security contributions.

When selling the underlying shares, standard provisions on capital gains apply.

However, the sale of the shares within 7 days of the exercise of the option is taxed as if the option was sold, ie, the detention period is calculated starting from the date of grant of the option.

**Non-transferable stock options**

The employee is regarded as receiving a taxable benefit in kind at the date of exercise of the stock options, ie, at the date he effectively acquired the shares or benefits from a cash settlement. The benefit in kind is normally taxable as employment income (see above). If the shares are blocked (ie, may not be sold) by the employee during a certain period of time, the employee will benefit from a tax allowance equal to 5% of the market value of the shares per year that shares are blocked, up to a maximum of 20%.

When the underlying stocks are sold, the standard provisions on capital gains apply.

Stock options (whether transferable stock options or non-transferable stock options) could be considered as dividends when they are granted to a shareholder in his capacity as shareholder and not in his capacity as employee.

Expenses borne by the employer in connection with the grant of stock options to its employees should, in general, be tax-deductible.

There are no special rules for stock options granted by certain types of companies.

17 A shareholding is considered as significant when the seller (individual taxpayer) holds or has held, directly or indirectly, alone or together with his spouse and dependent children, more than 10% of the corporate capital of the company during the 5 years preceding the date of transfer of ownership.

18 The taxable benefit is equal to the difference between the quoted or deemed market value of the stock option at the date of grant and the acquisition price paid by the employee for this option.

19 The taxable benefit is equal to the difference between the quoted or deemed market value of shares and the acquisition price (i.e. exercise price) paid by the employee.
Fiscal incentives in Luxembourg

Fiscal incentives at a fund level

Both SICAR and SIF benefit from extensive provisions, including but not limited to:

- No thin capitalisation rules apply
- Exemption from the annual 0.5% Luxembourg net worth tax
- SIF is exempt from CIT and MBT on any type of income (dividends, interest, capital gains)
- SICAR is exempt from CIT on any income and capital gains derived from transferable securities
- No withholding tax levied on dividends, interest and royalties distributed by a SIF or a SICAR
- Foreign investors are not subject to Luxembourg tax on any capital gains realised on the sale of their SICAR or SIF shares

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>Yes</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

Investment tax credit on gross investment

This investment tax credit is, in principle, available to natural and legal persons running an industrial, commercial, skilled craft or mining company that makes the following investments:

- Certain depreciable tangible goods
- Sanitation and central heating for hotels
- Social dwellings
- Environmental fixed assets (upon certain conditions).

This tax credit is equal to 7% of the total acquisition price of the qualifying assets, in so far as the acquisition price of the investments during the tax year does not exceed €150,000 and 2% of the excess over €150,000. This is increased to 8% and 4% for environmental fixed assets.

Special tax regimes

- Expatriate, highly skilled workers are allowed a tax exemption for elements of remuneration relating to their transfer to Luxembourg, subject to certain conditions and thresholds.
- The tax relief for taxpayers with children has been replaced by an annual bonus for all children for whom the taxpayer receives family allowances from the Luxembourg family fund. This monthly child bonus amounts to €76.88 per child who is part of the taxpayer’s household, regardless of the taxpayers' income. The bonus is tax-free and exempted from social security contributions. It is paid directly by the family fund. If no family allowances are due, the bonus can only be requested as tax relief by filing an annual tax return or tax reclaim and may not exceed the annual income tax charge.
Investment tax credit on additional investment
A similar credit is available to investments in certain depreciable tangible goods at 12% (of the eligible additional investment calculated on the net book value of all eligible goods). The tax credit is deductible from CIT payable and any excess may be carried forward for 10 years.

Both of the above credits:
- Are available for resident companies and Luxembourg permanent establishments of non-resident companies, provided that the qualifying investments are permanently located and are put to use in Luxembourg.
- Must be used against the CIT of the year in which the investments were made. No refund of income tax is granted where the credit exceeds the income tax. There is, however, in this case a carry-forward of the credits to the next 10 years.

Special depreciation scheme
Luxembourg Law provides for a special depreciation scheme that aims to stimulate production methods that respect the environment, save energy and/or improve workplace accessibility for physically disabled workers. This optional scheme is available to commercial, industrial, mining or skilled-craft companies and the permanent establishments of these companies.

Special depreciation can be claimed in addition to normal depreciation. However, a company that takes advantage of special depreciation cannot use the diminishing balance method of depreciation.

The depreciation may not exceed 60% of the acquisition costs of the goods.

Low tax regime for qualifying types of intellectual property income and capital gains (derived by Luxembourg taxpayers)
This includes an 80% exemption on royalties and capital gains derived from certain types of IP, resulting in an effective CIT of 5.844% on qualifying net IP income.

In order to benefit from the IP tax regime it must:
- Have been acquired or developed after 31 December 2007
- The IP right has not been acquired from specified “directly” related companies

Expenses, amortisations and write-downs economically related to the IP must be activated if these exceed qualifying IP income in a given year.

The law also provides for an 80% deemed income deduction for self-developed patents.

This notional deduction is calculated in terms of what the arm’s length patent royalty would have been had the patent been licensed to a third party.

While expenses in connection with qualifying IP rights are fully tax-deductible, a recapture is triggered upon realisation of gains. The gains are taxable to the extent the relevant IP has previously generated losses.

Qualifying IP rights benefit from a 100% net wealth tax exemption.
Introduction

A broad range of investment vehicles are available in Malta. The SICAV, INVCO and limited partnership are most commonly used for investments in private equity and venture capital. Malta generally levies relatively high tax, applying one of the highest corporate capital gains and income tax rates in Europe. However, partial refunds of tax paid in Malta can be claimed by shareholders upon receipt of dividends from trading profits not linked to immovable property situated in Malta. In addition, a large number of tax exemptions are available.

Malta also provides one of the most extensive fiscal incentives in Europe and levies low tax on stock options.

Maltese fund structures

Under the Maltese law, collective investment schemes (CIS) can be formed as:

- Investment company with variable share capital (SICAV)
- Investment company with fixed share capital (INVCO)
- Partnership en commandite or limited partnership
- Unit trust regulated by the Trusts and Trustees Act
- Limited liability company
- Funds or schemes established by contract

The first three (SICAV, INVCO and limited partnership) are most commonly used. Segregated funds and portfolio structures are also available under the Maltese Companies Act.

Funds of funds and umbrella companies (or multi-fund companies) are permitted in Malta, both in the form of non-UCITS as well as, UCITS schemes. Funds may also be structured with multi-class shares, whereby the different classes of shares would not constitute a separate fund. The incorporation of funds as cells within an incorporated cell company (ICC) is also possible.

The Companies Act (SICAV Incorporated Cell Companies) Regulations, published by Legal Notice 559 of 2010, came into effect on 1 February 2011. These regulations provide for the establishment of incorporated cell structures specifically adapted to funds, thus extending the Maltese legislation applicable to cell companies, first introduced in the insurance sector, to the funds sector.

The possibility of setting up multi-fund CIS containing multiple, segregated sub-funds with ring-fenced assets and liabilities has existed in Maltese law since 2003, in the form of the Companies Act (Investment Companies with Variable Share Capital) Regulations, known as the SICAV Regulations. The new Incorporated Cell Regulations go a step further, allowing the registration and licensing of incorporated cells structured with different patrimonies under the umbrella of the ICC.

While under the SICAV Regulations, a fund and its segregated sub-funds form one single legal entity and the sub-fund has no separate legal identity, each incorporated cell of an ICC has separate legal personality and is treated as a separate company forming part of the ICC scheme. At the same time, the overall scheme may still be structured to retain certain core features that allow it to scale up to desired efficiency levels.

The same rules concerning permanent establishment and transparency as applicable to fund structures apply to funds of funds, umbrella companies and cell companies.

Transparency

Depending on the capital structure, the following schemes may be structured as transparent:

- Partnership en commandite
- Unit trust
- Funds or schemes established by contract

Absence of incremental tax (as compared to direct investments)

None of these fund structures gives rise to incremental tax for both residents and non-residents as compared to the situation that the investors would invest directly in the target companies.

In the case of non-domestic investors, investment through a fund, whether a prescribed or a non-prescribed fund, will result in no tax liability at the level of the investor.
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment company with variable share capital (SICAV)</td>
<td>No</td>
<td>Yes</td>
<td>N/A</td>
<td>No</td>
<td>No, subject to conditions</td>
</tr>
<tr>
<td>Investment company with fixed share capital (INVCO)</td>
<td>No</td>
<td>Yes</td>
<td>N/A</td>
<td>No</td>
<td>No, subject to conditions</td>
</tr>
<tr>
<td>Partnership en commandite or Limited Partnership</td>
<td>Yes¹</td>
<td>Yes</td>
<td>N/A</td>
<td>No</td>
<td>No, subject to conditions</td>
</tr>
<tr>
<td>Unit Trust</td>
<td>Yes</td>
<td>Yes</td>
<td>N/A</td>
<td>No</td>
<td>No, subject to conditions</td>
</tr>
<tr>
<td>Limited Liability Company</td>
<td>No</td>
<td>Yes</td>
<td>N/A</td>
<td>No</td>
<td>No, subject to conditions</td>
</tr>
<tr>
<td>Funds or schemes established by contract</td>
<td>Yes</td>
<td>Yes</td>
<td>N/A</td>
<td>No</td>
<td>No, subject to conditions</td>
</tr>
</tbody>
</table>

1. If the capital of the partnership is not divided into shares and the partnership carries on a trade or business.

#### Taxation at a fund level

- **VAT on management fees**: No
- **Capital gains tax**: Min. 0% Max. 35%
- **Withholding tax**: Min. 0% Max. 15%
- **Stamp duties or transaction taxes**: Stamp Yes Transaction No
- **Anti-abuse rules**: No

#### Taxation at a company level

- **Company tax**: 35%
- **Special tax regime for SMEs or other small companies**: No
- **Deductibility of interest**: Related-party loans Yes, subject to conditions Unrelated-party loans Yes, subject to conditions

---

1. Malta does not impose any withholding tax on dividends, interest, royalties or proceeds from liquidation. Withholding tax is only applied on certain investment income of prescribed funds. No withholding tax applies on the income of non-prescribed funds.

2. Partial refunds of the 35% tax can be claimed by shareholders upon receipt of dividends from trading profits not linked to immovable property situated in Malta, reducing the overall effective rate of tax to between 0% and 5%.
Permanent establishment

A non-resident person investing in a CIS does not create a permanent establishment.

A non-resident person servicing a CIS does not create a permanent establishment, provided the activities are:

- Services listed in the First Schedule to the Investment Services Act (includes management services)
- Carried out in the ordinary course of business
- Done at arm’s length

Capital gains tax for non-resident investors

Capital gains realised by CIS investors not resident in Malta are not subject to income tax in Malta, provided that the beneficial owner of the gain is a person not resident in Malta and such person is not owned and controlled by, directly or indirectly, nor acts on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta.

Under the Maltese Income Tax Act, any gains or profits derived by any person not resident in Malta on a transfer of shares in a company resident in Malta are exempt from tax in Malta provided:

- The company is not a property company
- The beneficial owner of the gain or profit is a person not resident in Malta, and is not owned or controlled by, directly or indirectly, nor acts on behalf of an individual ordinarily resident and domiciled in Malta

Undue restrictions

Restrictions vary with the fund licence. Available types are:

- Professional investor funds (PIF) for experienced, qualifying and extraordinary investors
- Maltese non-UCITS schemes
- Maltese UCITS

A PIF does not have investment restrictions and is adaptable to traditional private equity fund structures.

[The reduction of leverage restrictions depends on the circumstance of the investment. For funds targeting experienced investors, leverage via borrowing or use of derivatives is limited to a maximum of 100% of NAV.]

There are no investment, borrowing or leverage restrictions for a fund targeting qualifying investors unless the fund invests in immovable property. Funds targeting extraordinary investors have no investment, borrowing or leverage restrictions.

A non-UCITS CIS must comply with the investment restrictions set out in the fund’s prospectus within 6 months of the launch of the scheme or upon reaching a value of €2,500,000. However, the scheme is not required to comply with its investment restrictions upon reaching a value of €2,500,000 if it complies with the restrictions within a maximum of 6 months from launch.

A UCITS CIS must observe all investment restrictions.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Fiscal incentives at a company level</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>Cooperative external research</td>
<td>Yes</td>
</tr>
<tr>
<td>Innovative spin-out</td>
<td>Yes</td>
</tr>
<tr>
<td>Young and innovative companies</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Taxation of employees

<table>
<thead>
<tr>
<th>Taxation of employees</th>
<th>Min. 0%</th>
<th>Max. 35%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social security</td>
<td>€688.48</td>
<td>€4,193.28 (up from €3,969.40 in 2012)</td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>Min. 0%</td>
<td>Max. 35%</td>
</tr>
<tr>
<td>Tax on stock options</td>
<td>Min. 0%</td>
<td>Max. 15%</td>
</tr>
<tr>
<td>Special tax regimes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

4 Half is borne by the employer and half by the employee.
Maltese tax at a fund level

VAT on management fees

The fund management company does not have to pay VAT on management fees in Malta. This also applies to outsourced activities.

The manner of computing the remuneration to fund management services is irrelevant. If a person provides fund management services to a fund for a fee (irrespective of whether the fee is a fixed fee, performance-based, etc), the supply would be VAT-exempt, provided that these services are specific and essential to the core activity of the fund. Therefore, the fund will not be charged VAT.

Capital gains tax

Malta levies income tax on capital gains made by a domestic investor who sells shares in a company. The rate is dependent on the tax rate applicable to the investor; if the investor is a company the corporate tax rate of 35% applies, if the investor is an individual, the personal rates of tax apply (a maximum of 35%) to all of his income, including the capital gains.

Subject to certain conditions, exemptions include:

- Intra-group transfer of assets, which are taxed upon their transfer
- Transfers of units in a CIS not controlled by a Maltese resident

A Maltese company (not an individual) may benefit from a full participation exemption upon the realisation of a capital gain that arises on the disposal of its holding in a company, provided a number of conditions are satisfied.

In order for the participation exemption to apply, the holding must be a participating holding of equity shares, which entitle the holding company to at least 2 of the following rights:

- A right to vote
- A right to profits available for distribution to shareholders
- A right to assets available for distribution on a winding up of that company

In addition, the Maltese holding company must satisfy any one of the following conditions. It must:

- Have a participating holding of at least 10%
- Be entitled at its option to call for and acquire the entire balance of the equity shares not held by it in the company

Finaly, the tax liability of domestic investors is the same if the gain is not realised from a direct investment but from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor.

Withholding taxes

Malta does not impose any withholding tax on dividends, interest, royalties or proceeds from liquidation.

However, withholding tax is levied on investment income paid to Maltese residents including:

- 15% on investment income is paid to Maltese-resident individuals and entities (other than certain financial institutions and insurance companies), including prescribed funds
- 10% on interest, discounts or premiums earned on Maltese stocks or bonds as well as investment income paid by corporate entities paid to prescribed funds

No withholding tax is levied on investment income paid to non-prescribed funds.

Withholding tax is available as a credit against an individual’s tax liability within 2 years of taxation provided the income has been declared in a tax return.

Stamp duties and transaction taxes

Subject to conditions, stamp duty is levied in Malta at:

- 2% on the transfer of marketable securities or shares
- 5% on the consideration of immovable property transferred
- 5% on the transfer of marketable securities or shares in certain companies having immovable property or rights thereon
- Certain rates of duty apply on insurance policies
Exemptions may apply subject to certain conditions:

- Intra-group transfer of dutiable assets
- Transfers of marketable securities in or by licensed CIS
- Transfers of marketable securities in or by persons holding an investment services licence under the Investment Services Act
- Companies with more than half the ordinary share capital, voting rights and rights to profits held by persons who are not resident in Malta and are not owned or controlled directly or indirectly by persons resident in Malta and has been determined as having the majority of its business interests outside Malta
- Companies with more than 90% of their business interests outside Malta

Anti-abuse rules

Malta has neither anti-abuse nor CFC rules.

Maltese taxation of employees

Maltese tax at a company level

Company tax

Company tax is levied at a rate of 35% in Malta.

However, upon the distribution of a dividend, shareholders are entitled to claim a refund of the tax paid by the distributing company, reducing the overall effective rate of tax to between 0% and 5%.

Maltese law does not provide for a special tax rate for small companies.

Deductibility of interest

Net interest expenses on both related and unrelated-party loans are tax-deductible in Malta, provided that the interest is paid on capital employed in acquiring income.

Income tax for private individuals

Income tax is levied in the following brackets:

<table>
<thead>
<tr>
<th></th>
<th>First n (%)</th>
<th>Next n (%)</th>
<th>Next n (%)</th>
<th>Remainder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-resident</td>
<td>€700 (0%)</td>
<td>€2,400 (20%)</td>
<td>€4,700 (30%)</td>
<td>35%</td>
</tr>
<tr>
<td>Married</td>
<td>€11,900 (0%)</td>
<td>€9,300 (15%)</td>
<td>€7,500 (25%)</td>
<td>35%</td>
</tr>
<tr>
<td>Single</td>
<td>€8,500 (0%)</td>
<td>€6,000 (15%)</td>
<td>€5,000 (25%)</td>
<td>35%</td>
</tr>
<tr>
<td>Parent</td>
<td>€9,300 (0%)</td>
<td>€6,500 (15%)</td>
<td>€5,400 (25%)</td>
<td>35%</td>
</tr>
</tbody>
</table>

Although not approved in parliament, the government proposed the introduction of a transitory tax bracket on income earned by Maltese residents up to €60,000. Under the proposals, the tax on this will be gradually reduced over 3 years (2013 - 2015) from 32% to 29% to 25%, consigning the 35% top rate to income earned above the €60,000 threshold.

Social security payments

Social security contributions in Malta are split into two classes:

- Class One rates, applied to salaried workers
- Class Two rates, applied to self-employed

Class One rates are subject to various sub-gradations, depending on employment type and are split evenly between the employer and employee. Class One rates range from €13.24 (€6.62 borne by each of the employer and employee) to €80.64 (€40.32 borne by each of the employer and employee) per week.

Class Two rates are sub-divided into a distinction between the self-occupied\(^5\) and the self-employed\(^6\). Class Two rates range from €23.65 to €60.47 per week.

Capital gains tax for private individuals

There is no specific taxation on capital gains in Malta. Capital gains are aggregated to income and taxed at normal income tax rates.

5. Persons who earn income from trade, business, profession, vocation or any other economic activity that exceeds €910 per annum.
6. Persons who receive income from rents, investments, capital gains or any other income.
The taxation of stock options

Stock options are taxed in Malta when the option is exercised as employment income.

The maximum rate of tax on stock options is 15% on the excess, if any, of the price which the shares in question would fetch if sold in the open market on the date of the exercise of the option over the option price of the same shares.

From a purely fiscal point of view, there are no special rules. However, stock options granted to employees or holders of office of a company are taxable upon exercise as fringe benefits from employment.

There is no tax relief for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options in Malta.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When the option is exercised</td>
<td>As employment income</td>
</tr>
</tbody>
</table>

| Special rules for certain types of company | No - but stock options granted to employees or holders of office of a company are taxable upon exercise as fringe benefits from employment |

| Tax relief for the grantor | No |

Maltese fiscal incentives

Fiscal incentives at a fund level

**Investors**

No tax is imposed on the disposal of units in a CIS by non-residents.

Upon receipt of dividend from a portfolio company, the shareholder is entitled to a refund of part of the income tax paid, if any, at the portfolio company level on the profits distributed. Depending on the nature of the source of income, the rate of refund is generally two-thirds or six-sevenths of the tax paid by the distributing entity. The effective rate of tax after refund is between 0% and 5%.

**Fund management**

Fund management entities are generally taxable on the profit from management and performance fees at 35%. To the extent that a fund management entity is ultimately owned by non-Maltese resident shareholders, upon the dividend distribution, the recipient is entitled to claim partial refunds of tax paid by the fund management entity. The general refund on Malta sourced fees is six-sevenths. Hence, the effective rate of tax after refund is reduced to 5%.

Further exemptions may be available depending on the structure of the fund.

Fiscal incentives at a company level

There are extensive fiscal incentives available in Malta at a company level (see page 108).

Most of the current schemes run to 2013 and usually consist of either part-financing or deductions for up to 50% of capital costs from the tax base.

Special tax regimes

**High Net-Worth Individual Rules**

High net worth individuals taking up residence in Malta may benefit from a flat rate of tax of 15% on all foreign income that is received in Malta, subject to the fulfilment of certain conditions.

**Highly Qualified Persons Rules**

Highly qualified expatriates employed in eligible offices in the financial services and gaming sectors may benefit from a flat rate tax of 15% on their employment income. This flat rate is imposed up to a maximum income of €5,000,000, over which the remaining amount is exempt from tax.
<table>
<thead>
<tr>
<th><strong>Investment Aid</strong></th>
<th>Investment Aid Tax Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SME Development</strong></td>
<td>First Time Participation in a Trade Fair Small Start-up</td>
</tr>
<tr>
<td><strong>Enterprise Support</strong></td>
<td>Quality+ Network Support</td>
</tr>
<tr>
<td><strong>Access to Finance</strong></td>
<td>Loan Guarantees Interest Rate Subsidies</td>
</tr>
<tr>
<td><strong>Get Qualified</strong></td>
<td>Get Qualified</td>
</tr>
<tr>
<td><strong>R&amp;D</strong></td>
<td>Loan of Qualified Experts Experimental Development Royalty Income from Patents</td>
</tr>
<tr>
<td><strong>Hospitality</strong></td>
<td>Refurbishment Subsidy</td>
</tr>
<tr>
<td><strong>Enterprise Support</strong></td>
<td>Business Advisory Services Competitiveness</td>
</tr>
<tr>
<td><strong>Access to Finance</strong></td>
<td>Create Business Development</td>
</tr>
<tr>
<td><strong>Get Qualified</strong></td>
<td>Trade promotion</td>
</tr>
<tr>
<td><strong>R&amp;D</strong></td>
<td>Technical Feasibility Studies Industrial Research R&amp;D Clusters</td>
</tr>
<tr>
<td><strong>Hospitality</strong></td>
<td>Energy Efficiency Loan</td>
</tr>
<tr>
<td><strong>Enterprise Support</strong></td>
<td>Create Business Development</td>
</tr>
<tr>
<td><strong>Access to Finance</strong></td>
<td>Trade promotion</td>
</tr>
<tr>
<td><strong>R&amp;D</strong></td>
<td>Collaborative R&amp;D Grants Registration for IP ERDF R&amp;D Grants</td>
</tr>
</tbody>
</table>
Introduction

There are no specialised investment vehicles for private equity or venture capital available in the Netherlands, although a range of vehicles may be used.

The Netherlands levies the second highest capital gains tax for individuals in Europe; however, taxation is usually close to the European average.

Fiscal incentives at a fund level are not directly aimed at private equity or venture capital but may be of some benefit.

Dutch fund structures

Structures

The Netherlands does not have specific legal vehicles for private equity and venture capital funds.

However, funds can be structured in the form of a Besloten Vennootschap (a corporate body, private limited liability company, BV), a Commanditaire Vennootschap (limited partnership under Dutch law, CV), or a co-operative (Co-op). Often, a combination of several of these entities is used, either as a parallel fund structure or as feeder entities.

Transparency

A CV can be organised as a tax-transparent entity for both domestic and non-domestic investors (a closed CV). This depends on how limited partners may be admitted or substituted. Generally, a CV (and a foreign limited partnership) is considered to be tax-transparent only if prior unanimous consent is required from all partners, both general and limited partners, for any admission or substitution of a limited partner and for any change in relative interest among existing limited partners. Otherwise, the CV (or foreign limited partnership) is considered opaque for tax purposes (an open CV).

Neither a BV nor Co-op can be organised as a tax-transparent entity under Dutch tax law.

Permanent establishment

The BV and Co-op fund structures generally do not constitute a permanent establishment by both Dutch law and rulings.

A BV is a corporate body and, as such, subject to Dutch corporate income tax. Investment in a BV or a non-transparent partnership will not typically result in a permanent establishment. However, non-resident shareholders or partners may be subject to corporate income tax on other grounds.

Investment in a transparent CV may result in a permanent establishment, depending on the level of activity of the fund (or attributable to the fund) in the Netherlands. It must be noted that some fund structures deliberately create a Dutch permanent establishment for non-Dutch investors in order to accomplish an efficient overall tax structure for non-Dutch participants.

Obtaining certainty through communication with the Dutch tax authorities is recommended.

Capital gains tax for non-resident investors

The Netherlands may impose corporate income tax on capital gains and distributions realised by non-resident participants in a Dutch Fund, if the non-resident investor owns 5% or more of the shares or a separate class of shares (BV) or is entitled to 5% or more of the profits (Co-op), unless the participation in the Dutch Fund is considered to belong to the assets of a trade or business carried on by the respective non-resident investor.

Undue restrictions

These structures are considered to be free from undue restrictions.
## Summary

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Besloten Vennootschap (Limited Liability Company, BV)</td>
<td>No, No</td>
<td>In most situations</td>
<td>Should be established on case-by-case basis¹</td>
<td>No</td>
<td>Should be established on case-by-case basis²</td>
</tr>
<tr>
<td>Commanditaire Vennootschap (Limited Partnership, CV)</td>
<td>Yes subject to conditions, Yes subject to conditions</td>
<td>Yes, Yes subject to conditions</td>
<td>Should be established on case-by-case basis³</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Co-operative (Co-op)</td>
<td>No, No</td>
<td>In most situations</td>
<td>Should be established on case-by-case basis¹</td>
<td>No</td>
<td>Should be established on case-by-case basis²</td>
</tr>
</tbody>
</table>

### Taxation at a fund level

<table>
<thead>
<tr>
<th>VAT on management fees</th>
<th>Payment</th>
<th>Reclaim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital gains tax⁴</td>
<td>Min. 20%</td>
<td>Max. 25%</td>
</tr>
<tr>
<td>Withholding tax</td>
<td>Min. 0%</td>
<td>Max. 15%</td>
</tr>
<tr>
<td>Stamp duties or transaction taxes</td>
<td>Stamp</td>
<td>Transaction</td>
</tr>
<tr>
<td>Anti-abuse rules</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Fiscal incentives</td>
<td>Investors</td>
<td>Fund management</td>
</tr>
</tbody>
</table>

### Taxation at a company level

| Company tax                  | 20% - 25% |
| Special tax regime for SMEs or other small companies | No |
| Deductibility of interest    | Related-party loans Yes, subject to restrictions, Unrelated-party loans Yes, subject to restrictions |

### Taxation of employees

| Income tax                   | Min. 37% | Max. 52% |
| Social security              | 31.15%⁵  |
| Capital gains tax            | Min. 0%  | Max. 25% |
| Tax on stock options         | Min. 37% | Max. 52% |
| Special tax regimes          | Yes      |

### Fiscal incentives at a company level

| Business R&D expenditure     | Yes      |
| R&D capital expenditure     | Yes      |
| Contracting researchers     | Yes      |
| Technology transfer         | Yes      |
| Cooperative external research | No       |
| Innovative spin-out         | No       |
| Young and innovative companies | No       |

¹ In case of an equity interest of 5% or more in the fund but less than 5% (on a look-through basis) in the investee company, there may be incremental tax.
² In particular in case of an equity interest of 5% or more in the fund.
³ In some situations the presence of a Dutch permanent establishment works out favourably for the Dutch tax position of non-domestic investors.
⁴ The Netherlands does not have a capital gains tax. However, the Netherlands may impose corporate income tax on capital gains realised by non-resident participants in a Dutch Fund.
⁵ Included in the income tax rate.
The Netherlands

Dutch tax at a fund level

**VAT on management fees**

Generally speaking, the services of a Netherlands-based fund management company to a private equity fund are exempt from Dutch VAT. Other management services are generally subject to VAT.

The VAT rate was 19% but has been increased to 21% as per 1 October 2012.

The ability to reclaim VAT depends on whether or not the management qualifies as a VAT-taxable person and on the type of activities the management services were purchased for.

If management services are connected to VAT-taxable services rendered by the recipient, the recipient can deduct the input VAT.

Should the management services be attributable to both VAT-exempt and VAT-taxable activities, the recipient is entitled to the deduction of input VAT on the basis of its so-called “pro-rata recovery ratio” (a percentage based on VAT-taxable turnover in relation to total turnover).

**Capital gains tax**

Subject to the participation exemption regime, capital gains are taxed at regular corporate income tax rates.

In general, benefits (both capital gains and dividends) derived from qualifying equity participations are fully exempt from corporate income tax (the “participation exemption”). This exemption is generally available if the shareholder owns 5% or more of the share capital of a company.

**Withholding taxes**

Withholding tax liability is subject to the following:

- A dividend distribution. A Dutch company is subject to 15% Dutch dividend withholding tax if the distributing entity has a capital divided into shares (an NV, BV or non-transparent CV).
- Dividend distributions made by a Dutch Co-op are, in principle, not subject to dividend withholding tax in the Netherlands (subject to certain abusive situations)
- Dividend withholding tax can be reduced under a tax treaty (either at source or through a reclaim procedure, depending on the treaty). The Netherlands has a wide treaty network.
- The Netherlands does not apply withholding tax on interest and royalties

**Stamp duties and transaction taxes**

The Netherlands does not levy stamp duties or transaction taxes.

**Anti-abuse rules**

If a company receives a dividend but cannot be considered to be the beneficial owner of the dividends, dividend exemptions are not applied.

Dutch tax at a company level

**Company tax**

The company tax rate in the Netherlands consists of federal corporate income tax:

- 20% for profits up to €200,000
- 25% for profits exceeding €200,000

**Deductibility of interest**

Interest expenses on debt provided by both related and non-related entities (not guaranteed by related parties) are generally tax-deductible.

However, the ability for a company (bidco) to offset the interest due on an acquisition debt against the profits of an acquired target is limited.

As of 1 January 2012, Dutch tax law contains a provision that limits the deduction of interest expense on “excess debt” incurred to fund a domestic target if the target and acquisition company are combined in a tax-consolidated group (a “fiscal unity”) or merged post-closing. Excess debt is determined as debt in excess of 60% of the purchase price. The 60% is decreased by 5% per year, to a minimum percentage of 25%. Interest paid on excess debt cannot be deducted against the profits of the target. However, the first €1 million of interest on the excess debt remains deductible, and the remainder of the interest expense remains deductible against profits from other sources within the fiscal unity (if any).

In addition, as of 1 January 2013, interest expenses (also on unrelated debt) are non-deductible if, and to the extent, the interest is paid on participation debt and the interest expense exceeds €750,000. Participation debt exists to the extent that the aggregate historic cost price of designated equity participations exceeds the taxpayer’s fiscal equity. The calculations have to be made on an average basis, by reference to the values as per the start and end of the taxpayer’s relevant tax year.
The Netherlands

The formula is (simplified):

\[ \text{Participation debt} \times \text{Financing costs} = \text{Participation interest} \]

The formula is (simplified):

\[ \left( \text{historic cost price subsidiaries} -/- \text{fiscal equity} \right) \times \text{Financing costs} = \text{Participation interest} \]

The provision particularly aims to deny the deduction of interest on “excessive” participation debt, ie, debt connected with equity participations that are acquired from affiliated parties. Based on case law, loans provided by a related party may be re-qualified as equity for corporate income tax purposes in the following situations:

- The parties actually intended that equity would be provided (“sham transaction”)
- The conditions of the loan are such that the lender effectively participates in the enterprise of the borrowing company (“profit participating loan”)
- The loan was granted under such circumstances that by the time the loan was granted, neither full nor partial repayment of the loan could reasonably be expected

The deduction of interest on a related-party loan that has been used to finance one of the following is not allowed, unless the taxpayer can demonstrate that the related-party loan serves business reasons (other than tax reasons):

- Dividend payment or repayment of share capital to a related company or individual
- A capital contribution into a related company
- Acquisition or increase of interest in a company that qualifies as a related entity after the transaction

Further, if a related-party loan is deemed to be a low interest loan (a deviation from arm’s length interest by 30% or more) the deduction of interest on that loan is denied.

The Dutch thin capitalisation rules have been abolished as per 2013.

### Dutch taxation of employees

#### Income tax for private individuals

Income tax is levied in the following brackets (2012):

<table>
<thead>
<tr>
<th>Bracket</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0-€18,945</td>
<td>33.1%</td>
</tr>
<tr>
<td>€18,945-€33,863</td>
<td>41.95%</td>
</tr>
<tr>
<td>€33,863-€56,491</td>
<td>42%</td>
</tr>
<tr>
<td>€56,491+</td>
<td>52%</td>
</tr>
</tbody>
</table>

For 2013, the income tax brackets are as follows (a substantial portion of the first two brackets consists of national insurance premium):

<table>
<thead>
<tr>
<th>Bracket</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0-€19,645</td>
<td>37%</td>
</tr>
<tr>
<td>€19,645-€33,363</td>
<td>42%</td>
</tr>
<tr>
<td>€33,363-€55,991</td>
<td>42%</td>
</tr>
<tr>
<td>€55,991+</td>
<td>52%</td>
</tr>
</tbody>
</table>

#### Social security payments

The Dutch employee social security contribution is limited to the national insurance premiums, which are fully integrated in the income tax brackets stated above.

The other category of social security payments (the employee social security premiums) are fully borne by the employer, and capped at approximately €9,000 per year.

#### Capital gains tax for private individuals

Capital gains on shares held by private individuals are exempt from personal income tax unless the shares can be considered to be a substantial interest (aanmerkelijk belang). This is the case if a private individual holds at least 5% of the issued share capital of a company.

Capital gains on the disposal of shares from a substantial interest are taxed at a flat personal income tax rate of 25%.
Further, subject to a complex set of rules, management’s (and fund executives’) participation in investee companies (sweet equity) or fund entities (carried interest) may be subject to “lucrative interest” taxation. Proceeds from a lucrative interest are taxable as ordinary income (up to 52%). However, the proceeds from carried interest/sweet equity can generally be structured to fall into the 25% flat rate for substantial interest income.

**The taxation of stock options**

All stock options in the Netherlands are taxed when the option is exercised. The profit realised when exercising the option is taxed as ordinary income. The rules on the taxation of stock options are the same, regardless of company type.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When the option is exercised</td>
<td>Profit realised when exercising the option is taxed as ordinary income</td>
</tr>
</tbody>
</table>

**Special rules for certain types of company**

No

**Tax relief for the grantor**

No

**Special tax regime**

The 30% ruling entitles certain employees to earn 30% of salary as a tax free reimbursement for expenses. This results in a maximum (effective) tax rate of approximately 36.4% on employment income, rather than 52%. This tax free allowance is considered compensation for expenses a foreign employee experiences when working outside his home country. Only employees with special skills which are recruited from abroad are eligible for the 30% ruling.

**Dutch fiscal incentives**

**Fiscal incentives at a fund level**

Dutch legislation aims to encourage limited partners to invest in venture capital funds. General relief aimed at funds may benefit both limited and general partners.

**Fiscal incentives at a company level**

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

Free depreciation is allowed on investments in fixed assets described in the decree ‘Uitvoeringsregeling Willekeurige afschrijvingen’. These include fixed assets that are environmentally friendly and assets that are instrumental in improving economic structure or the entrepreneurial environment.

A further R&D deduction is available to businesses for R&D activities. This is called the Research and Development Deduction (RDA). The RDA is aimed at businesses involved, on their own account, in the development of technical solutions, including software.

The additional deduction is available to businesses either subject to corporate income tax or personal income tax. The size of the deduction is 54% of expenditure for 2013 (up from 40% of expenditure for 2012), after which the percentage of deduction is under revision.

Under Innovation Box, profits allocable to WBSO (‘Wet Bevordering Speur- en Ontwikkelingswerk’) enabled R&D and patents are subject to reduced corporate income tax of 5%. Profits are determined using a transfer pricing-based allocation of profit to company functions, including R&D and patents.

Researchers from outside the Netherlands with an expertise that is scarce in the Dutch labour market may be eligible for a 30% ruling, resulting in an effective personal income tax rate that is 30% below average.

Furthermore, wages paid to employees engaged in certain R&D work may be eligible for the so-called “WBSO afdrachtvermindering”. This means that an employer is not required to pay full wage withholding tax to the tax authorities.
Introduction

There are no dedicated fund structures in Norway for private equity and venture capital investments. However, there are vehicles available and these have differing characteristics. Norway levies low tax at a fund level, but increasingly high taxes for employees. The withholding tax rate is among the lowest in Europe.

Fiscal incentives are limited and focus around research.

Norwegian fund structures

Structures

The most commonly-used fund structures in Norway for private equity and venture capital investments are:

- Private limited company (limited liability company or Aksjeselskap (AS))
- Limited partnership (Kommandittselskap (KS))

However, recently, and usually for larger funds, Norwegian fund managers have organised their private equity and venture capital funds in foreign jurisdictions.

Transparency

A KS is tax-transparent for both domestic and non-domestic investors.

An AS is subject to separate taxation.

Absence of incremental tax (as compared to direct investments)

The fund structures might, under certain circumstances, reduce tax for investors compared to direct investments in target companies.

A KS can distribute profits without attracting withholding tax. There is no dividend withholding tax on distributions by a Norwegian company to a KS. A foreign investor that otherwise would be subject to withholding tax on dividends received from a Norwegian target company would not be subject to this charge by making the investment through a KS.

Permanent establishment

A KS will normally be managed in Norway through a fixed place of business, which meets the permanent establishment definition under the Norwegian Tax treaties. A foreign partner who invests with shares in this kind of KS will then be considered to have a permanent establishment in Norway as well. As a result, the non-domestic investors and fund managers will normally be subject to Norwegian tax rules (incl. the participation exemption rules), and a sale of KS shares will be considered as a sale of the underlying investments of the KS and taxable in Norway.

Direct investments in an AS do in comparison not constitute a permanent establishment for a non-domestic investor.

Capital gains tax for non-resident investors

Non-residents are not subject to Norwegian capital gains tax on shares in an AS.

The tax legislation governing a non-resident’s capital gains on KS shares is more complex. As outlined above, because of permanent establishment, a sale of KS shares by a foreign corporate shareholder will be considered as a sale of the underlying investments of the KS and taxable in Norway.

However, if the investor is a corporation or a limited liability company, it may dispose of shares in a limited or general partnership (which normally constitutes a permanent establishment for the investor) without being subject to tax in Norway. This is the case provided that the value of the KS’s holdings of shares not covered under the participation exemption method is lower than 10% of the KS’s total investments in shares for a period of 2 years prior to the sale.

---

1 The Norwegian Partnership Act applies to partnerships that have their head office in Norway or that have a majority of their partners residing in Norway and their business operation in Norway. A KS with a majority of foreign partners will not be governed by Norwegian law if it is managed from outside Norway.

2 This treatment also applies to investments in foreign limited (or general) partnerships if the partnership is deemed to be governed through a fixed place in Norway.
## Summary

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td><strong>Limited Partnership (Kommandittselskap (KS))</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes&lt;sup&gt;3&lt;/sup&gt;</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Private Limited Company (Limited Liability Company or Aksjeselskap (AS))</strong></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

### Taxation at a fund level

<table>
<thead>
<tr>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax&lt;sup&gt;5&lt;/sup&gt;</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Min. 0%</td>
<td>Max. 28%</td>
<td>Stamp: No</td>
<td>Yes</td>
<td>Investors: No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Transaction: No</td>
<td></td>
<td>Fund management: No</td>
</tr>
</tbody>
</table>

### Taxation at a company level

<table>
<thead>
<tr>
<th>Company tax</th>
<th>Special tax regime for SMEs or other small companies</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>28%</td>
<td>No</td>
<td>Related-party loans: Yes, subject to restrictions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Unrelated-party loans: Yes</td>
</tr>
</tbody>
</table>

### Taxation of employees

<table>
<thead>
<tr>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min. 28%</td>
<td>21.9%&lt;sup&gt;6&lt;/sup&gt;</td>
<td>Min. 28%</td>
<td>Min. 28%</td>
<td>No</td>
</tr>
<tr>
<td>Max. 40%</td>
<td></td>
<td>Max. 40%</td>
<td>Max. 40%</td>
<td></td>
</tr>
</tbody>
</table>

### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Business R&amp;D expenditure</th>
<th>R&amp;D capital expenditure</th>
<th>Technology transfer</th>
<th>Contracting researchers</th>
<th>Innovative spin-out</th>
<th>Young and innovative companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

<sup>3</sup> No withholding tax on dividends, see below.
<sup>4</sup> Depends on the investor and the portfolio of the KS, see below.
<sup>5</sup> The withholding tax rate on dividends is dependent on the investor and his residency; however, for private equity and venture capital investments, the participation exemption method will often apply.
<sup>6</sup> 14.1% is paid by the employer and 7.8% by the employee.
<sup>7</sup> Capital gains may be taxed as employment income (up to 40%) eg, in an earn-out scenario where the seller commits to remain employed.
Investments in this context that are not covered under the participation exemption method are holdings not exceeding 10% and held for less than 2 years in companies resident in countries outside the EEA-area and any investment in tax havens outside the EEA-area. The value of these investments must accordingly at all times be lower than 10% of the KS’s total investments in shares.

On the other hand, if the investor is not a corporate investor, gains from the disposal of shares in a KS are taxable in Norway.

Undue restrictions

Norwegian fund structures are considered to be free from undue restrictions.

While the Norwegian limited partnership has many similarities to limited partnerships based in other countries like the Channel Islands and Denmark, there is a requirement that the general partner of a KS holds at least 10% of the capital and has a right to 10% of the profit and loss of the KS.

Norwegian tax at a fund level

VAT on management fees

When the fund is a KS performing the management through its general partner no VAT is due on the management fee.

If an advisory company receives the management fees and it has the authority to make investment decisions on behalf of the fund (being either an AS or KS) no VAT should be added. If the advisory company receiving the management fees does not have the authority to make investment decisions, it needs to perform real capital management and the major parts of the follow-up work for the management fees to be VAT-exempt. If these requirements are not met, VAT is due on the management fees. The VAT is a final cost for the fund.

Please note that any consultancy work performed by an advisory company in addition to the management of the fund is liable to VAT, such as performing due diligence.

Capital gains tax

AS

An investment vehicle set up as an AS is considered as a separate tax subject.

Therefore gains derived by the AS will be taxed in the AS as a starting point.

However, an AS will be tax-exempt for:

- Gains on shares of another AS or of EEA-resident limited companies
- Gains on shares in limited companies resident outside the EEA area, provided that:
  - the AS continuously, for a period of 2 years prior to the sale, has held at least 10% of the share capital and represented at least 10% of votes to be voted for in the general meeting; and the company is not resident in a low-tax jurisdiction. Any gain derived by an AS on shares in limited companies resident in a low-tax jurisdiction outside the EEA area will not be tax-exempt.
- Gains on shares of partnerships, provided that the value of the partnership’s holdings of shares not covered under the participation exemption method do not exceed 10% of the partnership’s total investments in shares for a period of 2 years prior to the sale.

KS

A KS is tax-transparent. However, a non-domestic investor in a KS will normally be considered to have a permanent establishment in Norway. The taxable income of the KS must therefore be assessed and allocated to the investors. The general tax rules apply to the assessment of the KS’s income, including the participation exemption method, which, in relation to private equity and venture capital investments, often will result in no taxable income to allocate to the investors.

Finally, the tax liability of a domestic investor is the same if the gain is not realised from a direct investment but from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor.

Withholding taxes

Under Norwegian tax law, no withholding tax is imposed on interest and royalties.

Withholding tax of 25% will be imposed on dividends distributed to a non-domestic fund that is a shareholder of an AS. The rate may be lower if a double taxation treaty applies. Furthermore, the participation exemption method will apply to the non-domestic fund, in which case no withholding tax will apply, provided that the fund is a qualifying subject under the participation exemption method (an AS or a similar entity to the other Norwegian entities that qualify) resident within the EEA area.

8 If the EEA-company is resident in an EEA state which, under Norwegian law, is considered as a low-tax jurisdiction, the company must additionally be considered as genuinely established in its state of residence in order to qualify for tax exemption.
A non-domestic corporate limited partner of a KS will, as a starting point, not be subject to withholding tax on dividends. However, the partner will, in the same way as a domestic corporate limited partner, be subject to a limited claw-back taxation of 3% of exempted dividends, which will be taxed at 28% (effectively 0.84%) since the KS normally will be considered to have a permanent establishment in Norway.

**Stamp duties and transaction taxes**

Norway does not levy a stamp duty or financial transaction tax.

**Anti-Abuse Rules**

In order for an EEA-resident corporate shareholder to qualify for (withholding) tax exemptions on outbound dividends, it must be genuinely established and carry on genuine business in its state of residence. This is subject to interpretation.

Further, in relation to outbound dividends, Norwegian law also applies a beneficial owner’s test. Under this test, an EEA-resident shareholder must also for private law be considered as the owner of the shares. Whilst not subject to strict interpretation, a shareholder acting as a nominee would not qualify.

Finally, a “substance over form” rule exists under Norwegian case law. Under this, any intermediary structure may be disregarded for tax purposes if the structure is considered to be tax-motivated and disloyal to the purpose of the tax legislation.

**Norwegian tax at a company level**

**Company tax**

The corporate income tax rate is 28%. This applies to net profits as well as capital gains.

**Deductibility of Interest**

**Unrelated-party loans**

Net interest expenses on unrelated-party loans are fully tax-deductible in Norway.

**Related-party loans**

Net interest expenses on related-party loans are also fully deductible provided that the terms (interest rate and other terms) are at arm’s length and that the company is not considered to be thinly capitalised.

**Norwegian taxation of employees**

**Income tax for private individuals**

The marginal income tax rate for private individuals in Norway is 40%.

This rate consists of a combined:

- Flat income tax rate of 28%
- An additional tax of up to 12% of gross earned employment income above NOK 828,300 (approximately €110,700)

No additional municipal, local or trade taxes are levied. However, additional social security contributions must be paid (see below).

**Social security payments**

An employee must pay a social security contribution of 7.8% and an employer a social security contribution of 14.1%.

**Capital gains tax for private individuals**

There is no specific taxation on capital gains in Norway. Capital gains are taxed as capital income at a flat rate of 28%.

**The taxation of stock options**

Stock options are taxed in Norway upon exercise as employment income.

The exercise of stock options will give the grantor a tax deduction corresponding to the difference between exercise price and the grantor’s cost price.¹

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When the option is exercised</td>
<td>As employment income</td>
</tr>
</tbody>
</table>

| Tax relief for the grantor | Yes – Tax deduction is available when the option is exercised |

¹ This refers to a situation where the grantor purchases the share, not when issuing new shares in a capital increase.
Norwegian fiscal incentives

Fiscal incentives at a fund level
There are currently no fiscal incentives for investors, fund managers or the fund itself to invest in private equity or venture capital, either through a fund or directly through the portfolio company.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>No</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>Yes</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

Companies conducting R&D in Norway may apply for a tax credit through the Research and Development Tax Credit (Skattefunn), with the following requirements and limitations:

- Approval from the Research Council of Norway
- A maximum tax relief basis of NOK 5.5 million (approximately €735,000)
- A maximum tax relief of 18% of the company's R&D cost (tax relief basis).
- The tax relief is 20% for SMEs (subject to Norwegian definition).

Augmented relief is available when the R&D is purchased from a university or another research organisation, in which case the maximum tax relief basis, is NOK 11 million (approximately €1.5 million).

Further, R&D capital expenditure may, generally and on specific conditions, either be deducted or booked as part of the acquisition cost of capital assets that are developed and then later either be depreciated or deducted in connection with a sale of the capital asset.
Introduction

Poland has a structure that may be used for private equity and venture capital investments but transparency is not available.

Taxes are low in Poland, although no particular tax is unusually so.

Fiscal incentives are limited.

Polish fund structures

Structure

The most suitable domestic fund structure in Poland for private equity and venture capital investments is the closed-end investment fund for non-public assets (CEIF).

Transparency

A CEIF is a legal entity covered by the Polish Corporate Income Tax (CIT) Act. Thus, a CEIF is formally not transparent for either domestic or non-domestic investors. However, under the CIT Act, CEIF is exempt from CIT.

Absence of incremental tax (as compared to direct investments)

The fund structure does not give rise to incremental tax for domestic (and non-domestic) investors as compared to the situation where such investors would invest directly in the target companies.

Permanent establishment

A CEIF does not constitute a permanent establishment in Poland by law but depends on a facts and circumstances test.

The Polish permanent establishment definition largely follows the permanent establishment definition from double tax treaties, based on the OECD model convention.

Capital gains tax for non-resident investors

A CEIF is CIT-exempt. Therefore, a sale of shares in the Polish targets by a CEIF is CIT-neutral for this entity. Non-resident investors are not taxed on sale of the shares by a CEIF as it is a separate taxpayer (although CIT-exempt).

If the non-resident investor sells the shares in the Polish company, it will depend on a particular double tax treaty whether the capital gains on the sale are taxable in Poland. Since Polish double tax treaties follow the OECD model convention, generally the capital gains will be taxable in the investor’s state of tax residence. However, Poland may tax capital gains on the sale of the shares in the Polish company if its value is derived by more than 50% from the real estate if such taxation is allowed by the given double tax treaty.

Undue restrictions

There are no tax restrictions regarding the types of CEIF investment. However, there are regulatory restrictions in this respect.

Polish tax at a fund level

VAT on management fees

The fund management company does not have to pay VAT on management fees charged on a CEIF (management services are VAT-exempt). VAT is, however, applicable to management services provided to a Polish portfolio company (under the general rules).

Capital gains tax

Capital gains generated by a domestic investor are taxed as ordinary business income at 19% (no other taxes should be added).

No participation exemption applies to capital gains in Poland.
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor type</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
</tr>
<tr>
<td>Closed-End Investment Fund for Non-Public Assets (CEIF)</td>
<td>No (although exempt from CIT)</td>
<td>No (although exempt from CIT)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>No for CEIF; otherwise 19%</td>
<td>No for CEIF; otherwise 19%</td>
<td>Stamp</td>
<td>Transaction</td>
<td>Yes</td>
<td>Investors</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Yes, subject to restrictions</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
<th>Fiscal incentives at a company level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Min. 18%</td>
<td>14% + 9% health insurance</td>
<td>19%</td>
<td>19%</td>
<td>Yes (for stock option plans)</td>
<td></td>
</tr>
</tbody>
</table>

#### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th></th>
<th>Business R&amp;D expenditure</th>
<th>R&amp;D capital expenditure</th>
<th>Contracting researchers</th>
<th>Technology transfer</th>
<th>Cooperative external research</th>
<th>Innovative spin-out</th>
<th>Young and innovative companies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

---

1 Employers will pay at least 19.48% social security contributions.
The tax liability is the same if the domestic investor realises the gain from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investors (subject to the applicable double tax treaties and the relevant non-domestic tax regulations).

**Withholding taxes**

Dividends are subject to withholding tax at 19% (no other taxes should be added).

This can be reduced under the Parent-Subsidiary Directive or a double tax treaty provided that the fund is allowed for the Directive/treaty benefits (i.e., for the reduced tax rates or tax exemption). A certificate of tax residence is required.

If a situation arises where the taxpayer wants to reclaim tax that was unduly withheld by a Polish company on a dividend payment, it must initiate a tax overpayment claim proceeding and substantiate that it is entitled to apply a tax treaty. The reclaim process usually takes 2 to 3 months.

**Stamp duties and transaction taxes**

**Transfer tax**

As a rule, the sale and exchange of shares is subject to transfer tax at 1%. However, the following transactions are exempt:

- Transactions involving Polish treasury bonds and Polish treasury bills, bills issued by the National Bank of Poland and some other specified securities
- Transactions performed via a stock exchange (OTC transactions in listed securities might be subject to tax)
- Sale to or through investment firms

**Anti-abuse rules**

Polish anti-abuse rules include:

- Transfer pricing regulations: Transactions between related parties should be at an arm’s length level
- As a rule, mergers and divisions are tax-neutral. However, exemptions are not applied if the merger or division is not carried out for economically justified reasons but with the principal goal of tax avoidance

- Rules of evidentiary proceedings under which the tax authority, while establishing the content of a given act in law, may take into account both the mutual intention of the parties and purpose of the act and not just the literal wording of declarations of intent. Additionally, if, while disguised as one act in law, another act is performed, the tax consequences may follow from the disguised act in law. Special rules are provided in the tax code.
- Thin capitalisation restrictions apply with a 3:1 debt to equity ratio. The proportion of interest that exceeds the agreed threshold is treated as non-deductible.

**Polish tax at a company level**

**Company tax**

Company tax is levied in Poland at a flat rate of 19%.

**Deductibility of interest**

Interest expenses on both related and unrelated-party loans are tax-deductible in Poland.

The thin capitalisation provisions apply only to loans and credits from related parties. As such, the following types of loans will fall under the thin capitalisation provisions:

- Loans from a shareholder that holds at least 25% of voting power in the borrowing company
- Loans from shareholders that hold jointly at least 25% of voting power in the borrowing company jointly
- Loans from a company that has the same shareholder as the borrower, if the shareholder owns at least 25% of voting power in both the lending and the borrowing company (i.e., a sister company)

Where the tax authorities conclude that a company is thinly capitalised, the proportion of interest that exceeds the 3:1 threshold is treated as non-deductible.

The Ministry of Finance plans to: (i) broaden the scope of loans subject to thin cap restriction to include those from indirect shareholders and indirect sister companies, and (ii) provide the alternative thin cap regime, optional for taxpayers, covering also loans from unrelated parties (presumably as of 1 January 2014).
### Polish taxation of employees

#### Income tax for private individuals
The income tax rate in Poland ranges from 18% to 32%.

#### Social security payments
Total social security costs financed by an employee amount to approximately 14% of the tax base. Moreover, employees pay 9% health insurance. Below is a breakdown of social security and health insurance contributions.

<table>
<thead>
<tr>
<th>Type of Contribution</th>
<th>Social Security Contributions - Employment Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(the employer is required to calculate, deduct and pay all the above contributions to the relevant bank accounts)</td>
</tr>
<tr>
<td>Base for contribution calculation</td>
<td>Contribution financed by the Employer</td>
</tr>
<tr>
<td>Income from employment contract</td>
<td></td>
</tr>
<tr>
<td>The base is limited, however, to 30 times average forecast salary in national economy for a given calendar year (in 2013 it is 111,390 PLN). Once the income obtained by the employee exceeds this level, the surplus is not subject to Retirement and Disability Pension Contributions.</td>
<td></td>
</tr>
<tr>
<td>Retirement</td>
<td>9.76%</td>
</tr>
<tr>
<td>Disability Pension</td>
<td>6.50%</td>
</tr>
<tr>
<td>Income from employment contract (no limitation)</td>
<td></td>
</tr>
<tr>
<td>Accident at Work</td>
<td>from 0.67% to 3.86% depending on type of work</td>
</tr>
<tr>
<td>Sickness</td>
<td>-</td>
</tr>
<tr>
<td>Labour Fund</td>
<td>2.45%</td>
</tr>
<tr>
<td>Employee Guaranteed Benefits Fund</td>
<td>0.1%</td>
</tr>
<tr>
<td>Income from employment contract minus (i) Retirement, (ii) Disability Pension and (iii) Sickness Contributions financed by the Employee</td>
<td></td>
</tr>
<tr>
<td>Healthcare</td>
<td>-</td>
</tr>
</tbody>
</table>
Capital gains tax for private individuals

Capital gains are subject to 19% tax. No other taxes should be added.

The taxation of stock options

The taxation of stock options depends on the details of the stock option programmes.

Generally, stock options are not taxable on granting of the option. The exercise of the option is taxable if the stock is acquired by the employee below the market value, unless a special tax deferral scheme is applicable – in this case, the tax is payable on disposal of the stock. The special tax deferral scheme generally requires that the employee acquires shares in an EU or EEA joint-stock company, based on a resolution of the shareholders’ meeting of that company.

There is no tax relief for the grantor of the stock option.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>The exercise of the option is taxable if the stock is acquired by the employee below the market value, unless a special tax deferral scheme is applicable – in this case, the tax is payable on disposal of the stock</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tax relief for the grantor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No tax relief for the grantor of the stock option</td>
</tr>
</tbody>
</table>

Polish fiscal incentives

Fiscal incentives at a fund level

Poland does not provide fiscal incentives at a fund level.

There is also no specially agreed tax treatment for fund managers or the fund itself to invest in private equity and venture capital.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure(^2)</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

Centre for Research & Development

The Polish Centre for Research & Development initiative provides income tax and real estate tax exemptions.

Technological Tax Relief

The Polish Technological Tax Relief is designed for the purchase of new technologies and provides the opportunity to decrease the tax base by up to 50% of the R&D cost incurred.

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\(^2\) R&D capital expenditure comprising expenditure connected with eg, the purchase of capital goods (tangibles or intangibles).
Introduction
Portugal provides a dedicated fund structure for private equity and venture capital investments. However, this does not allow transparency and restrictions may apply.

Taxes in Portugal are not unusually high but withholding taxes on items such as royalties do not present a favourable environment.

On the other hand, generous tax exemptions are available to investors.

Portuguese fund structures

Structures

The venture capital company (Sociedade de Capital de Risco or SCR) is the most commonly used investment vehicle in Portugal for private equity and venture capital investments. Venture capital companies usually manage several venture capital funds (Fundos de Capital de Risco or FCR).

Portugal has a specific legal regime for venture capital, including business angels (Investidores em Capital de Risco or ICR).

Transparency

FCRs are not transparent for either domestic or non-domestic investors.

Absence of incremental tax (as compared to direct investments)

Absent any differences in the withholding tax treatment of investors holding interests in the target companies directly and holding their interests through a limited partnership, this fund structure should not give rise to incremental Portuguese tax for domestic and non-domestic investors.

Permanent establishment

Venture capital structures do not constitute a permanent establishment in Portugal by law. But the local presence of a venture capital fund manager in the member state in which the investment is made may be regarded as a permanent establishment of the fund or of the investors themselves in this state.

Capital gains tax for non-resident investors

Net capital gains obtained by non-resident entities (without a permanent establishment in Portugal) on the sale of FCRs are exempt from corporate income tax (CIT) provided that the following conditions are met:

- Only 25% of the non-resident entity is held by a Portugal-resident entity
- The non-resident entity is not resident in a blacklisted country
- 50% of the assets are not composed of real estate

If the abovementioned conditions are not met, capital gains are taxed at a 10% rate (Article 23 (7) and 27 of the Portuguese Tax Benefits Code).

Undue restrictions

FCRs are free from undue restrictions.

Portuguese tax at a fund level

VAT on management fees

VAT is not levied on management fees in Portugal.

Capital gains tax

In general, capital gains obtained by a Portugal-resident company are taxed at a CIT rate of up to 31.5% (the standard CIT rate is 25%; the maximum of 31.5% includes municipal and state surtaxes for 2013).1

---

1 See the section on corporate income tax for more information (page 127).
### Summary

**Fund structures**

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No (subject to conditions)</td>
</tr>
<tr>
<td>Non-domestic</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

**Taxation at a fund level**

<table>
<thead>
<tr>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Min. 0%</td>
<td>Min. 0%</td>
<td>Stamp duties or transaction tax</td>
<td>Yes</td>
<td>Investors Yes</td>
</tr>
<tr>
<td></td>
<td>Max. 31.5%</td>
<td>Max. 28%</td>
<td>Transaction tax</td>
<td>No</td>
<td>Fund management No</td>
</tr>
</tbody>
</table>

**Taxation at a company level**

<table>
<thead>
<tr>
<th>Company tax</th>
<th>Special tax regime for SMEs or other small companies</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum 31.5% 2</td>
<td>No</td>
<td>Related-party loans Yes (subject to restrictions)</td>
</tr>
</tbody>
</table>

**Taxation of employees**

<table>
<thead>
<tr>
<th>Income tax</th>
<th>Social security 3</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min. 14.5% up from 11.5% in 2012</td>
<td>Min. 9.3% (employee)/ 11.9% (employer)</td>
<td>Max. 28%</td>
<td>Min. 14.5%</td>
<td>Yes</td>
</tr>
<tr>
<td>Max. 48% up from 46.5% in 2012</td>
<td>Max. 11% (employee)/ 23.75% (employer)</td>
<td></td>
<td>Max. 48% 4</td>
<td></td>
</tr>
</tbody>
</table>

**Fiscal incentives at a company level**

<table>
<thead>
<tr>
<th>Business R&amp;D expenditure</th>
<th>R&amp;D capital expenditure</th>
<th>Contracting researchers</th>
<th>Technology transfer</th>
<th>Cooperative external research</th>
<th>Innovative spin-out</th>
<th>Young and innovative companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

---

2 The standard corporate income tax rate is 25%; the maximum of 31.5% includes municipal surcharge (up to 15%, depending on the municipality) and state surcharge (up to 5%, depending on the taxable profits).

3 If a person is self-employed, in general, their self-employment income is subject to a rate of 29.6%.

4 For 2013 an extraordinary surtax is due at a rate of 3.5%. An additional solidarity surcharge is also due and applicable at a rate of 2.5% on annual income exceeding €80,000 (for annual income over €250,000 a tax rate of 5% will apply).
A company may apply for reinvestment relief whenever sales proceeds are fully or partially reinvested during the previous year, the year of the sale or the 2 subsequent years. This halves the tax base.5

Capital gains obtained by a holding company on the sale of participations held for more than 1 year are generally tax-exempt. However, the minimum holding period increases to 3 years if:

- The participation was acquired from a related party, a resident in a tax haven;
- or a Portuguese resident subject to a special tax regime
- The legal status of the seller in the 3-year period prior to the sale excluded the seller from tax exemption on capital gains

In general, capital gains on shares accrued in Portugal by individual shareholders are taxed at a rate of 28%. However, net capital gains obtained by resident private individuals on the sale of FCRs are taxed at a rate of 10%. For more information, please see below.

It is worth noting that the tax liability of domestic investors is different if the capital gain is not realised from a direct investment but from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor.

As outlined above, capital gains on the sale of FCRs obtained by non-resident entities are exempt, provided that a Portugal-resident company does not own more than 25% of the entity or that it is not resident in a tax haven. Otherwise they are taxed at a rate of 10%.

Furthermore, capital gains tax may be adjusted under a relevant double tax treaty.

**Withholding taxes**

In general, pursuant to internal tax law (2013 State Budget), dividends and interest are subject to withholding tax at a rate of 28% (up from 26.5% in 2012), for domestic and non-domestic investors.

Services rendered by non-resident entities and royalties are subject to withholding tax at a rate of 25% (up from 21.5% in 2012).

Under the Interest and Royalties Directive, withholding tax on interest and royalties due under domestic legislation may be reduced (5%) until 30 June 2013 and eliminated (0%) thereafter.

Exemptions from withholding tax under a relevant double tax treaty or the Parent-Subsidiary Directive may apply.

Withholding tax is recoverable for permanent establishments upon the submission of a CIT return.

Under Article 23 (2) Portuguese Tax Benefits Code, income distributed by FCRs is subject to withholding tax at a reduced rate of 10% for Portuguese residents and is not subject to tax when the recipient is not resident in Portugal, not resident in a tax haven nor more than 25% owned by a Portugal-resident company.

A tax credit of 50% against dividends added to overall income is available to Portugal-resident individuals (article 23 (6) of the Portuguese Tax Benefits Code).

**Stamp duties and transaction taxes**

Stamp duty is levied on the use of credit and guarantees according to maturity. However, some exemptions may apply.6

**Anti-abuse rules**

Portugal provides general (Article 38, General Taxation Law) and specific anti-abuse rules.

**Portuguese tax at a company level**

**Company tax**

Companies are subject to CIT at a general rate of 25%.

In addition, a state surcharge is applied to taxable profits in excess of €1,500,000 as follows:

- From €1,500,000 to €7,500,000: 3%
- Above €7,500,000: 5%7

A municipal surcharge is also due, at a rate of up to 1.5% (depending on the municipality).

In summary, the combined CIT rate may be up to 31.5%.

**Deductibility of interest**

**Unrelated-party loans**

Net interest expenses on unrelated-party loans are tax-deductible in Portugal. However, under the Portuguese pure holding companies (SGPS) tax regime, interest charged on loans obtained to finance the acquisition of share capital is not deductible for tax purposes.

5 See the section on fiscal incentives for more information (page 129).
6 Furthermore, Portugal is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
7 This applies to fiscal years beginning as of or after 1 January 2013 (2013 State Budget Law 66-B/2012, of December 31). Since 2013, the minimum taxable threshold from which the rate of 5% applies has been lowered from €10 million to €7.5 million.
Where the computation of this amount is not linear Portuguese tax law defines the computation method.

Related-party loans
Net interest expenses on related-party loans are also tax-deductible in Portugal.

Under Portuguese thin capitalisation rules, whenever the indebtedness of a resident entity, subject to CIT, to an entity outside the EU with which a special relationship exists is excessive, the interest in relation to the part considered excessive is not deductible for the determination of taxable income. A normal ratio of debt to equity is defined as 2.1 debt.

Thin capitalisation rules also apply when a Portuguese entity is indebted to an unrelated party resident outside the EU that has been provided with collateral or guarantees by a related party.

Under the Portuguese transfer pricing regime, where transactions between related parties are not priced on an arm’s length basis, the Portuguese tax authorities have the right to impose an appropriate adjustment in one company, with a corresponding adjustment in the other company to the transaction (domestic transactions). As a result, interest deductibility may be restrained whenever not following the arm’s length principle.

### Recent changes

The 2013 State Budget (Law 66-B/2012, of December 31), in force as of 1 January 2013, replaces the thin capitalisation rule by limiting the deductibility of financial costs.

Under the new rules, net financial costs may only be deductible up to the higher of the following limits: €3 million or 30% of the profit obtained before depreciations, net financing expenses and taxes.

Nevertheless, a transitional period is foreseen, under which this limitation will be gradually increased. The deductible percentage would then amount to 70% in 2013, 60% in 2014, 50% in 2015 and 40% in 2016. The 30% limit will only apply in 2017.

Financial costs that are not considered as tax-deductible because of these limits may be carried forward for a period of 5 fiscal years, as long as the limits are always complied with.

Furthermore, when the amount of financial costs considered as tax-deductible is lower than the 30% limit, the immediate and successive carry-forward of the unused limit is allowed for the following 5 fiscal years, until the total amount is used.

### Portuguese taxation of employees

#### Income tax for private individuals

The 2013 State Budget, in force as of 1 January 2013, reduced from 8 to 5 the personal income tax brackets and increased the standard income tax rates applicable to residents as follows:

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0–€7,000</td>
<td>14.5%</td>
</tr>
<tr>
<td>€7,000–€20,000</td>
<td>28.5%</td>
</tr>
<tr>
<td>€20,000–€40,000</td>
<td>37.0%</td>
</tr>
<tr>
<td>€40,000–€80,000</td>
<td>45.0%</td>
</tr>
<tr>
<td>€80,000+</td>
<td>48.0%</td>
</tr>
</tbody>
</table>

Furthermore, for 2013 an extraordinary surtax is due at a rate of 3.5%.

In addition, for 2013, an additional solidarity surcharge applies at a rate of 2.5% on annual income exceeding €80,000 (for annual income over €250,000 the tax rate will be 5%).

#### Social security payments

**Employees**

National insurance is charged on a person’s employment income.

- If a person is self-employed, in general, their self-employment income is subject to a rate of 29.6%.
- For employed persons, their employment income will be subject to different rates depending on their activity. For example, social security contributions are due on employees’ income at a rate of 11%, directly withheld by the company. On the other hand, members of statutory boards are subject to a lower social security contribution of 9.3%.  

**Employers**

Employers pay national insurance contributions at rates that vary with activity. The maximum social security contribution rate for employers is 23.75%. The minimum rates are 17.3% (in case of employees over 65 years) and 11.9% (in case of partially disabled employees) (on the mainland).
Capital gains tax for private individuals

In general, for private individuals, capital gains on shares are taxed at a rate of 28% (up from 26.5% in 2012).

Net capital gains obtained by resident private individuals on the sale of FCRs are taxed at a rate of 10%.

The taxpayer can opt to include this income in an annual income tax return.9

The taxation of stock options

In Portugal, tax is levied on stock options at two points in time:

> When stock options are exercised - in which case they are taxed as employment income
> When the underlying stock is sold - in which case they are taxed as capital gains

There are no special rules on stock options for certain company types.

There is no tax relief for the grantor of the stock options on the grant and/or exercise of stock options in Portugal.

Do note, however, that if reimbursement of the spread is made to the grantor company, the local subsidiary can deduct the amount reimbursed. On the other hand, if the local entity is a branch, a deduction can be made only if the costs of the stock option are (i) properly registered in the books of the branch and (ii) funded by the company to which the branch belongs.

Portuguese fiscal incentives

Fiscal incentives at a fund level

Portugal provides several fiscal incentives to invest in private equity and venture capital, mainly aimed at investors.

> A limited partner investing directly in a company, pursuant to Article 48 (4) of the Portuguese CIT Code, may apply for a reinvestment regime under which 50% of the capital gains from the sale of participations held for at least 1 year are exempt provided:
  - Proceeds are reinvested during the previous year, the year of the sale or the 2 subsequent years
  - Reinvestment is in participations, Portuguese government bonds or the acquisition or production of tangible fixed assets
  - Participations sold correspond to at least 10% of share capital
  - Sales and purchases are not made with entities resident in tax havens except when destined to pay-in share capital
> Pursuant to Article 23(2) of the Portuguese Tax Benefits Code, income distributed by FCRs is subject to withholding tax at a reduced rate of 10% for Portuguese residents and is not subject to tax when the recipient is neither resident in Portugal, resident in a tax haven nor owned more than 25% by a Portugal-resident company
> A tax credit of 50% against dividends added to overall income is available to Portugal-resident individuals (Article 23(6) of the Portuguese Tax Benefits Code)

Please also see the section on corporate capital gains taxation above for the special tax treatment of capital gains obtained by holding companies and of net capital gains obtained by non-resident entities.

For fund managers, income earned by an FCR, which may be constituted and operating in accordance with national legislation, is exempt from CIT.

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9 The tax rate applied will be whichever results from the global income declared, according to the different categories reported (Articles 22 and 72/4 and 7 of Personal Income Tax Code).
### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>No</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>No</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

SIFIDE is a tax incentive for R&D expenses, which will be in force until 2015. It applies to R&D expenses, such as personnel costs and the acquisition of fixed assets. The regime sets out 2 deductions:

- 32.5% of R&D expenses accounted for in the year
- 50% of the increase in the R&D expenses compared with the average of the last 2 fiscal years, limited to €1,500,000. This can be increased to 70%, up to €1,800,000, for expenses incurred in employing people with a doctorate degree

The first deduction is increased by 10% to 42.5% for SMEs that have not yet completed 2 years of activity.

Expenses that cannot be deducted because of an insufficient tax burden may be carried forward for the following 6 fiscal years.
Introduction

Romania’s tax system consists of an almost entirely flat rate of 16%. This means that Romania levies among the lowest corporate income tax (CIT), personal income tax and tax on stock options in Europe.

On the other hand, Romanian fiscal incentives are some of the least available in Europe.

Romanian fund structures

Structures

The typical domestic fund structures that may be used when considering a Romanian private capital investment are the closed-end investment fund for non-public assets (CEIF) (Alt Organism de Plasament Colectiv, AOPC). These are either closed-end investment funds based on civil contract or closed-end investment companies.

Transparency

Contract based closed-end investment funds are not subject to taxation on their income; the revenues derived by members are, however, taxable.

Closed-end investment companies are subject to the standard 16% corporate tax.

Absence of incremental tax (as compared to direct investments)

The contract-based AOPC does not give rise to incremental tax for domestic and non-domestic investors as compared to the situation where such investors would invest directly in the target companies. The AOPC companies are independently subject to corporate tax.

Permanent establishment

An AOPC does not create per se a permanent establishment in Romania. The Romanian permanent establishment definition is largely in line with the permanent establishment definition found in most double tax treaties based on the OECD model.

Capital gains tax for non-resident investors

The taxation of non-resident investors (both companies and individuals) in an AOPC incorporated as a legal entity is similar to the taxation of similar investments made by resident investors, ie:

- for individuals: capital gains realised upon the disposal of shares in non-listed companies are subject to 16% tax
- for companies: (recorded in the company’s income statement) - subject to the 16% standard rate

Subject to the tax residence of the investor, a double taxation treaty may apply, changing the applicable tax rate.

Capital gains triggered by the transfer of securities held in a Romanian AOPC established as a company, earned by non-resident collective investment undertakings not established as legal entities, are not subject to tax in Romania.

Undue restrictions

There are no tax restrictions regarding the types of AOPC investments. However, there are regulatory restrictions in this respect.

Romanian tax at a fund level

VAT on management fees

The fund management company does not have to pay VAT on management fees charged on an AOPC, as the management of financial services are VAT-exempt. VAT is, however, applicable to management services rendered to Romanian portfolio companies.

Capital gains tax

Capital gains derived upon the disposal of shares by AOPCs in non-listed companies are taxed at a rate of 16% (irrespective of the period of holding the shares).
### Summary

<table>
<thead>
<tr>
<th>Fund structures</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor type</td>
<td>Domestic</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Non-domestic</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Subject to double tax treaty</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Regulatory</td>
</tr>
<tr>
<td>Closed-End Investment Fund for Non-Public Assets (CEIF or AOPC)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract-based</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Subject to double tax treaty</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Regulatory</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Taxation at a fund level</th>
<th>Taxation of employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>VAT on management fees</td>
<td>Income tax 16%</td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>Social security 16.5% (employee) + maximum 28.45% (employer)</td>
</tr>
<tr>
<td>Withholding tax</td>
<td>Capital gains tax 16%</td>
</tr>
<tr>
<td>Stamp duties or transaction taxes</td>
<td>Tax on stock options Taxable at employee level at 16% when underlying stock is sold</td>
</tr>
<tr>
<td>Anti-abuse rules</td>
<td>Special tax regimes No</td>
</tr>
<tr>
<td>Fiscal incentives</td>
<td>Fund management No</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Taxation at a company level</th>
<th>Fiscal incentives at a company level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company tax 16%</td>
<td>Business R&amp;D expenditure No</td>
</tr>
<tr>
<td>Special tax regime for SMEs or other small companies Yes</td>
<td>R&amp;D capital expenditure Yes</td>
</tr>
<tr>
<td>Deductibility of interest Related-party loans Yes, subject to restrictions</td>
<td>Contracting researchers No</td>
</tr>
<tr>
<td>Unrelated-party loans Yes, subject to restrictions</td>
<td>Technology transfer No</td>
</tr>
<tr>
<td></td>
<td>Cooperative external research No</td>
</tr>
<tr>
<td></td>
<td>Innovative spin-out No</td>
</tr>
<tr>
<td></td>
<td>Young and innovative companies No</td>
</tr>
</tbody>
</table>

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Capital gains triggered by the disposal of shares in listed companies by AOPCs (as an entity) are taxed at 1% if the securities are held for a period exceeding 365 days or 16% if the securities are held for a period below 365 days.

The tax liability of a domestic investor is the same if the gain is not realised from a direct investment but from an investment in a tax-transparent (domestic or non-domestic) fund that distributes the proceeds of the gain to the domestic investor.

Withholding taxes

A withholding tax of 16% applies to dividend distributions made by Romanian companies to non-resident entities unless a lower tax treaty rate applies (provided that the entity qualifies for treaty protection).

Furthermore, an exemption is available under the EU Parent-Subsidiary Directive for dividends paid to a company resident in another EU and EEA member state or a permanent establishment of an EU and EEA-resident company located in another EEA member state (subject to certain conditions being met - a 10% holding for an uninterrupted period of 2 years).

There are no ad valorem capital duty taxes under Romanian legislation. Double tax treaties should also be considered on a case-by-case basis.

If a taxpayer paid withholding tax at a rate higher than that provided under a treaty or EU law, the amount in excess can be recovered upon request. In order to recover tax paid in excess, a non-resident entity must submit a reimbursement request to the Romanian income tax authority within 5 years.

Stamp duties and transaction taxes

There are no stamp duties or transaction taxes in Romania.

Anti-abuse rules

As of January 2013, specific anti-abuse rules have been implemented allowing the tax authorities to re-qualify transactions that cannot be properly substantiated.

A general “substance over form” principle applies.

Transfer pricing regulations apply: transactions between related parties should be at an arm's length level.

Thin capitalisation restrictions apply within a 3:1 debt to equity ratio. The portion of interest that exceeds the agreed threshold is treated as non-deductible. See also below.

Romanian tax at a company level

Company tax

The standard tax rate in Romania is 16%.

Company tax for SMEs

There is a special company tax rate (of 3% applied to turnover) for “micro-enterprises” starting as of February 2013. A company qualifies as a micro-enterprise if, amongst other conditions:

- Annual turnover does not exceed the equivalent in €65,000
- It is not owned by the state or by local authorities
- It is not a management/consulting/insurance/bank/gambling company

Deductibility of interest

Net interest expenses on both related and unrelated-party loans are fully deductible provided that the loans are granted by financial institutions.

For loans granted by institutions other than financial ones, the deductibility of interest expenses and net foreign exchange losses is assessed on the basis of 2 criteria:

- The deductibility of interest on loans contracted from related parties and non-financial institutions is limited to an interest rate of 6% for loans denominated in a foreign currency and to the reference interest rate (as announced by the NBR for the last month of the quarter) for loans denominated in the local currency. Any interest paid in excess of the above-mentioned rates is non-deductible for tax purposes.
- If the debt to equity ratio is higher than 3.1 or the equity is negative, interest expenses and net foreign exchange losses on long term loans (other than those expressly referred to by law) are wholly non-deductible in the year they are incurred. Any non-deductible interest subject to this criterion may be carried forward (until it is fully deducted) to future tax periods where the debt to equity ratio is positive and falls below 3.1. The debt to equity ratio rules do not apply to Romanian banks, branches of foreign banks, leasing companies, mortgage companies, credit institutions and non-bank financial institutions.
Romania

Romanian taxation of employees

**Income tax for private individuals**

The income tax rate in Romania is flat at 16% (from gross salary after deducting employees' social security contributions).

**Social security payments**

Individual social security payments are made up of three parts:

- A social security contribution (CAS): 10.5% - capped at 5 times the gross monthly average salary
- A health insurance contribution (CASS): 5.5%
- Unemployment fund: 0.5%

Depending on the nature of the income derived (i.e., freelancing activities, intellectual property rights, etc) some of the above-mentioned contributions may not be due. However, where income is derived from dependent activities (i.e., employment income) all of the above mentioned social security contributions are due.

Employers’ social security contributions (for normal working conditions):

- Social security contribution (CAS): 20.8%
- Health insurance contribution (CASS): 5.2%
- Contributions to the unemployment fund: 0.5%
- Salary guarantee fund: 0.25%
- Child-raising contribution: 0.85%
- Accidents at work and professional diseases contribution: 0.15% - 0.85%, depending on the employer’s activity

**Capital gains tax for private individuals**

Capital gains are taxed as income in Romania: the tax rate applicable to capital gains derived from the disposal of shares by private individuals is 16%.

**The taxation of stock options**

At the employer’s level, stock option plans are not taxable; at the employee’s level, stock options are taxed as capital gains when the underlying stocks are sold.

There are no special rules on stock options for certain types of companies in Romania, and there is no tax relief for the grantor of the stock options.

1 Stock option plans are not taxable at the employer’s level.

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### Romanian fiscal incentives

**Fiscal incentives at a fund level**

Romania does not provide fiscal incentives at a fund level.

**Fiscal incentives at a company level**

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>No</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
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<td>Technology transfer</td>
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<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

Romanian legislation allows companies to benefit from accelerated depreciation for capital expenditure.

Furthermore, Romanian taxpayers are entitled to a supplementary deduction of 50% from R&D expenses for corporate tax purposes. This extra deduction should be computed quarterly/annually.
**The Slovak Republic**

**Introduction**

The Slovak Republic makes no distinction between regular income and capital gains and taxes both of them as ordinary income through corporate or individual income tax. In 2012, taxes were levied at a flat rate of 19%; however, since 2013 the corporate income tax (CIT) rate has increased to 23%.

Slovakian fiscal incentives are limited to a generous scheme covering R&D expenditure.

**Slovakian fund structures**

**Structures**

The Slovak Republic does not provide any specific structure for private equity and venture capital investments. Mostly, the structure of a limited liability company (LLC) or, in Slovak, *spoločnosť s ručením obmedzeným* or joint-stock company (JSC) in Slovak, *akciová spoločnosť*, is used.

Both are of a very similar nature and the implications for both legal forms are identical. The sections below that apply to an LLC apply also to a JSC.

**Transparency**

Generally, a Slovak LLC is not a tax-transparent legal entity (for domestic or non-domestic investors). However, in general, there is no taxation of dividends in the Slovak Republic and therefore, if a foreign investor invests in a Slovak LLC, only CIT at the level of the Slovak LLC applies. Further, dividends can be freely distributed among foreign investors without being subject to withholding tax in the Slovak Republic.

If a Slovak resident person invests in a Slovak LLC, he is obliged to pay a health insurance payment of 14% of the dividend income, which is deducted at the level of the LLC.1 As such, this has the same nature as withholding tax.

Note that there is a maximum assessment base above which no health insurance payment is applicable. Currently, this base amounts to €141,480 per year. If the dividends are distributed to domestic corporate investors, they are not subject to withholding tax, corporate tax or any health insurance payment.

**Permanent establishment**

A Slovak LLC is regarded as a taxpayer with unlimited tax liability. It is therefore subject to taxation on its worldwide income since it has its registered seat situated in the Slovak Republic. However, if a place of effective management is situated in another country, it will most likely result in dual residency, in which case double tax treaties often apply. In most, if not all, double tax treaties to which the Slovak Republic is a party, the place of effective management is a decisive factor where there is a dual tax residence claim. Slovak tax authorities generally accept this treaty rule.

If the Slovak LLC is not a tax resident of the Slovak Republic, it is obliged to pay taxes in the Slovak Republic from the income generated in the Slovak Republic (not from the worldwide income), provided that it has a permanent establishment situated therein. Please note that the Slovak LLC does not per se form a permanent establishment. The Slovak LLC is deemed to create a permanent establishment for CIT purposes only if the following three conditions are cumulatively fulfilled:

a. The LLC has a fixed place for its activities
b. The fixed place is permanent
c. Business is partly or wholly carried on through the Slovak LLC

Firstly, if there is an office physically situated in the Slovak Republic, irrespective of its nature and legal background, this is a fixed place for the Slovak LLC’s activities. Criteria confirming the existence of such fixed place include facilities essential for pursuing activities (work and office equipment such as furniture, computer, access to the internet, phone, etc.) owned by or available to the Slovak LLC and located in such place.

---

1 Having its registered seat in the Slovak Republic and distributing dividends to natural persons participating in public health insurance according to the Health Act on a mandatory basis (i.e. natural persons having their permanent residence in the Slovak Republic, subject to minor exceptions).
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Domestic</th>
<th>Non-domestic</th>
<th>Domestic</th>
<th>Non-domestic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited Liability Company</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Joint-Stock Company</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th>Taxation</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>VAT on management fees</td>
<td>No (if considered a distribution of profit shares)</td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>23% (up from 19% in 2012)</td>
</tr>
<tr>
<td>Withholding tax</td>
<td>Not on dividends²</td>
</tr>
</tbody>
</table>

#### Taxation at a company level

<table>
<thead>
<tr>
<th>Taxation</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company tax</td>
<td>23% (up from 19% in 2012)</td>
</tr>
<tr>
<td>Special tax regime for SMEs or other small companies</td>
<td>No</td>
</tr>
<tr>
<td>Deductibility of interest</td>
<td>Related-party loans Yes (subject to anti-abuse rules)</td>
</tr>
</tbody>
</table>

#### Taxation of employees

<table>
<thead>
<tr>
<th>Taxation</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td>19%/25%</td>
</tr>
<tr>
<td>Social security³</td>
<td>Min. Approximately €45 for employees/approximately €119 for employers Max. Approximately for €520 for employers/for employers it depends on income</td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>19%/25%</td>
</tr>
<tr>
<td>Tax on stock options</td>
<td>As employee income (when option is vested)⁴</td>
</tr>
<tr>
<td>Special tax regimes</td>
<td>No</td>
</tr>
</tbody>
</table>

#### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Fiscal incentives</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>No</td>
</tr>
<tr>
<td>Cooperative external research</td>
<td>No</td>
</tr>
<tr>
<td>Innovative spin-out</td>
<td>No</td>
</tr>
<tr>
<td>Young and innovative companies</td>
<td>No</td>
</tr>
</tbody>
</table>

---

² In the Slovak Republic, there is no taxation of dividends (only dividends from profits generated before 2004 are taxed). However, health insurance payment for dividend income is due in certain circumstances.

³ Including social security charge and health insurance payment.

⁴ In case of dividend payment, social security charges (health insurance + social insurance) are levied if the employee has no ownership interest in the company distributing the dividends.
Permanence of the fixed place for the Slovak LLC’s activities is interpreted as a long-term, systematic and not just occasional nature of such fixed place and activities pursued therein. The duration (or even expected duration) for 6 months or more is usually (with some exceptions) considered as permanence.

The third condition connects the activities pursued in the fixed place with the business of the Slovak LLC. If such activities are pursued systematically and with the aim of achieving profit, they will most likely be considered as business activities. On the other hand, most tax treaties provide a “safe harbour” list of activities that do not constitute a permanent establishment and therefore can be viewed as non-business activities. Such activities are usually of secondary and non-core nature for the business of the founder of the Slovak LLC and include, for example, passive storage of goods, providing information on the products and services of the founder and collecting information on potential customers on the territory. This very distinction between business activities and non-business, auxiliary activities may prove to be crucial for the view whether or not the founder’s presence in Slovakia constitutes a permanent establishment.

**Capital gains tax**

The Slovak Republic makes no distinction between regular income and capital gains and taxes both of them as ordinary income through CIT or individual income tax. See respective sections below.

No municipal or local tax is levied. No participation exemption may be applied.

Generally, there is no taxation of proceeds of the gains in the Slovak Republic. However, natural insurance residents (i.e. persons participating in Slovak public health insurance on a mandatory basis) are obliged to pay health insurance payment of 14% from dividends.

Since domestic or non-domestic funds are not legal entities, the proceeds of gains thereof are not subject to health insurance payments in the Slovak Republic.

**Withholding taxes**

In general, the Slovak Republic does not levy withholding taxes on dividends. However, it does levy health insurance payments on dividend income much like a withholding tax. These payments are deducted by companies with a registered seat in the Slovak Republic and distributing dividends to resident persons participating in public health insurance on a mandatory basis (according to the Slovak Health Act).

Furthermore, the Slovak Republic withholds tax at 19% on interest and income from securities, etc, with an exception for interest, winnings and other income from passbook deposits, funds on current accounts, home-saving accounts and deposit accounts, income from unit certificates, certificates of deposit, deposit letters and treasury bonds if paid to a mutual fund, pension funds, banks or a branch of a non-resident bank, or the export-import bank of the Slovak Republic.

Under Slovak law, it is not clear whether this exception also applies to non-domestic funds.

**Stamp duties and transaction taxes**

Under Act no. 384/2011 Coll., banks are charged a bank levy at a general rate of 0.4% of their liabilities which are further specifically adjusted (decreased rates apply in selected scenarios). Banks are obliged to pay the levy in 4 quarterly payments.

Transaction taxes are currently subject of discussion on the EU level.\(^5\)

---

\(^5\) The Slovak Republic is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
There are anti-abuse rules in the Slovak Republic. Generally, a principle of “substance over the form” applies. More specifically, there are transfer pricing rules defined in the Slovak law as well as implicit anti-treaty shopping measures contained in double tax treaties to which the Slovak Republic is a party.

Company tax
In 2012 company tax was levied at a flat rate of 19%. This has increased to 23% from 2013.

Deductibility of interest
Net interest expenses on both related and unrelated-party loans are tax-deductible in the Slovak Republic, subject to anti-abuse rules (including transfer pricing rules, applicable to foreign related persons only, and “substance over the form” principle, applicable to everyone).

In 2012, income tax was levied at a flat rate of 19%.

From 2013 resident persons whose annual taxable income (from all sources of income) does not exceed approximately €34,400 are still taxed at 19%. For residents above this level, the rate has increased to 25%.

No municipal or local tax is added.

There is no specific taxation on capital gains in Slovakia. Capital gains are taxed as ordinary income.

Stock is taxed in the Slovak Republic when the option is vested as employee income, if it is part of the employee’s remuneration (if it is in the form of bonuses to regular remuneration and it is not in the form of a dividend payment).

If it is a dividend payment, the health insurance premium rate of 14% of the dividend income is paid by the employee. Note that there is a maximum assessment base above which no health insurance payment is applicable. Currently, this base amounts to €141,480 per year. These payments are deducted at the level of the paying company (constituting a de facto withholding tax) having its registered seat in the Slovak Republic and distributing dividends to natural persons participating in public health insurance on a mandatory basis (according to the Slovak Health Act).

There is no minimum assessment base for employees in the Slovak Republic. However, if work is performed on a full-time basis, the minimum wage is €337,70 for 2013, which is similar in nature to a minimum assessment base for employees.
The Slovak Republic

There are no specific rules on stock options for certain types of company.

Furthermore, there is no tax relief for the grantor of the stock options on the grant and/or exercise of stock options.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When the option is vested</td>
<td>As employee income (if it is part of the employee's remuneration) In case of dividend payment, social security charges (health insurance + social insurance) are levied if the employee has no ownership interest in the company distributing the dividends</td>
</tr>
</tbody>
</table>

Special rules for certain types of company

| Tax relief for the grantor | No |

Slovak fiscal incentives

Fiscal incentives at a fund level

The Slovak Republic does not provide fiscal incentives at a fund level.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>No</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>
Slovenia

Introduction
Slovenia provides two structures for investments in private equity and venture capital. However, both constitute a permanent establishment and are not transparent for either domestic or non-domestic investors. Nevertheless, subject to conditions, a venture capital company may be exempt from taxation.

Corporate taxes in Slovenia are low. While the tax rates for private individuals (natural persons) are very high, tax reliefs are available; however, the amounts are rather small.

Slovenian fund structures

Structure
The most commonly-used fund structure for private equity and venture capital investment is the mutual fund. In addition, the venture capital company is available.

Transparency
Slovenian venture capital companies are not transparent for either domestic or non-domestic investors.

Absence of incremental tax (as compared to direct investments)
Venture capital companies do not offer domestic and non-domestic investors the same taxation as compared to the situation that these investors would invest directly in the target companies.

Permanent establishment
A venture capital company will generally constitute a permanent establishment in Slovenia making non-domestic investors and fund managers subject to domestic taxes.

Capital gains tax for non-resident investors
For corporate investors there are no other circumstances where capital tax gains is charged to non-residents (if there is no permanent establishment to which capital gains can be attributed). For individuals, please see below.

Undue restrictions
A venture capital company is considered to be free from undue restrictions.

Slovenian tax at a fund level

VAT on management fees
General rules regarding VAT apply. As a result, there is VAT on management fees charged to the fund.

This VAT may be recuperated if related to taxable business transactions and if other conditions for VAT deduction are met. Restrictions on VAT deduction include:

- Vehicles and related services
- Accommodation
- Food and drink

Capital gains tax

There is no specific tax rate for capital gains for companies. Capital gains are included in the taxable revenues and, as such, subject to corporate income tax rates: 18% in 2012, 17% in 2013, 16% in 2014, 15% from 2015 onwards.

Generally, 50% of capital gains derived by a taxpayer from the disposal of shares are exempt from taxation provided that the taxpayer who generated the capital gain:

- Holds at least 8% of the share capital for a minimum period of 6 months
- Employs at least 1 employee on a full-time basis

1 Likewise, 50% of loss is not tax-deductible.
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td>Mutual fund</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Venture Capital Company</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes (individuals)/ No (corporate investors)</td>
<td>No</td>
</tr>
</tbody>
</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>Payment</th>
<th>Reclaim</th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>17% 2 (down from 18% in 2012)</td>
<td>Min. 0%</td>
<td>No</td>
<td>No</td>
<td>Investors</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Max. 15% 3</td>
<td>Transaction</td>
<td>Fund management</td>
<td>Fund management</td>
</tr>
</tbody>
</table>

#### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Income tax</th>
<th>Social security</th>
<th>Capital gains tax</th>
<th>Tax on stock options</th>
<th>Special tax regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Min. 16%</td>
<td>38.2% 5</td>
<td>Min. 0%</td>
<td>Min. 0%</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Max. 50% 4</td>
<td></td>
<td>Max. 25% (up from 20% in 2012)</td>
<td>Max. 50%</td>
<td></td>
</tr>
</tbody>
</table>

#### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th></th>
<th>Business R&amp;D expenditure</th>
<th>R&amp;D capital expenditure</th>
<th>Contracting researchers</th>
<th>Technology transfer</th>
<th>Cooperative external research</th>
<th>Innovative spin-out</th>
<th>Young and innovative companies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

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2 However, 50% of capital gains derived by a taxpayer from the disposal of shares may be exempt subject to certain conditions.
3 For private individuals, withholding tax amounts to 25% since 1 January 2013 (up from 20% in 2012).
4 The 50% tax bracket applies only temporarily for the years 2013 and 2014.
5 16.1% is paid by the employer and 22.1% is paid by the employee.
No municipal, local, social or trade tax is levied.

The tax liability of a domestic investor is not different if the gain is not realised from a direct investment but from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor.

**Withholding taxes**

Dividends and income similar to dividends paid to non-residents are subject to 15% withholding tax of the gross amount.

For private individuals (who are resident in Slovenia), withholding tax amounts to 25% since 1 January 2013 (up from 20% in 2012). No municipal, local, social or trade tax is levied.

Withholding tax is not due if the EU Parent-Subsidiary Directive applies.

No withholding tax is levied on dividends and similar income if:

- The recipient is an EU company that is subject to corporate income tax (CIT) and has a legal form listed in the Directive; and
- Holds directly at least 10% of the capital or voting rights in the payer that is a Slovene-resident company
- Additionally, a continuous minimum holding period of 2 years is required

If the recipient does not fulfil the minimum holding period requirement, dividends or similar income may be paid out without being subject to withholding tax if the payer of the dividend provides an appropriate bank guarantee to the responsible tax authorities to secure the possible tax liability.

The tax authorities can redeem the guarantee if the dividend's recipient does not record the minimum participation of 24 months. If withholding tax has been paid and the minimum holding period requirement is subsequently fulfilled or has been fulfilled at the time of the payment, the taxpayer is entitled to a tax refund.

If the Parent-Subsidiary Directive cannot be applied, the payer of the income and the recipient may still use the benefits from the double tax treaty.

Withholding tax paid decreases the domestic tax liability for companies. Withholding tax for private, resident individuals is definite.

**Stamp duties and transaction taxes**

Slovenia does not levy a stamp duty or transaction tax.6

**Anti-abuse rules**

There are no anti-abuse rules in Slovenia.

**Slovenian tax at a company level**

**Company tax**

In 2013, company tax is levied in Slovenia at 17% (down from 18% in 2012). This will reduce by one percentage point each year down to a rate of 15% in 2015.

No municipal, local, social or trade tax is levied.

**Deductibility of interest**

**Unrelated-party loans**

Net interest expenses on unrelated-party loans are tax-deductible in Slovenia if they are required for gaining revenues that are taxable under the Corporate Income Tax Act.

**Related-party loans**

The tax deductibility of interest between related entities is subject to thin capitalisation rules.

Interest paid on loans received from a shareholder or partner who, at any time during the tax period, directly or indirectly owned at least 25% of the shares in the equity capital or voting rights of the taxpayer is not recognised as an expense if, at any time during the tax period, the loan exceeds the prescribed debt to equity ratio of 4:1.

However, if the taxpayer can prove that the excess loan could also be granted by a non-related entity under the same or similar circumstances, the thin capitalisation rules do not apply.

Loans granted by a shareholder include loans granted by third parties if guaranteed by the shareholder, and loans granted by a bank if granted in connection with a deposit held in that bank by the shareholder.

The law provides that interest on loans granted by entities established in states where CIT is below 12.5% is not deductible.

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6 However, Slovenia is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
**Slovenian taxation of employees**

**Income tax for private individuals**

Income tax is levied in the following brackets for 2013:

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax</th>
<th>Rate on excess in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0–€8,021.34</td>
<td></td>
<td>16%</td>
</tr>
<tr>
<td>€8,021.34–€18,960.28</td>
<td>€1,283.41</td>
<td>27%</td>
</tr>
<tr>
<td>€18,960.28–€70,907.20</td>
<td>€4,236.92</td>
<td>41%</td>
</tr>
<tr>
<td>€70,907.20+</td>
<td>€25,535.16</td>
<td>50%</td>
</tr>
</tbody>
</table>

The 50% tax bracket applies only temporarily for the years 2013 and 2014.

No municipal, local, social or trade tax is levied.

**Social security payments**

Social security is levied on gross income (including fringe benefits and other employment income) in Slovenia at the:

- Employee rate of 22.1%
- Employer rate of 16.1%

**Capital gains tax for private individuals**

In 2012, capital gains on the disposal of shares for private individuals were taxed at 20%. As of 1 January 2013, this rate has increased to 25%. No municipal, local, social or trade tax is levied.

For each completed period of 5 years, the capital gains tax rate is lowered by 5%. Thus, gains are taxed at 15% after 5 years of ownership, 10% after 10 years of ownership, 5% after 15 years of ownership and 0% after 20 years.

**The taxation of stock options**

Stock options are taxed as capital gains when the underlying stocks are sold or as employment income (benefit in kind) when the option is exercised.

There are no special rules on stock options for certain types of company, and there is no tax relief for the grantor of the stock options.

**Taxation of stock options**

<table>
<thead>
<tr>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the underlying stocks are sold Or When the option is exercised</td>
<td>As capital gains Or As employment income (benefit in kind)</td>
</tr>
</tbody>
</table>

**Special rules for certain types of company**

No

**Tax relief for the grantor**

No

**Slovenian fiscal incentives**

**Fiscal incentives at a fund level**

Profits generated by an alienating ownership share acquired by investment in a venture capital company may be excluded from the tax basis if:

- The venture capital company has been set up in accordance with the Venture Capital Companies Act
- The status of the venture capital company did not change throughout the period of ownership of the capital holdings

Furthermore, venture capital companies pay corporate profit tax on activities relating to implementing permissible investments, at a 0% rate of the tax basis, provided that a separate tax statement is compiled for just that part of their activities.

**Fiscal incentives at a company level**

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
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<tr>
<td>Technology transfer</td>
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<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>Yes</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>
**R&D incentive**

A taxable entity may claim a reduction of the tax base by 100% of the amount invested in R&D in a period, however, not exceeding the tax base. This covers investments in:

- Internal R&D activities of the taxable entity, including the purchase of R&D equipment used exclusively and permanently in R&D activities of the taxable entity
- The purchase of R&D services rendered by other persons, including affiliates or other public or private R&D organisations

In order to be eligible to claim this tax incentive, tax legislation requires the preparation of a business plan or plan for developing projects. This will be used to monitor and verify the R&D process against planned activities and results.

**Investment incentive**

Based on the Corporate Income Tax Act, taxpayers may apply for an investment incentive (reduction of the taxable base) equal to 40% of the amount invested in equipment\(^7\) and intangible assets. However this must not exceed the tax base.

Any unused amount may be carried forward for 5 tax years.

Use of the R&D incentive precludes the use of the investment incentive.

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\(^7\) Excluding furniture and office equipment but including hardware and software.
**Introduction**

Spain offers two incentivised fund structures for private equity and venture capital investment. They are not tax-transparent and do not constitute a permanent establishment.

The tax burden in Spain is skewed towards individuals so that, whilst fund-level taxes are practically nothing on average, taxes at an individual level are high. This is in part due to temporary tax rises that are in effect until the beginning of 2014.

A range of deductions are allowed for R&D expenses and an incentive for entrepreneurs is under consideration.

**Spanish fund structures**

**Structures**

Spain has two structures for private equity and venture capital investment:

- *Sociedad de Capital Riesgo* (SCR)
- *Fondo de Capital Riesgo* (FCR)

The most commonly-used domestic fund structure for private equity and venture capital investment in Spain is the FCR structure.

**Transparency**

SCRs and FCRs are not transparent for either domestic or non-domestic investors as they are fully subject to Spanish corporate tax.

**Absence of incremental tax (as compared to direct investments)**

Nevertheless, they benefit from a special regime that allows for a practically full exemption on qualifying capital gains, so that there is a substantive difference between the taxation of an investment made through a fund structure and an investment made directly in the target company (see below).

Furthermore, SCRs and FCRs will normally benefit from double taxation treaties entered into by Spain.

**Permanent establishment**

Because they are subject to Spanish corporate tax, SCRs and FCRs prevent non-domestic investors and fund managers from having a permanent establishment in Spain.

**Capital gains tax for non-resident investors**

Non-residents that invest through an FCR or SCR are not taxed in Spain on the capital gains or dividends they obtain from the FCR or SCR.

Please see below for more information on Spanish taxation for non-residents with no permanent establishment in Spain.

**Undue restrictions**

Spanish regulations on private equity and venture capital investment structures, set out in Law 25/2005, of 24 November, Regulatory of private equity entities and their management companies, contain restrictions on the assets in which SCRs and FCRs can invest, and the ratios and limits of the investment.

SCRs and FCRs can only invest in certain entities (“qualifying companies”) under the applicable law. In this regard, SCRs and FCRs can:

- Hold shares in non-financial and non-real estate companies that are not listed at the moment of the transaction. In this sense, holding companies are considered as non-financial by law if they hold shares in non-financial companies
- Invest in listed companies if in the 12 months following the acquisition of shares, they are delisted
- Invest in other venture capital entities
- Develop other activities, such as providing profit-sharing loans and providing advice to their investee companies
## Summary

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic</td>
<td>Domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Non-domestic</td>
<td>Non-domestic</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

| Sociedad de Capital Riesgo (SCR) | No | No | Yes | Yes | No | No | Yes |
| Fondo de Capital Riesgo (FCR)   | No | No | Yes | Yes | No | No | Yes |

### Taxation at a fund level

- **VAT on management fees**: No
- **Capital gains tax**: 0.30%\(^1\)
- **Withholding tax**: 0%
- **Stamp duties or transaction taxes**: Stamp: Yes, Transaction: No
- **Anti-abuse rules**: Yes
- **Fiscal incentives**: Investors: Yes, Fund management: Yes

### Taxation at a company level

- **Company tax**: 30%
- **Special tax regime for SMEs or other small companies**: Yes
- **Deductibility of interest**: Related-party loans: Yes but limited, Unrelated-party loans: Yes but limited

### Taxation of employees

- **Income tax\(^2\)**: Min. 24.35%, Max. 51.9%
- **Social security\(^3\)**: Min. €391.68, Max. €1,276.07
- **Capital gains tax**: Min. 21%, Max. 27%
- **Tax on stock options**: Min. 24.35%, Max. 51.9%
- **Special tax regimes**: Yes

### Fiscal incentives at a company level

- **Business R&D expenditure**: Yes
- **R&D capital expenditure**: Yes
- **Contracting researchers**: Yes
- **Technology transfer**: Yes
- **Cooperative external research**: Yes
- **Innovative spin-out**: No
- **Young and innovative companies**: No

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1. Spanish law establishes a 99% tax exemption for capital gains. The remaining 1% is taxed at the company tax rate of 30%, so capital gains at a fund level are taxed at a rate of 0.30%.

2. These are the tax rates for Madrid. The tax rate varies depending on the Spanish region.

3. These figures are an approximation of the total contribution to social security to be paid by the employer in the event of (i) an employee within the category of engineer and university graduate, (ii) economic activity of office work and (iii) no extraordinary hours being made by the employee. The employee contribution is deducted from gross salary.
Spain

In addition, Law 25/2005 establishes a minimum 60% mandatory investment ratio in qualifying companies for SCRs and FCRs, of which a maximum of 30 and 20 percentage points, respectively, can be invested in profit-sharing loans and in other private equity funds.

The remaining 40% is unrestricted and it can be invested, in general, in other financial assets (quoted shares and securities, loans, etc) and in the case of SCRs, up to 20% in fixed assets needed for the development of their activity.

Additionally, Law 25/2005 sets out mandatory ratios to ensure investment diversification.

Spanish tax at a fund level

VAT on management fees
Management services rendered to SCRs and FCRs by their authorised management entities are VAT-exempt.

Capital gains tax
Under the special SCR and FCR corporate tax regime, there is a 99% tax exemption for gains arising from the transfer of shares in qualifying companies held for at least 1 year. No exemption is granted after a holding period of 15 years. Exceptionally, an extension to 20 years may be granted.

The exemption is applied subject to the condition that real estate representing at least 85% of the book value of the total real estate of the investee company is used uninterruptedly throughout the time during which the securities are held, for an economic activity that is not finance or real estate activities.

In the event that the investee qualifying company is admitted to a stock market regulated by Directive 2004/39/CEE of the European Parliament and the Council of 21 April 2004, the exemption is subject to the condition that the FRC or the SCR transfers its participation in the capital of the investee qualifying company within a term of no more than 3 years. Please see below for the taxation of capital gains at a company level.

Withholding taxes
Dividends distributed by Spanish qualifying companies to SCRs and FCRs are not subject to withholding tax and are fully deductible at the SCR and FCR level under their corporate tax.

Dividends distributed by non-Spanish qualifying companies to SCRs and FCRs are tax-exempt in Spain.

Please see below for withholding taxes at a company level.

Stamp duties and transaction taxes
Equity contributions are not subject to capital duty. However, share capital redemption is still subject to a 1% capital duty on the value of the assets distributed to the shareholders upon redemption.

Anti-abuse rules
A number of general anti-abuse rules are applied:

- In general, the exemptions are not applicable to gains and income obtained through a country or territory qualified under the relevant regulations as a tax haven.
- The 99% exemption on gains is not applicable when the individual or entity acquiring the securities is connected with the SCR or FCR or its shareholders or participants, or when they are residents in a country or territory qualified under the relevant regulations as a tax haven, except where the individual or entity acquiring the securities is the entity in which securities are being acquired itself, any of the members or administrators of the entity in which securities are being acquired, or another FCR or SCR.
- The 99% exemption on gains is not applicable to the income generated by the transfer of the securities that have been acquired, directly or indirectly, by the FCR or SCR from a person or entity connected to it or to its members or participants, in the event that prior to the acquisition there was a connection between the members or participants of the entity and the qualifying company in which the securities are held.
- When the securities are transferred to another connected FCR or SCR, the transferee entity inherits from the transferor the acquisition date and the value of the shares for tax purposes.
- For the purposes of the anti-abuse rules above, “connected” means the participation, directly or indirectly, in at least 25% of the share capital or funds of the entity.

Spanish tax at a company level

Company tax
Company tax is levied in Spain at 30%.

In addition, the following taxes apply to Spanish companies.

4 Furthermore, Spain is one of the 11 EU member states that intend to introduce a uniform EU Financial Transaction Tax by means of an enhanced co-operation.
Local taxes
Local taxes are levied, based on the specific characteristics and circumstances of activities performed in Spain or assets held in Spain.

For example, a business activity tax is due depending on factors such as the number of employees and the square metres of the facilities used in the activity.

Capital gains tax
Gains on the transfer of shares are normally included in the corporate tax base.

However, some allowances to mitigate double taxation apply in certain conditions. The most relevant are the following:

- When a stake of at least 5% in a Spanish investee company has been held for the year prior to the transfer, the transferring company can deduct from its corporate tax an amount equivalent to the proportional undistributed reserves generated by the investee company during the period of holding.
- However, when the transfer is of shares in an SCR or participations in an FCR, this deduction applies regardless of the stake and period of holding of the participation.
- In general, when a stake of at least 5% in a non-Spanish trading investee company has been held for the year prior to the transfer, the resulting capital gain is exempt from corporate tax.

Dividends tax
Dividends derived from the participation in a Spanish company are normally included in the corporate tax base.

However, some allowances to mitigate double taxation apply under certain conditions. The most relevant are:

- A general 50% deduction for dividends obtained from Spanish investee companies
- A 100% deduction when the participation in a Spanish company has been at least 5% for 1 year.

However, when the dividend is paid out by an SCR or FCR, this full deduction applies, regardless of the stake and holding period of the participation. Thus, investments made by corporate investors through an FCR or SCR not only do not incur incremental tax as compared to direct investment, but they reduce taxation to nil (see above).

In general, when a stake of at least 5% in a non-Spanish trading investee company has been held for a year, any dividends paid by the company are exempt from corporate tax.

Company tax for SMEs
Companies with a turnover under €10 million were taxed at a rate of 25% for the first tranche of taxable income up to €300,000.

From 2013 onwards, super-reduced sized companies are taxed at a 20% corporate income tax rate for the first tranche of taxable income up to €120,202.41 and 25% for income in excess of this.

To qualify for the super-reduced sized companies regime, turnover must be under €5 million and the number of employees, which has to be maintained, must not exceed 25.

Deductibility of interest
From 2012 onwards, net financial expenses on loans are tax-deductible at a rate of up to 30% of EBITDA to a maximum of €1 million.

Net financial expenses exceeding the 30% EBITDA limit can be carried-forward and deducted in the following 18 years (subject to the same 30% EBITDA limit). If the 30% EBITDA limit is not reached in a given tax period, this excess can also be carried-forward and the limit increased over the following 5 years.

In addition, interest accrued on intra-group debt incurred to fund intra-group acquisitions of shares or equity investments in another group entity are deemed non-deductible unless the taxpayer can give evidence that the transaction was made for valid commercial reasons.

Related-party loans are subject to additional transfer pricing rules.

Spanish taxation of employees

Income tax for private individuals

Personal tax on income and short-term gains
Salary income, business income, and short-term capital gains (those generated before a year of holding has elapsed) are included in the general taxable base for individuals’ tax purposes.
Spain

Rates applicable to the general taxable base range from 24% to 45%. However, for 2012 and 2013, the following brackets apply in Madrid (the tariff varies depending on the Spanish region):

<table>
<thead>
<tr>
<th>Taxable Base</th>
<th>Gross Tax</th>
<th>Modulus</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0</td>
<td>€17,707.20</td>
<td></td>
<td>24.35%</td>
</tr>
<tr>
<td>€17,707.20</td>
<td>€4,382.53</td>
<td>€15,300</td>
<td>29.7%</td>
</tr>
<tr>
<td>€33,007.20</td>
<td>€8,972.53</td>
<td>€20,400</td>
<td>39.8%</td>
</tr>
<tr>
<td>€53,407.20</td>
<td>€17,132.53</td>
<td>€66,593</td>
<td>46.9%</td>
</tr>
<tr>
<td>€120,000.20</td>
<td>€48,431.24</td>
<td>€55,000</td>
<td>48.9%</td>
</tr>
<tr>
<td>€175,000.20</td>
<td>€75,381.24</td>
<td>€125,000</td>
<td>50.9%</td>
</tr>
<tr>
<td>€300,000.20</td>
<td>€139,131.24</td>
<td></td>
<td>51.9%</td>
</tr>
</tbody>
</table>

Personal tax on long-term gains, dividends and interest
Personal tax on long-term capital gains, dividends and interest is levied in Spain at a 19% rate on the first €6,000 and at a 21% rate thereafter.

However, for 2012 and 2013, the following brackets apply:

<table>
<thead>
<tr>
<th>Category</th>
<th>Min.</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0-€6,000</td>
<td>21%</td>
<td></td>
</tr>
<tr>
<td>€6,001-€24,000</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>€24,001+</td>
<td>27%</td>
<td></td>
</tr>
</tbody>
</table>

Assets acquired before 1994 are subject to a reduced tax depending on the holding period between their purchase and December 1994.

Also, Spanish law sets out a yearly exemption for dividends with a limit of €1,500.

Social security payments
The general system classifies employees in professional categories for their social security contribution, which is levied on a monthly income base. Each category has minimum and maximum monthly contribution bases, which are adjusted annually.

For 2013 these bases are:

<table>
<thead>
<tr>
<th>Category</th>
<th>Min.</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineers and university graduates</td>
<td>€1,051.50</td>
<td>€3,425.70</td>
</tr>
<tr>
<td>Qualified technicians and assistants</td>
<td>€872.10</td>
<td>€3,425.70</td>
</tr>
<tr>
<td>Clerical and workshop supervisors</td>
<td>€758.70</td>
<td>€3,425.70</td>
</tr>
<tr>
<td>Unqualified assistants</td>
<td>€753.0</td>
<td>€3,425.70</td>
</tr>
<tr>
<td>Clerical officers and assistants, messengers, etc.</td>
<td>€753.0</td>
<td>€3,425.70</td>
</tr>
</tbody>
</table>

The Spanish social security system requires both employers and employees to contribute. However, the employer is responsible for paying all social security contributions on its behalf and on behalf of its employees. Therefore, employee social security payments are deducted from his or her monthly income.

The rates for calculating an employer’s social security contributions for common contingencies are, in general terms, the following:

<table>
<thead>
<tr>
<th>Component</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>General benefits fund</td>
<td>23.60%</td>
</tr>
<tr>
<td>Unemployment insurance</td>
<td>5.50%</td>
</tr>
<tr>
<td>Wages Guarantee Fund</td>
<td>0.20%</td>
</tr>
<tr>
<td>Professional education or training</td>
<td>0.60%</td>
</tr>
<tr>
<td>Total</td>
<td>29.90%</td>
</tr>
</tbody>
</table>

Additionally, employers must contribute to the social security fund for professional contingencies. The rates for calculating these would depend on the employer's economic activity.

The rates for calculating the employee’s social security contributions are, in general terms, the following:

<table>
<thead>
<tr>
<th>Component</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>General benefits fund</td>
<td>4.70%</td>
</tr>
<tr>
<td>Unemployment insurance</td>
<td>1.55%</td>
</tr>
<tr>
<td>Professional education or training</td>
<td>0.10%</td>
</tr>
<tr>
<td>Total</td>
<td>6.35%</td>
</tr>
</tbody>
</table>

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In addition to the above, there is also an additional social security contribution when employees work extraordinary hours. The rates for this are:

<table>
<thead>
<tr>
<th>Extraordinary hours by force majeure</th>
<th>Employer’s rate</th>
<th>Employee’s rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rest of extraordinary hours</td>
<td>23.60%</td>
<td>4.70%</td>
</tr>
</tbody>
</table>

Social security contributions are deductible for tax purposes.

### Taxation of stock options

Stock options are taxed as salary income in kind when the option is exercised.

Spanish law sets out a 40% tax reduction on such income.

- This reduction cannot exceed the amount that results from multiplying the average annual salary of the Spanish employees by the number of years over which the income has been generated.
- This limit is doubled when the shares acquired are held for at least 3 years and the stock option plan is offered on the same conditions to all workers in the company, group or subgroups of the company.
- This reduction cannot be applied to yearly income over €300,000.

In addition, in general, shares of the employer’s group of companies given to an active employee for free or for an under-price are exempt from personal tax up to €12,000, provided that the employee holds the stocks for at least 3 years.

In general, the salary expense derived from the granting of shares and stock options is deductible for the corporate tax purposes of the grantor.

### Special tax regimes

Personal and professional circumstances are to be considered when computing tax: having children or elderly people in charge; moving from usual residence; moving abroad to work for a period of time during a year; and being a disabled person can reduce tax payable in a given year.

### Capital gains tax

Capital gains derived by non-residents (corporate or individuals) from the disposal of shares in Spanish companies are taxed at 19%. The tax rate for 2012 and 2013 is 21%.

- However, Spanish law sets out an exemption for capital gains derived by non-residents from the disposal of shares of Spanish companies if they are tax-resident in another EU member state. This exemption will not apply if the assets of the Spanish company are Spanish real estate assets, or if the non-resident, at any time during the 12 months previous to the disposal of the shares, held at least 25% of the shares of the Spanish company.
- In addition, taxation rules established in the agreement to avoid double taxation between Spain and the country of residence of the non-resident investor may exempt the gains from taxation in Spain.
- Finally, non-residents that invest through an FCR or SCR are not taxed in Spain on the capital gains they obtain from the FCR or SCR (see above).

None of the above tax benefits apply when the non-resident obtains the gains through a territory that qualifies as a tax haven.

### Dividends tax

Dividends derived from the participation in Spanish companies by non-residents are taxed at 19% (21% for 2012 and 2013).
However, these dividends are exempt when the non-resident investor is an EU-resident company that holds for a year a stake of at least 5% in the Spanish investee company, to the extent that the majority of the voting rights of the EU parent company are ultimately held by EU residents.

Also, Spanish law sets out an exemption for dividends received by individuals resident in another member state of the EU or in countries or territories with which Spain has an effective exchange of tax information, with an annual limit of €1,500.

In addition, taxation rules established in the agreement to avoid double taxation between Spain and the country of residence of the non-resident investor may reduce the tax rate applicable in Spain to the dividends.

Finally, non-residents that invest through an FCR or SCR are not taxed in Spain on the dividends they obtain from the FCR or SCR (see above).

Spanish fiscal incentives

Fiscal incentives at a fund level

As FCRs and SCRs are taxable under the general corporate tax regime, in general, all corporate tax incentives are available for them.

In any event, the most important incentive is the 99% partial exemption on qualifying gains, which is exclusive of FCRs and SCRs.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>Yes</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

The following R&D activities qualify for deductions:

- Business R&D activities: a deduction exists of 25% for expenditure on R&D activities in the year. This can be increased to 42% if such expenditures exceed the average expenditure of the last 2 years.
- Capital expenditure (excluding real estate): an 8% deduction on the amount invested in a given year.
- Wages and salaries paid to qualified researchers assigned to R&D activities: a 17% deduction may be taken.
- Technological innovation activities: a 12% deduction for expenditure incurred during the taxable period.

The fiscal R&D incentives will be limited to 35% of the tax payable over a given period. Notwithstanding this, the R&D tax credits can be carried forward for an 18-year period.

Income derived from the assignment of the right to use certain intangible assets – relating to industrial, commercial or scientific experience – benefits from a partial exemption of 50%. The following requirements must be met:

- The assigning entity must have created the assets to be assigned.
- The rights to use the assets are used by the assignee in the pursuit of an economic activity.
- The result of such use may not materialise in the delivery of goods or the provision of services to the assignee generating tax-deductible expenses.
- The assignee is not resident in a country or territory that does not levy taxes or is considered a tax haven.
- The assignor must make the necessary book entries to be able to determine the income and expenses, direct and indirect, corresponding to the assets under assignment.
- The partial exemption ceases to apply when the income deriving from the assignment of the asset exceeds 6 times its cost.

Income and expenses derived from the assignment are taken into account when determining a group’s corporate tax base.

An Entrepreneur’s Law is currently under consideration by the Spanish authorities.
Introduction
Sweden provides suitable fund structures for private equity and venture capital investment. Participation in tax-transparent fund structures may, however, create permanent establishment issues for non-domestic investors.

Tax rates are high in Sweden; taxes on personal income and stock options are among the highest in Europe.

Moreover, Swedish withholding taxes are high (but usually reduced in accordance with applicable tax treaties) and fiscal incentives in Sweden are some of the least available.

Swedish fund structures

Structures
Sweden has two main structures for private equity and venture capital investment:
- Swedish limited liability company (Aktiebolag)
- Swedish limited partnership (Kommanditbolag)

In general, the Swedish limited liability company is the most commonly used structure.

Transparency
Swedish limited partnerships are tax-transparent for both domestic and non-domestic investors.

Swedish limited liability companies are not tax-transparent, neither for domestic nor non-domestic investors.

Absence of incremental tax (as compared to direct investments)
Investments in both Swedish limited liability companies and limited partnerships can generally be structured so as not to incur incremental Swedish tax. This applies to both domestic and non-domestic investors.

Typically, for individuals and non-domestic investors it is often not advisable to invest directly into a Swedish limited partnership. Instead, a blocker entity is often interposed.

Permanent establishment
Even though the Swedish limited partnership is tax-transparent, non-domestic investors may be subject to tax in Sweden since income will generally be considered to be derived from a permanent establishment in Sweden. The investment in the Swedish limited partnership will not create a permanent establishment in itself but the activities carried out by the partnership as well as other activities carried out by the partners could constitute a permanent establishment in Sweden. In fund structures, this is generally the case because the fund management conducts its investment activities in Sweden. However, this is generally only a problem if the permanent establishment generates income that is not tax-exempt in accordance with the participation exemption rules.

A Swedish limited liability company will not create a permanent establishment in Sweden for a non-domestic investor.

Undue restrictions
The structures are considered to be free from undue restrictions.

Swedish tax at a fund level

VAT on management fees
Management services supplied in Sweden from a separate management company are generally subject to 25% VAT. This may also be the case where the management company providing the services is the general partner of a Swedish limited partnership even if the services fall within the scope of the partnership agreement.

VAT does not become an additional cost if the recipient of the management services conducts a VATable business since VAT can then be recovered. Since this is usually not the case in a traditional private equity set-up, VAT leakage is usually to be expected.
**Summary**

### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aktiebolag (Swedish limited liability company)</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Kommanditbolag (Swedish limited partnership)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Generally yes if the fund management conducts its investment activities in Sweden</td>
<td>No</td>
</tr>
</tbody>
</table>

### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>Payment</th>
<th>Reclaim</th>
<th>VAT on management fees</th>
<th>Capital gains tax</th>
<th>Withholding tax</th>
<th>Stamp duties or transaction taxes</th>
<th>Anti-abuse rules</th>
<th>Fiscal incentives</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes (on real estate)</td>
<td>Min. 0%</td>
<td>Max. 22%</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes, subject to limitation rules</td>
</tr>
<tr>
<td>Taxation of employees</td>
<td>Income tax</td>
<td>Min. ~29%</td>
<td>Max. ~ 60%</td>
<td>Social security</td>
<td>Min. 10.21%</td>
<td>Max. 31.42%</td>
<td>Capital gains tax</td>
<td>Min. 25% (20% - closely held companies)</td>
<td>Max. 30% (60% - closely held companies)</td>
</tr>
<tr>
<td></td>
<td>Tax on stock options</td>
<td>Min. ~29%</td>
<td>Max. ~ 60%</td>
<td>Special tax regimes</td>
<td>No</td>
<td>Fiscal incentives at a company level</td>
<td>Business R&amp;D expenditure</td>
<td>No</td>
<td>R&amp;D capital expenditure</td>
</tr>
<tr>
<td></td>
<td>Contracting researchers</td>
<td>Yes</td>
<td>Technology transfer</td>
<td>No</td>
<td>Cooperative external research</td>
<td>No</td>
<td>Innovative spin-out</td>
<td>No</td>
<td>Young and innovative companies</td>
</tr>
</tbody>
</table>

### Taxation at a company level

<table>
<thead>
<tr>
<th></th>
<th>Company tax</th>
<th>Special tax regime for SMEs or other small companies</th>
<th>Deductibility of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>22%</td>
<td>No</td>
<td>Related-party loans Yes, subject to limitation rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unrelated-party loans Yes</td>
</tr>
</tbody>
</table>
Sweden

**Capital gains tax**

All income received by a domestic corporate investor is generally fully taxable at the corporate income tax (CIT) rate of 22%. However, for shares held in unlisted companies, the participation exemption rules normally apply and capital gains and dividends received are then tax-exempt.

Investors in Swedish (and foreign) limited partnerships also benefit from the participation exemption. Capital gains on interests in partnerships within the EEA are tax-exempt if received by a qualifying investor. Dividends and capital gains on shares held by a partnership can also be received exempt from tax to the extent the dividend or capital gain would have been tax-exempt if received directly by the investor in the partnership.

For individuals, the tax rate on capital gains and dividends is generally 30% (25% on unlisted shares).

Special tax rules apply to certain categories of taxpayers, eg, mutual funds, investment companies and insurance companies.

Non-domestic investors with no permanent establishment in Sweden are not subject to Swedish capital gains taxation but dividends may be subject to a withholding tax.

**Withholding taxes**

A withholding tax of 30% is levied on dividends paid to non-domestic investors. However, it is generally not levied on dividends to non-domestic corporate investors in other EU countries.

The withholding tax is also often reduced or eliminated under applicable tax treaties or under domestic tax law.

Sweden does not impose any withholding tax on interest payments.

**Stamp duties and transaction taxes**

Stamp duty is levied on the direct transfer of real property.

A postponement of stamp duty may be granted on an intra-group transfer of real property.

**Anti-abuse rules**

Sweden has general anti-avoidance legislation. Moreover, the concept of a “beneficial owner” may be found in some provisions of the tax act, for example in the interest deduction limitation rules.

There is no codified “substance over form” doctrine however this has been developed in case law.

**Swedish tax at a company level**

**Company tax**

CIT is levied at a flat rate of 22%.

**Deductibility of interest**

**Unrelated-party loans**

Interest expenses on unrelated-party loans are fully tax-deductible in Sweden.

**Related-party loans**

Interest expenses on related-party loans are not tax-deductible in Sweden unless:

- The beneficial owner of the interest income is subject to a statutory tax rate of 10% or more, assuming that the income is its only income (the “ten percent rule”), unless the main reason for the loan structure is to obtain a substantial tax benefit for the group
- The loan is mainly commercially justified, especially taking into account if it instead would have been possible to finance the borrower with equity (the “business purpose test”). However, the interest expense will only be tax-deductible if the lender is resident in the EU/EEA or in a country with which Sweden has a comprehensive tax treaty. Moreover, if the loan arose in connection with an intra-group acquisition of shares, the interest expense is tax-deductible only if the acquisition can be mainly commercially justified as well.

**Swedish taxation of employees**

**Income tax for private individuals**

The income tax rate in Sweden for individuals is progressive and consists of a municipal tax and a federal tax.
Sweden

Annual income is taxed with a municipal tax between 29% and 35%, depending on the municipality. Federal tax also applies with different rates above two thresholds:

- Annual income above threshold 1, SEK 413,000 (approximately €48,000) is taxed with an additional federal tax of 20%
- Annual income above the higher threshold 2, SEK 591,600 (approximately €69,000) is taxed with a further federal tax of 5%. Thus, the tax rate on income above this threshold could be as high as 60% (municipal + federal tax)

It should be noted that there are job incentives that can reduce the tax liability.

**Social security payments**

Employers are generally liable for social security contributions, based on all salaries and benefits, paid out at a standard rate of 31.42%. Social security contributions are not charged on employees.

Social security is also levied on self-employed individuals conducting business through sole proprietorships or limited partnerships (the so-called self-employed person’s social security contribution).

The standard rate is 28.97% of gross annual income.

Exceptions are:

- For individuals below 26 years' old, the rate is reduced to approximately half the standard rate
- For individuals above 65 years' old, the rate is reduced to 10.21%

**Capital gains tax for private individuals**

Capital gains are generally taxed at a flat rate of 30% (25% on unlisted shares).

Capital gains on the disposal of shares in a closely-held company (fåmansföretag) in which the individual is active may be taxed as salary (progressive tax rate of up to 60%) up to a certain threshold (and 30% above the threshold). These individuals, however, also enjoy a lower tax rate (20%) on part of the capital gain.

**The taxation of stock options**

Stock options that do not qualify as securities (employee stock option plans or Personal optioner) are not taxed upon grant. Instead, when the stock option is exercised, any difference between the fair market value of the shares and the exercise price is taxed as salary (progressive tax rate of up to 60%).

Social security contributions are also payable by the employer based on the amount taxed as salary.

For securities based plans, the taxable event is when the shares or other securities are acquired. Normally, the acquisition is carried out at fair market value and thus no taxation (including social security contributions) is triggered at grant (if acquired below fair market value, the difference between the fair market value and the acquisition cost is taxed as salary and the employer must pay social security contributions on that amount). Any increase in value is subject to capital gains taxation at a flat rate and with no social security contributions.

There are no special rules on stock options for certain types of company, and no tax relief exists for the grantor of the stock options (or any other entity) on the grant and/or exercise of stock options in Sweden.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee stock option plans</td>
<td>Upon exercise</td>
<td>Any difference between the fair market value of the shares and the exercise price is taxed as salary (social security contributions are also payable by the employer based on the amount taxed as salary)</td>
</tr>
</tbody>
</table>

| Securities based plans | When the shares or other securities are acquired | If acquired below fair market value, the difference between the fair market value and the acquisition cost is taxed as salary and the employer must pay social security contributions on that amount. Any increase in value is subject to capital gains taxation at a flat rate and with no social security contributions. |

| Special rules for certain types of company | No |

| Tax relief for the grantor | No |
Swedish fiscal incentives

**Fiscal incentives at a fund and fund manager level**

Sweden does not provide fiscal incentives at a fund or fund manager level and no special tax treatment is applicable.

**Fiscal incentives at a company level**

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>No</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>No</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>No</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

Swedish provides tax relief for foreign specialists, scientists and other key personnel (Skattelättnad för utländska specialister, forskare och andra nyckelpersoner). Features of the tax relief include:

- Income tax exemption for 25% of gross remuneration, plus remuneration for different costs incurred by the individual
- Social security charges are not levied on tax-exempt amounts;
- This applies for an individual's first 3 years in Sweden

There are several prerequisites that need to be fulfilled to qualify for the relief. However, any foreign individual with a monthly salary of above SEK 89,000 (approximately €10,400) for 2013 is deemed eligible for the relief.

The Swedish government has announced that in the spring of 2013, it will issue a bill which will include proposals to introduce tax incentives on investments in small and newly-started companies. The incentive would be given in the form of a deduction on the income from capital equal to 50% of the acquisition cost of the investment, with a maximum of SEK 650,000 (approximately €76,000) per individual in any year. The company may only receive investments qualifying for the deduction up to a maximum of SEK 20 million (approximately €2.3 million) per year. This measure would likely apply, at the earliest, from 1 September 2013.
Introduction

A number of investment fund structures are available in Switzerland.

Taxes are levied at three different levels in Switzerland: federal, cantonal and municipal. The cantonal and municipal rates vary markedly between cantons as these are free to determine their tax rates. That being said, the rates are generally below the average tax rates in Europe, and are reviewed on a yearly basis. The rates indicated in the table below are minimum and maximum rates.

Summary

Swiss fund structures

Under the legal framework for investment fund vehicles - the Collective Investment Schemes Act (CISA) - four fund structures are available in Switzerland:

- Contractual fund
- Investment company with variable capital (SICAV)
- Limited partnership for collective investment (LP)
- Investment company with fixed capital (SICAF)

Real estate funds with direct real estate ownerships in Switzerland can be structured as contractual funds, SICAV or LP.

<table>
<thead>
<tr>
<th>Fund structures</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor type</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td></td>
</tr>
<tr>
<td>Contractual Fund</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No (exceptions may apply) Yes</td>
</tr>
<tr>
<td>Investment Company with Variable Capital (SICAV)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No (exceptions may apply) Yes</td>
</tr>
<tr>
<td>Limited Partnership for collective investment (LP)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No (exceptions may apply) No (used only to a very limited extent)</td>
</tr>
<tr>
<td>Investment Company with Fixed Capital (SICAF)</td>
<td>No</td>
<td>No</td>
<td>No (potential double economic taxation and withholding tax)</td>
<td>No (potential double economic taxation and withholding tax)</td>
<td>No (exceptions may apply) Yes</td>
</tr>
</tbody>
</table>
The CISA has been recently revised. The revised text has been approved by the Swiss Parliament and entered into force on 1 March 2013. Furthermore, the Swiss Ordinance on Collective Investment Schemes (CISO) also entered into force on 1 March 2013. The revised CISA and its implementing provisions are a significant improvement over the initial legislation and are in line with the main terms of the AIFMD.

As of 31 July 2012 no SICAF has been incorporated in Switzerland. This structure has not met with the expected success.

In practice, investments still rely, however, on non-Swiss structures (foreign partnerships) and appoint a Swiss investment manager. All the vehicles provided by the CISA are regulated and are subject to supervision by the Swiss Financial Market Supervisory Authority (FINMA).

From a Swiss tax point of view, contractual funds, SICAVs and LPs are transparent structures for both domestic and non-domestic investors. Accordingly, income derived from a fund is taxed in the hands of the investors. In principle, these structures do not give rise to incremental tax for domestic and non-domestic investors.

- For Swiss corporate investors, income (including capital gains) is subject to corporate income tax (CIT) according to the tax regime applicable to the corporate investor (please see below). The corporate investor may benefit, however, from the participation reduction scheme (please see below) if it fulfils the conditions set forth by Swiss tax law.
- For Swiss individual investors, capital gains are tax-exempt to the extent that the assets are held as privately held assets. Other income (including capital gains on business assets) is subject to income tax in the hands of the investor. The tax rate is progressive (please see below).

1 There are also compulsory contributions to occupational benefit plans for salary amounting up to CHF 84,240 (approximately €69,226) a year. The average contribution ranges between 12% and 14% of salary and is borne half by the employer and half by the employee.
2 The social security contribution for self-employed individuals amounts to 9.7%.

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Switzerland

Special rules apply to:

- Distributing funds (funds that distribute at least 70% of income): investors are taxed on the yearly income distributions
- Accumulating funds (funds that fully retain their income and reinvest it): investors are taxed on income that is reinvested
- Mixed funds (funds that distribute less than 70% of income): income is taxed upon distribution and accumulation

A SICAF is not transparent and is therefore taxed as a corporation under Swiss tax law (and therefore subject to direct taxes and Swiss withholding tax). Taxation of a SICAF at the level of investors is thus determined by the laws in force in the country of their tax residence.

Irrespective of their legal set-up (ie contractual fund, SICAV or LP), Swiss funds with direct real estate ownerships in Switzerland are directly subject to CIT on the part of their income that comes from this real estate. Corporate investors that are employment pension funds are exempted from CIT under Swiss tax law.

Foreign source withholding tax levied on income arising from the underlying assets of a domestic transparent fund structure is in most cases not refundable for the fund, although the investor is entitled to a refund.

Non-Swiss structures are transparent for domestic investors unless they are regarded as liable to tax in Switzerland without limitations. For non-domestic investors, foreign structures are transparent unless they are regarded as having a permanent establishment in Switzerland.

Permanent establishment

In practice, these structures prevent non-domestic investors from having a permanent establishment in Switzerland.

Capital gains tax for non-resident investors

In general, a non-domestic investor (individual or company) should not become liable to income (respectively corporate income) tax in Switzerland on capital gains, unless in the following situations (in relation to the investment):

- The investor owns or is a partner in a business located in Switzerland
- The investor owns real estate in Switzerland (for individual investors only if held as business asset)
- The investor is active in the real estate business in Switzerland

In addition to these, non-domestic corporate investors may also be liable to tax in Switzerland if they own debts guaranteed by Swiss real estate.

Undue restrictions

Swiss private equity funds could be structured as LP (closed-ended structures). In general, contractual funds or SICAV (open-ended structures) are not suitable for private equity. As indicated above, in practice, investment structures generally rely on non-Swiss structures (foreign partnerships).

Swiss tax at a fund level

VAT on management fees

Generally, no VAT is levied on management fees in Switzerland if the management services are provided to an authorised fund that is governed by the CISA.

Management fees on Swiss and foreign funds that are not governed by the CISA and on foreign funds governed by the CISA may be subject to VAT (unless zero-rated) depending on the VAT treatment of the activities performed if the manager is located in Switzerland. When the manager is not located in Switzerland, the management fees may be subject to Swiss VAT on the basis of the reverse charge mechanism, if the services are considered as performed on Swiss territory and to the extent that the recipient of the services is considered as having its place of business in Switzerland.

Capital gains tax

With the exception of the SICAF, Swiss fund structures are regarded as transparent for (corporate) income tax and capital gains purposes. Capital gains tax is levied in the hands of the investors.

Domestic individual investors

For individuals, income tax is levied where shares are regarded as business asset. Capital gains on privately held assets are not subject to income tax. Please note that, by way of exception, capital gains on privately-held assets may be subject to income tax.

For business assets, capital gains may be partially taxed if the investor makes a profit on the sale of the participation, where it is at least 10% of the capital of the underlying company and which it has held for at least 1 year.
At federal level, should the above-mentioned conditions be met, only 50% of the capital gain is subject to tax.

At cantonal and municipal levels, the method varies depending on the cantons: some cantons only tax a part of the capital gains while some cantons tax the whole capital gain at a reduced tax rate.

**Domestic corporate investors**
Capital gain on the sale of shares in a company is subject in Switzerland to CIT. Capital gains may, however, be eligible for the participation reduction scheme (applicable at both federal and cantonal/municipal levels) if the investor makes a profit on the sale of the participation, where it is at least 10% of the capital of the underlying assets of the fund and which it has held for at least 1 year. Please note that this scheme is applicable to all participations described above acquired after 1 January 1997 and only to those acquired previously if they are sold after 1 January 2007.

Companies realising capital gains, which may benefit from the participation reduction scheme, may reduce their CIT by reference to the ratio between the net earnings on the participation and the total net income.

Please note that the same tax rate applies to dividends and capital gains.

**Withholding taxes**
On a general basis, Switzerland levies withholding tax on dividends (or similar income) from a Swiss company distributed to a foreign fund.

Income from contractual funds, SICAVs and LPs are subject to Swiss withholding tax at a rate of 35%, irrespective of the nature and location of the investor.

For accumulating funds (funds that fully retain their income and reinvest it), Swiss withholding tax is due at the time of the reinvestment in the fund.

No withholding tax is levied on capital gains, if the capital gain is clearly separated from income realised by the fund (separate coupon) and if the units are held as private assets by Swiss-resident individual investors. In addition, no Swiss withholding tax is levied on the distribution of net income derived from directly-held real properties.

Further, no Swiss withholding tax is levied on income arising out of a fund if:
- At least 80% of the income is derived from foreign sources
- The custodian bank can confirm that the unit holder is a non-Swiss resident (so called “affidavit procedure”)

Dividend distributions from a SICAF are subject to withholding tax of 35% since it is considered as a corporation.

A refund of withholding tax may be granted subject to the conditions of the double taxation treaty entered into between Switzerland and the country of residence of the non-Swiss investors. Swiss investors receive a full refund if they fulfil the conditions set forth by Swiss legislation and declare the income on their tax return.

**Stamp duties and transaction taxes**
All acquisitions and disposals of foreign investment fund units are subject to securities transfer tax at a rate of 30 basis points (0.3%), provided that a Swiss securities dealer acts as an intermediary in the transaction.

All acquisitions and disposals of Swiss investment fund units are subject to securities transfer tax at a rate of 15 basis points (0.15%), provided that a Swiss securities dealer acts as an intermediary in the transaction.

LPs, SICAVs, SICAFs, contractual funds as well as foreign funds corresponding to Swiss LPs, SICAVs, SICAFs and Swiss contractual funds are transaction stamp tax-exonerated counterparties.

The acquisition upon issuance of units in a Swiss investment fund is exempt from securities transfer tax. The acquisition upon issuance of units in a foreign investment fund is subject to securities transfer tax at a rate of 15 basis points (0.15%).

There is no securities transfer tax upon the redemption of units in a Swiss or foreign investment fund.

**Anti-abuse rules**
There are no anti-abuse rules specifically related to funds in Switzerland.
Switzerland

Swiss tax at a company level

Corporate income tax

The CIT rate is proportional (flat) and varies depending on the location of the company. CIT is levied at three different levels: federal, cantonal and municipal.

In 2012, the total effective (ie, pre-tax) rates varied between approximately 12% and 24%. No major change is expected in 2013. There is no specific company tax rate for small companies based on amount of profits, early stage of development, etc.

However, privileged tax regimes are available to companies based on the type of activities performed or the source of income (eg, holding company regime, auxiliary company regime, service company regime).

When a Swiss company is an investor in a fund, any distribution from a fund to a Swiss company is treated as income and taxed at the usual CIT rates in the hands of the Swiss company.

A Swiss company can claim for participation reduction on dividend distributions received from a SICAF, which is considered a corporation for Swiss tax purposes. The participation reduction comes in the form of a reduction of CIT. It is computed based on the ratio that the net dividend income or capital gain bear to the total net profit.

Swiss tax treatment follows the accounting treatment if it is in line with Swiss practice. This means that a Swiss company holding units in a fund as business assets may record units in a fund at the lower of its acquisition cost or its fair market value (ie, following a mark-to-market approach).

If a company records units at the lower of acquisition costs or fair market value, it will benefit from a deferred tax effect and gains will be taxed upon the disposal or redemption of the fund units.

A Swiss bank will value the units in a fund at market price if the units are recorded as trading assets.

Deductibility of interest

For CIT purposes, net interest expenses are fully deductible on unrelated-party loans.

The interest deductibility on related loans is limited by both thin-capitalisation rules and minimum/maximum interest rules. The minimum/maximum interest rates agreed are determined in a yearly guideline issued by the Swiss Federal Tax Administration (SFTA).

Capital tax

The shareholder’s equity of a Swiss company is subject to capital tax at cantonal and municipal levels. The combined (cantalonal and communal) rate varies between 0.001% and 0.5325%, depending on the canton and the municipality where the company is subject to tax. Please note that in some cantons CIT may be credited against capital tax.

Swiss taxation of employees

Income tax for private individuals

Tax rates for individuals vary depending on residence (canton and municipality) and are progressive. Various deductions are available to individuals.

While the federal tax is progressive up to 11.5%, the cantonal and municipal tax rates vary strongly from canton to canton. As a result, the maximum tax rate (federal, cantonal and municipal) ranges from 19% to 46%.

Income from a fund is subject to income tax in the hands of the individual. Income from directly-held real estate in a real estate fund is exempt from taxation at the level of the investor since it is taxed at the level of the fund.

Income arising out of a SICAF is regarded as a dividend, which is subject to tax in the hands of the shareholder. Accordingly, dividends can be partially exempted from taxation when the individual holds in his/her private asset a participation of at least 10%.

Social security payments

Social security contributions are levied on professional income (salary) but not on investment income. However, if an individual is regarded as a professional (commercial) securities dealer, investment income is subject to social security contributions.

The total amount of social security contributions is 12.5%. However, as half of the social security contributions have to be supported by the employer, the actual rate for employees is 6.25%.
The above-mentioned social security contributions include old-age insurance, invalidity insurance, income compensation and unemployment insurance. In addition, the employer must also pay premiums for accident insurance (work accident and occupational diseases), and family allowances.

Finally, there are also contributions to occupational benefit plans for salary amounting up to CHF 84,240 (approximately €69,226) a year. The average contribution to the occupational benefit plan amounts to between 12% and 14% of salary and is borne half by the employer and half by the employee. The employer may also decide to expend the occupational benefit plan, and the respective contributions, to salary exceeding CHF 84,240 a year.

When an individual is regarded as self-employed (e.g., professional securities dealer), the amount of social security contributions corresponds to 9.7% of the income from this activity.

**Capital gains tax for private individuals**

Generally, capital gains realised by individuals on privately held assets are tax-exempt. However, there are a number of exceptions, which cause capital gains to be subject to the ordinary taxation (both at federal and cantonal/municipal levels).

Therefore, a capital gain on a fund is exempt from income tax if the units in the fund are held privately. A capital loss is correspondingly not deductible.

The taxable income and the tax value for net wealth tax purposes of most Swiss funds is published each year by the Swiss Federal Tax Administration in an official tax information database (so called Kursliste).

**The taxation of stock options**

Stock options granted to employees are taxed as professional income in Switzerland.

The moment of taxation varies:

- At grant, when a valuation at grant is possible and when there is no vesting and/or blocking period
- At vesting, when a valuation is possible but the option is subject to a vesting period
- At exercise in all other cases

As from 1 January 2013, the options will be taxed:

- At grant, only when the option is tradable without any restriction or is listed
- At exercise, in all other cases, i.e. mainly when the option is neither tradable nor listed

Any gain realised on the sale of the underlying assets is generally tax-free.

There is no tax relief for the grantor of stock options (or any other entity) on the grant and/or exercise of stock options in Switzerland.

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Moment of taxation varies:</td>
<td>As professional income</td>
</tr>
<tr>
<td></td>
<td>At grant (only when the option is tradable without any restriction or is listed)</td>
<td></td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td>Any gain realised on the sale of the underlying assets is generally tax-free</td>
<td></td>
</tr>
</tbody>
</table>

**Tax relief for the grantor**

No

**Special tax regimes**

Lump sum taxation is available to non-Swiss people who do not work or conduct any business in Switzerland.

**Swiss fiscal incentives**

**Fiscal incentives at a fund level**

Fiscal incentives are available to limited partners in Switzerland who own shares in partnerships located outside Switzerland. This must, however, be ruled on a case-by-case basis.

Fund management entities may obtain a special tax status if the managed funds are outside of Switzerland. Requirements include an individual ruling.
Switzerland

**Fiscal incentives at a company level**

Switzerland offers fiscal incentives to encourage investments in private equity and venture capital through the Federal Law on Venture Capital Companies of 8 October 1999, which came into effect in May 2000. This law provides certain tax benefits to Swiss resident (venture capital) companies that invest at least 50% of their funds in Swiss start-up enterprises with innovative and international projects in the field of products and services (young innovative companies). For example, a venture capital company can benefit from a participation reduction for dividend income and capital gains if it holds at least a 5% capital participation in the start-up company.

For individuals investing in a private equity structure, other than a limited partnership, as limited partners, the law also offers the possibility to grant subordinated loans for the foundation of a new company, the loan being deductible by up to 50% of its principal amount.

Switzerland does not offer a fiscal incentive scheme to support young and innovative companies in their early development phase, nor a special company tax rate for SMEs. Moreover, there are no fiscal incentives for contracting researchers, co-operation between firms and research institutes or universities as well as for the creation or spin-out of innovative firms.

That said, Switzerland offers fiscal R&D incentives for business R&D expenditures. More specifically, at federal level, a Swiss company is allowed to provide for a yearly, tax effective provision of up to 10% of its taxable net income, but only for an overall amount not exceeding CHF 1 million (approximately €821,767) for future third-party R&D mandates. Most cantons provide also similar rules.

No specific incentive for R&D capital expenditure is available. However, based on a case-by-case analysis, specific treatments, such as accelerated depreciation may be available on request/ruling granted by the relevant tax authorities.

Fiscal incentives may be offered for technology transfer, when it is combined with a tax holiday. That said, no specific incentive is offered for technology transfers.

For employees, tax-free representations, indemnities or housing allowances may be available on request.

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes³</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>No</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes⁴</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

**Fiscal incentives at an individual level**

It is possible to incorporate performance-related incentives for private equity and venture capital fund managers, such as carried interest. Generally, carried interest is considered as taxable income subject to the ordinary income tax rate in the hands of the manager. It is possible to arrange for carried interest to be treated as an exonerated capital gain, provided that it can be evidenced that the fund managers are paid otherwise with a sizeable salary, which is subject to tax.

In an international context, the income which should be taxed in Switzerland could be reduced on the basis of the international profit split methods. Therefore, if it is properly structured abroad, it might be possible to achieve a more favourable taxation. However, there is no commonly used route that could be followed and the structuring remains a big challenge.

Tax-free representations, indemnities or housing allowances may be also available upon request.

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3 Upon request/ruling granted by the tax authorities.
4 When combined with a tax holiday.
The United Kingdom

Introduction

There are two commonly used fund structures in the United Kingdom that are applicable to private equity and venture capital investments.

Taxation in the United Kingdom is generally below the European average.

Fiscal incentives are available in the UK and are generally enhanced for SMEs.

British fund structures

Structures

The English limited partnership (ELP) is the most commonly used fund structure in the UK for private equity and venture capital investments.

Also, Scottish limited partnerships (SLP) are commonly used.

Description

For the purposes of UK taxation on income and capital gains, English and Scottish limited partnerships are treated the same. The main difference between the two is that an SLP has a separate legal personality. SLPs are typically used where a partnership which has legal personality is needed, so that it can become a partner in an ELP, for example in fund of fund structures.

Tax transparency

ELPs and SLPs that carry on a business are transparent for domestic and non-domestic investors for the purposes of UK taxation on income and chargeable gains.

Absence of incremental tax (as compared to direct investments)

Absent any differences in the withholding tax treatment of investors holding interests in the target companies directly and holding their interests through a limited partnership, this fund structure should not give rise to incremental UK tax for domestic and non-domestic investors. Please also see the next section regarding permanent establishment issues.

Permanent establishment tax

Provided that the fund is not trading in the UK and the investor is not investing in the fund in the course of a financial trade, the limited partnership structure should not incur permanent establishment-related taxes in the UK for non-domestic investors and fund managers. Typically, limited partnerships used for private equity and venture capital investments will not be trading under the UK “badges of trade” test. Permanent establishment issues may arise if a non-domestic financial trader (such as a bank) holds its interest in the fund in the course of its trade. In such cases, it is recommended that these investors hold their interests through a non-trading subsidiary.

Capital gains tax for non-resident investors

There are no other circumstances where capital gains tax is charged to non-residents.

Undue restrictions

UK limited partnerships do not suffer from any undue restrictions.
### Summary

#### Fund structures

<table>
<thead>
<tr>
<th>Investor type</th>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>English limited partnership (ELP)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Scottish limited partnership (SLP)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

#### Taxation at a fund level

<table>
<thead>
<tr>
<th></th>
<th>Transp.</th>
<th>Abs. incr.</th>
<th>Permanent</th>
<th>Capital gains tax for non-residents</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>VAT on management fees</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Withholding tax</td>
<td>Min. 0%</td>
<td>Max. 20%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stamp duties or transaction taxes</td>
<td>Stamp Yes</td>
<td>Transaction No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anti-abuse rules</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Fiscal incentives</td>
<td>Investors Yes</td>
<td>Fund management Yes</td>
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</table>

#### Taxation at a company level

<table>
<thead>
<tr>
<th></th>
<th>Domestic</th>
<th>Permanent</th>
<th>Capital gains tax</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company tax</td>
<td>Min. 20%</td>
<td>Max. 24%¹</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special tax regime for SMEs or other small companies</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deductibility of interest</td>
<td>Related-party loans Yes, subject to restrictions</td>
<td>Unrelated-party loans Yes, subject to anti-avoidance provisions</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Taxation of employees

<table>
<thead>
<tr>
<th></th>
<th>Domestic</th>
<th>Permanent</th>
<th>Capital gains tax</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td>Min. 0%</td>
<td>Max. 50%²</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social security³</td>
<td>Min. 0%</td>
<td>Max. 12%⁴/2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>Min. 0%</td>
<td>Max. 28%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax on stock options</td>
<td>Min. 0%</td>
<td>Max. 50%²</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special tax regimes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th></th>
<th>Domestic</th>
<th>Permanent</th>
<th>Capital gains tax</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cooperative external research</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Innovative spin-out</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Young and innovative companies</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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¹ The main rate of UK corporation tax will reduce to 23% from 1 April 2013 and further reduce to 21% with effect from 1 April 2014 and 20% with effect from 1 April 2015.
² The maximum rate of UK income tax for income over £150,000 (€177,949) will reduce to 45% with effect from 6 April 2013.
³ Employers pay their contributions at 13.8% on earnings or other taxable benefits provided to employees over £7,488 (€8,883).
⁴ The 12% rate is subject to a cap of £42,484 (approximately €50,400) income.
British tax at a fund level

VAT on management fees

Although management fees for managing a private equity fund would, in theory, be subject to VAT in the UK, in practice and in typical structures, a fund management company in the UK would not have to charge VAT on its management fees, either (i) because it is in a VAT group with the general partner of the fund (if the general partner is established in the UK), to whom the supplies are made, or (ii) because the general partner of the fund, to whom the supplies are made, is located outside the EU VAT area (for example in Guernsey or Jersey) and the supplies are of a type that are viewed as being supplied where the recipient belongs and therefore fall outside the scope of UK VAT. The priority profit share a general partner receives from the fund, and which it uses to pay any management or advisory fees, is not subject to VAT.

Capital gains tax

ELPs and SLPs are generally transparent for the purposes of UK taxation on income and chargeable gains; therefore, the investors are taxed according to the nature of the profits of the fund. Both UK companies and individuals that are investors in the fund would be subject to capital gains tax. Please also see below for further details in relation to capital gains tax consequences for individuals.

UK companies are subject to corporation tax on capital gains. This is charged at the relevant rate at the time. The relevant rates are currently 24% for large companies and 20% for small companies. The main rate of corporation tax for large companies will reduce to 23% from 1 April 2013 and further reduce to 21% with effect from 1 April 2014 and 20% with effect from 1 April 2015.

A sale of shares by a UK corporate investor would also attract indexation allowance. This is based on the retail price index movement between the date of acquisition and the date of disposal. UK individual investors are not entitled to indexation allowance. Depending on the facts, individuals may be entitled to a lower rate of capital gains tax under the entrepreneurs’ relief rules (see below).

Certain entities, such as UK pension funds, are exempt from taxation on chargeable gains.

Depending on the facts, UK corporate investors holding a 10% or greater shareholding in a company for more than 12 months may qualify for the substantial shareholding exemption from tax on chargeable gains.

For UK individual investors, capital gains are not subject to the same tax rate as dividends. Depending on the facts, dividend income may be exempt from tax for UK corporate investors. If not, dividend income would be subject to the same corporate income tax (CIT) rate as capital gains.

No municipal, local, social or trade taxes are levied in addition to the applicable UK taxation rate on chargeable gains.

(There is no difference in the tax liability of domestic investors if the gain is not realised from a direct investment but from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor.)

Withholding taxes

The UK withholds tax on the following types of income:

- Dividends – Generally, there is no withholding tax on dividends paid by UK companies. However, a 20% rate applies to distributions paid by UK Real Estate Investment Trusts (REITs).
- Royalties – A 20% rate can apply to certain types of royalty payments (patent and certain copyrights)
- Interest – A 20% rate applies to interest paid on loans other than short-term loans and loans from banks. A 20% rate also applies to interest paid on corporate bonds. However, there is currently an exemption from withholding tax on interest paid on a qualifying Eurobond (i.e. a listed debt security). A 20% rate applies to interest paid on bank deposits.
- Rental income – A rate of 20% applies to rent paid to a non-resident from immovable property located in the UK

Relief from withholding tax can be obtained under British domestic legislation, tax treaties or EU Directives. Advance clearance from the British tax authorities (HMRC) may be required to apply relief at source from withholding tax.

Reclaims are also possible provided that the relevant documentation is submitted to HMRC within the Statute of Limitations (4 years from the 31 January following the tax year in which the withholding tax was suffered).

There are no municipal, local, social or trade taxes that are withheld in addition to the specified rates above.
The United Kingdom

**Stamp duties and transaction taxes**

Share sales are subject to stamp duty or stamp duty reserve tax if they relate to UK shares or securities or if anything in respect of the share transfer is done in the UK (e.g., instruments are executed in the UK).

Stamp duty and stamp duty reserve tax are charged at a rate of 0.5% of the consideration paid by the purchaser to the vendor for the transfer of the shares. Stamp duty is paid by the recipient, i.e., the purchaser of the shares.

Any stamp duty paid by the purchaser is an allowable expense when calculating any resulting capital gain or loss on the disposal of the shares.

Once the percentage figure has been applied, stamp duty is rounded up to the nearest £5. The same does not apply to stamp duty reserve tax.

Generally, stamp duty is not payable if the consideration does not exceed £1,000.

Strictly speaking, transfers of partnership interests are also subject to stamp duty if there is a transfer on sale and the partnership owns stock or marketable securities. However, there is often no practical need to pay the stamp duty in such cases.

**Anti-abuse rules**

HMRC updated its guidance in June 2012 on beneficial ownership. This guidance has potentially tightened up the requirement for an intermediary company providing debt to have a beneficial ownership of the interest receipts in order to benefit from any double taxation treaty to which the UK is a party.

There are various targeted anti-avoidance provisions in UK tax legislation and an established line of anti-avoidance case law. The UK government has published a consultation document on a proposed general anti-abuse rule and has issued draft legislation which will come into effect from July 2013.

**Deductibility of interest**

**Unrelated-party loans**

Generally, a portfolio company can deduct its net interest expenses on unrelated-party loans from its tax basis without any limitation. However, specific anti-avoidance provisions can limit the amount of the deduction in certain circumstances. For example, interest may be treated as a distribution if the debt has equity-like features, the loan must be taken out for the commercial purposes of the company and the worldwide debt cap rules may apply if the UK net debt of the group exceeds 75% of the worldwide gross debt of the group. The UK transfer pricing rules only apply to related-party loans.

**Related-party loans**

Although interest is generally deductible, a portfolio company in the UK may not be able to deduct all of its net interest expenses on loans from its tax basis where the UK's transfer pricing or other anti-avoidance provisions apply. The UK transfer pricing rules broadly provide that where there is a controlling interest between a borrower and a lender, or if they are otherwise connected, the rate of interest charged under the loan must be at arm's length and the level of gearing must not exceed the amount that an independent third party would be prepared to lend in similar circumstances. There is no “safe harbour” debt-to-equity ratio in the UK. HMRC tends towards a case-by-case approach to transfer pricing.

**British tax at a company level**

**Company tax**

The main rate of corporation tax is 24% (with effect from 1 April 2012). This rate will reduce to 23% from 1 April 2013 and is expected to reduce to 21% from 1 April 2014 and 20% from 1 April 2015. Companies with profits in excess of £1.5 million are subject to the main rate of corporation tax.

Small companies (those with profits chargeable to corporation tax of less than £300,000) are subject to corporation tax at a rate of 20%.

The £1.5 million and £300,000 thresholds are reduced depending on the number of associated companies in the group. Broadly, associated companies are companies (including non-UK companies) that are within the same 50% or more group as the company.

Companies that have profits chargeable to corporation tax between £300,000 and £1.5 million (or the relevant reduced threshold, depending on the number of associated companies) are taxed at the main rate of corporation tax and are then able to claim marginal relief.

No municipal, local, social or trade taxes are levied in addition to the applicable UK corporation tax rate.
**British taxation of employees**

**Income tax for private individuals**

The following tax brackets apply (tax year 2012/2013) - Taxable income:

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0-£34,370 (approximately €46,300)</td>
<td>20%</td>
</tr>
<tr>
<td>£34,371-£150,000 (approximately €190,000)</td>
<td>40%</td>
</tr>
<tr>
<td>£150,000+</td>
<td>50% - to reduce to 45% from 6 April 2013</td>
</tr>
</tbody>
</table>

Individuals are allocated a personal allowance of £8,105 (€9,615). This allowance reduces where income is above £100,000 (€118,632) (by £1 for every £2 over the £100,000 limit).

**Social security payments**

**Private individuals**

National insurance (NI) is charged on a person’s employment income. All rates are in relation to the 2012/13 tax year. If a person is self-employed their self-employment income is subject to the following rates (Class 4 NI):

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0-£7,605 (approximately €9,600)</td>
<td>0%</td>
</tr>
<tr>
<td>£7,605-£42,475 (approximately €54,000)</td>
<td>9%</td>
</tr>
<tr>
<td>£42,475+</td>
<td>2%</td>
</tr>
</tbody>
</table>

If a person is employed their employment income is subject to the following rates (Class 1 NI):

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0-£7,592</td>
<td>0%</td>
</tr>
<tr>
<td>£7,592-£42,484</td>
<td>12%</td>
</tr>
<tr>
<td>£42,484+</td>
<td>2%</td>
</tr>
</tbody>
</table>

**Employers**

Employers pay employers’ Class 1 or Class 1A NI contributions at 13.8% on earnings or other taxable benefits provided to employees over £7,488 (€8,883).

**Capital gains tax for private individuals**

For the 2012/13 tax year, capital gains tax rates depend on a person’s income. If income is over the basic rate band (£34,370), CGT is 28%. If income is less than the basic rate band, CGT is charged at 18%.

Individuals are also given an annual exempt amount of £10,600 (€12,575), which is an annual tax-free allowance for individuals.

Entrepreneurs’ relief (a tax relief introduced in April 2008 available to taxpayers who dispose of an interest in their businesses (including shares in their “personal companies”)) is available when the following conditions are satisfied:

- A material disposal of business assets
- A disposal associated with a material disposal
- The disposal of trust assets

In most instances entrepreneurs’ relief will be available to:

- Sole traders or partners selling the whole or part of their business
- Company directors, officers or employees who sell shares in a “personal company” after holding the shares for at least 12 months. A company is an individual’s “personal company” if, broadly, the company is a trading company or holding company of a trading group, the shareholder works for the company or a member of the group, has 5% of the ordinary share capital of the company and is able to exercise at least 5% of the voting rights.

The aim of entrepreneurs’ relief is to reduce the rate of capital gains tax paid by taxpayers on qualifying disposals to 10%. Gains are eligible for entrepreneurs’ relief up to a maximum lifetime limit which is currently £10 million.

No municipal, local, social or trade taxes are levied in addition to the applicable UK capital gains tax rate.

**The taxation of stock options**

The taxation of stock options depends on the type of stock option scheme and the status of the individual who receives it (e.g., employee or a consultant).

Unapproved options are taxed as income upon exercise. If the stock option relates to an employment and the shares under option are “readily convertible assets” on exercise, income tax would be payable under the PAYE system and national insurance contributions (both employee’s and employer’s NI contributions) would arise.
Approved stock options are not taxed upon grant or exercise if the exercise price represents the market value of the shares under option at the date of grant and the options are exercised in approved or qualifying circumstances.

Capital gains tax will arise on any gain made on the subsequent disposal of the option shares.

**Special schemes**

Some schemes are approved by HMRC and attract favourable tax treatment.

These are:

- Share incentive plans
- SAYE schemes
- Company share option plans
- Enterprise management incentive (EMI) option schemes

All of the above schemes, assuming they have HMRC approval or otherwise satisfy the relevant HMRC requirements, have certain tax and NI contribution advantages. These low-tax schemes generally enable a company to award shares to its workforce free of income tax and NI contributions.

The schemes are usually established to incentivise and reward staff. There are, however, certain conditions that a company must satisfy in order to establish these schemes, such as that the company cannot be under the control of another company (unless the company is listed on a recognised stock exchange).

**Tax relief for the grantor of the stock options**

Subject to certain conditions, on the exercise of employee stock options, a valuable corporation tax deduction may arise for the employer company based on the difference between the market value of the shares on exercise and the exercise price paid for the shares.

---

<table>
<thead>
<tr>
<th>Taxation of stock options</th>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unapproved options</td>
<td>Upon exercise</td>
<td>As income. If the stock option relates to an employment and the shares under option are “readily convertible assets” on exercise, income tax would be payable under the PAYE system and national insurance contributions would arise.</td>
</tr>
<tr>
<td>Approved stock options</td>
<td>They are not taxed upon grant or exercise if the exercise price represents the market value of the shares under option at the date of grant and the options are exercised in approved or qualifying circumstances. Capital gains tax will arise on any gain made on the subsequent disposal of the option shares.</td>
<td></td>
</tr>
</tbody>
</table>

**Special rules for certain types of company**

Yes – There are special schemes approved by HMRC which attract favourable tax treatment. There are, however, certain conditions that a company must satisfy in order to establish these schemes.

**Tax relief for the grantor**

Yes - subject to certain conditions, on the exercise of employee stock options, a valuable corporation tax deduction may arise for the employer company.

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**Special tax regimes**

The £8,105 base income tax exemption may be adjusted under:

- Age-related allowance
- Blind persons allowance
- Married couples allowance
British fiscal incentives

Fiscal incentives at an investor level

There are no specific fiscal incentives for investors to invest in limited partnership fund structures, but it is worthwhile noting that the tax treatment of carried interest in a typical private equity or venture capital fund is agreed in a memorandum of understanding agreed between the BVCA and HMRC.

There are fiscal incentives to invest in private equity and venture capital more generally. These fiscal incentive schemes, including, venture capital trusts (VCTs), Enterprise Investment Scheme (EIS) and Seed Enterprise Investment Scheme (SEIS) investments, are aimed at encouraging investment in small and start-up companies by UK resident individuals. The relevant tax reliefs are not applicable to non-UK resident investors.

UK individuals investing up to £200,000 (€237,265) in a VCT (which is, in fact, a listed company) are entitled to income tax relief at 30% on the investment provided that it is held for at least 5 years. Income distributed by the VCT will not be subject to tax in the hands of the investing individual, and capital gains realised by an individual on the sale of shares in a VCT will be free of capital gains tax.

In addition, there are tax advantages for UK individuals investing via Enterprise Investment Schemes in small unquoted companies, including through EIS fund structures (which tend to be contractual arrangements as opposed to a conventional fund structure).

In recent years, the EIS investment limits have increased and, from 6 April 2012, investments of up to £1 million (€1,186,320) attract tax relief at a rate of 30% (previously 20%). Providing the investment is held for 3 years, any capital gain is tax-exempt, however, dividends remain taxable. In order for the shares to qualify they must be full-risk, ordinary shares with no preferential rights to redemption or assets on a winding up.

The total amount that can be invested in any company under all venture capital schemes has also increased from £2 million to £5 million.

A new scheme called the Seed Enterprise Investment Scheme has also been introduced to encourage investment into new businesses. The qualifying conditions are much more restrictive than the EIS scheme -the company has to be a new start-up with less than £200,000 of gross assets. The company can also raise only up to £150,000 through the scheme. An SEIS investment attracts income tax relief at a rate of 50% on investments up to £100,000 made in the year.

Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>Yes</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

The UK has been providing several fiscal incentives for business R&D expenditure since the year 2000, which are available to SMEs and, on a less generous scale, to larger companies from 2002.

For SMEs there is a 175% enhanced deduction for qualifying expenditure. This was increased to 200% from 1 April 2011 and further increased to 225% from 1 April 2012. It had previously been a condition that a minimum of £10,000 was spent on R&D in order to claim these enhanced deductions. However, this condition was abolished from 1 April 2012.

SMEs are also able to claim tax credits if they have trading losses. The company is able to surrender trading losses for a tax credit of 11% for any losses attributable to expenditure incurred after 1 April 2012. In a 2011 government consultation on R&D, one of the many ideas discussed was to introduce a pilot scheme for small companies and start-ups to provide advance assurances to the application of the scheme.

Larger companies are still able to claim a 130% deduction for qualifying expenditure and, instead of claiming this deduction, larger companies will be able to claim an above the line tax credit of 10% for their qualifying expenditure incurred on or after 1 April 2013.

For qualifying expenditure, the UK also offers 100% accelerated capital allowances (RDAs) for capital expenditure incurred on R&D. These are given as a one-off, up-front deduction.

Expenditure on externally provided workers can qualify for an enhanced deduction, for both SMEs and larger companies, provided the relevant conditions are met. For SMEs, all expenditure on subcontracted R&D qualifies whilst only certain subcontracted R&D qualifies for large companies.
After widespread consultation, the UK will be introducing an elective "patent box" regime from April 2013 with a preferential 10% rate of corporation tax on a proportion of profits from relevant patents. The regime is to be phased in over a 5-year period and so the relevant proportion of profits will be 60% from April 2013, increasing annually to 100% from April 2017.

In general, contributions to independent research qualify for enhanced R&D deductions.

Future developments

- **Tax-transparent funds (TTF)** - Since January 2012, the UK Government has been consulting on the introduction of a new, regulated, tax-transparent fund vehicle primarily to facilitate the setting up of pooled “master funds” under the Undertakings for Collective Investments in Transferable Securities IV Directive (UCITS IV). The main objective of introducing contractual schemes is to ensure that the UK is able to compete to win an appropriate share of European pooled funds as UK-domiciled funds. The TTF legislation is expected to be in force in 2013.

- **GAAR** – The government has published a consultation document and draft legislation on a proposed general anti-abuse rule (GAAR). The draft GAAR is targeted at abusive tax avoidance arrangements. It should initially apply (but not exclusively) to income tax, corporation tax, capital gains tax and stamp duty land tax. The intention is that the GAAR will also apply to NI contributions, but this will require separate legislation. The GAAR should apply fully to tax advantages arising from arrangements entered into on or after the proposed commencement date in July 2013.

- **Disguised interest** – The government has published a consultation document outlining possible amendments to the tax treatment for individuals of the return from investments that are designed to produce a return equivalent to interest (such as, the return on zero-rate preference shares). For UK individual recipients, the change could result in the return being subject to UK income tax, rather than as a capital gain. This will align UK individuals with the regime already in place for UK-resident companies. Legislation will be included within the Finance Bill 2013.

- **Statutory residence test** – The government has published a consultation document and draft legislation setting out a new test to determine whether an individual is UK tax-resident, which will take effect from April 2013. The current position is based upon case law.

- **Employee shareholders** – The government has announced a new tax-effective regime under which employees can give up certain employment rights in return for shares which are exempt from capital gains tax on sale. Draft legislation has been published and is proposed to come into force from September 2013.

- **EMI share option schemes** – Draft legislation has been published to extend entrepreneurs’ relief from capital gains tax on shares acquired under the EMI scheme options. Following the exercise of EMI options, it is proposed that EMI shareholders will no longer be required to satisfy the 5% “personal company” shareholding test to qualify for entrepreneurs’ relief. In addition, in determining whether shareholders have held the shares for a minimum period of 1 year, the period during which the option is held will be included and not just the period after the option is exercised.

Fiscal incentives for young and innovative companies

Based on the European definition of SMEs or other similar rules, there are various fiscal incentives available for such companies in the UK, including: enhanced R&D relief; more generous capital allowances; an exemption from the UK transfer pricing rules; a lower rate of corporation tax; the EIS, VCT and SEIS schemes; and enterprise management incentive (EMI) share option schemes to encourage employee share ownership (see above).
Introduction

US limited partnerships provide a similar structure to those generally available in Europe. Taxes are high in the United States of America in comparison with Europe with higher corporate income tax (CIT) rates and a withholding tax rate on a par with one of the highest in Europe. However, the US provides a large variety of fiscal incentives.

US Fund structures

Structures

- The Delaware limited partnership is the most commonly used fund structure in the US for private equity and venture capital investments.
- The Cayman Island exempted limited partnership1 is also a commonly used fund structure. For the purposes of US taxation on income and capital gains, Delaware and Cayman Islands limited partnerships are treated the same.
- The Delaware limited liability company may be considered as a fund structure as it provides limited liability to the investors and is transparent for US federal tax purposes. However, this structure is rarely used, partly because the classification of the entity in non US jurisdictions may vary, which may impact the taxation of investors in their home jurisdictions.

Transparency

Both Delaware and Cayman Island limited partnerships are transparent for domestic and non-domestic investors.

Absence of incremental tax (as compared to direct investments)

Given the transparency of both structures, the fund structure generally does not impact the taxation of the target company or the taxation of domestic and non-domestic investors with respect to proceeds. I.e a Delaware Partnership or a Cayman Partnership will not result in additional tax compared to a direct investment in the underlying portfolio company.

Permanent establishment

Both fund structures do not generally constitute (by law) a permanent establishment in the US for non-domestic investors and fund managers. If the fund invests in a portfolio company that is tax-transparent and that has a permanent establishment in the US, however, non-domestic partners in the fund will be treated as having a permanent establishment in the US. Non-domestic investors can solve this by investing in the fund through an entity taxed as a C corporation for US tax purposes, although investing in the fund through a C corporation may increase the tax burden ultimately borne by the non-domestic investor with respect to the fund investment.

Capital gains tax for non-resident investors

Non-domestic investors generally are not subject to US tax on capital gains generated on the sale of shares of US companies unless the capital gains constitute income that is treated as effectively connected with the conduct of a trade or business within the US (“ECI”). A fund may, however, generate capital gain that is treated as ECI:

- If it invests in tax-transparent portfolio companies that are engaged in a trade or business within the US
- If the fund invests in a “United States real property holding corporation” (generally, a corporation where US real estate comprises 50% or more of the fair market value of the corporation’s business assets).

In addition, non-domestic investors that are individuals and that are present in the US for 183 days or more during the year are subject to US tax on US source capital gains that are not ECI. Although, under these circumstances, the non-domestic investor may be considered a US resident for US tax purposes and, as a result, be subject to tax on the individual’s worldwide income.

Undue restrictions

The fund is considered to be free from undue restrictions.
## Summary

### Fund structures

<table>
<thead>
<tr>
<th>Transparency</th>
<th>Absence of incremental tax</th>
<th>Permanent establishment</th>
<th>Capital gains tax</th>
<th>Undue restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor type</td>
<td>Domestic</td>
<td>Non-domestic</td>
<td>Domestic</td>
<td>Non-domestic</td>
</tr>
<tr>
<td>Delaware Limited Partnership</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Cayman Island Limited Partnership</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Taxation at a fund level

- **VAT on management fees**: No
- **Capital gains tax**: Maximum 35%
- **Withholding tax**: 30%
- **Stamp duties or transaction taxes**: Stamp - No; Transaction - No
- **Anti-abuse rules**: Yes
- **Fiscal incentives**:
  - **Investors**: Yes
  - **Fund management**: Yes

### Taxation at a company level

- **Company tax**: Min. 15% Max. 35%
- **Special tax regime for SMEs or other small companies**: No
- **Deductibility of interest**:
  - Related-party loans: Yes, subject to restrictions
  - Unrelated-party loans: Yes, subject to certain restrictions

### Taxation of employees

- **Income tax**: Min. 10% Max. 39.6%
- **Social security**: 5.65% (employee) + 7.65% (employer)
- **Capital gains tax**: 15% for long-term capital gains; Max. 39.6% for short-term gains
- **Tax on stock options**: Min. 0% Max. 39.6%
- **Special tax regimes**: Yes

### Fiscal incentives at a company level

- **Business R&D expenditure**: Yes
- **R&D capital expenditure**: Yes
- **Contracting researchers**: Yes
- **Technology transfer**: Yes
- **Cooperative external research**: No
- **Innovative spin-out**: No
- **Young and innovative companies**: Yes

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2 This percentage consists of 4.2% social security tax on wages up to $110,100 (€85,903) and 1.45% Medicare tax on all wages. For tax years beginning after 2012, social security tax will be 6.2% (this will apply to all wages up to $113,700 (€88,712)).

Please note that the rates are different for self-employed individuals.

3 Tax treatment depends on classification as statutory or non-statutory (see below). Additionally, these rates do not take into account employment taxes or any tax that may be imposed on the stock after the option is exercised.
The United States of America

US Tax at a fund level

**VAT on management fees**

The fund management company does not have to pay VAT on management fees.

**Capital gains tax**

A domestic investor is subject to income tax upon the sale of shares of a portfolio company. If the investor is an individual and the stock was held for more than 1 year, the gain on sale is currently subject to federal tax at a 15% tax rate (and the same rate generally applies to dividends received by individuals). For tax years beginning after 2012, the 2012 Taxpayer Relief Act increases this rate to 20% for individual taxpayers with incomes exceeding $400,000 (£312,090) ($450,000 for married taxpayers).

Domestic corporations are not eligible for this reduced tax rate for capital gain. The highest US federal income tax rate currently applicable to domestic corporations is 35%.

Domestic investors may also be subject to state and local taxes.

The tax liability of domestic investors is not different if the gain is not realised from a direct investment but from an investment in a tax-transparent domestic or non-domestic fund that distributes the proceeds of the gain to the domestic investor.

**Withholding taxes**

The US levies withholding taxes, which are non-refundable (unless overpaid), at a rate of 30% on US source dividends, interest, and other income paid by a US company to a non-domestic investor, unless the investor is eligible for a reduced rate or exemption from withholding under a tax treaty between the US and the investor’s country of residence. Certain other exemptions may apply for interest payments.

This 30% tax rate is the US federal income tax withholding rate for such income; there may also be state and local withholding taxes.

In addition, under the US Foreign Account Tax Compliance Act (FATCA) a 30% withholding tax will apply to US source income and gross proceeds attributable to property that can produce US source income unless the non-domestic investor complies with FATCA. This tax is refundable only in certain circumstances. FATCA withholding on US source income is scheduled to begin 1 January 2014, and FATCA withholding with respect to US source gross proceeds is scheduled to begin 1 January 2017.

**Stamp duties and transaction taxes**

No stamp duties or transaction taxes are levied in the US.

**Anti-abuse rules**

There are various targeted anti-abuse provisions in the US tax laws (including the recently codified “economic substance” doctrine) and a significant body of case law dealing with various anti-abuse concepts (for example, the “step transaction” doctrine).

US Tax at a company level

**Company tax**

US federal CIT rates are graduated. If taxable income of the taxpayer is:

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax</th>
<th>%</th>
<th>Of the amount over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0–$50,000</td>
<td>$7,500</td>
<td>15%</td>
<td>$0</td>
</tr>
<tr>
<td>$50,000–$75,000</td>
<td>$13,750</td>
<td>25%</td>
<td>$50,000</td>
</tr>
<tr>
<td>$75,000–$100,000</td>
<td>$22,250</td>
<td>34%</td>
<td>$75,000</td>
</tr>
<tr>
<td>$100,000–$335,000</td>
<td>$113,900</td>
<td>39%</td>
<td>$100,000</td>
</tr>
<tr>
<td>$335,000–$1,000,000</td>
<td>$1,500,000</td>
<td>34%</td>
<td>$335,000</td>
</tr>
<tr>
<td>$1,000,000–$15,000,000</td>
<td>$3,400,000</td>
<td>35%</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>$15,000,000–$18,333,333</td>
<td>$5,150,000</td>
<td>38%</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>$18,333,333+</td>
<td></td>
<td>35%</td>
<td>0</td>
</tr>
</tbody>
</table>

State and local taxes are not included in this calculation.

Due to the progressive nature of the US tax system, less profitable corporations are taxed at lower rates. In addition, certain companies may qualify as “subchapter S corporations,” in which case they generally would not be subject to federal tax at the entity level. Several requirements would need to be satisfied for this status to apply, including a prohibition on non-domestic shareholders and shareholders who are not individuals (with certain exceptions).
The United States of America

Deductibility of interest

Unrelated-party loans
Generally, a portfolio company can deduct its net interest expenses on unrelated-party loans from its tax basis. However, in certain cases these expenses must be capitalised.

There are also special limitations that apply to certain indebtedness issued to fund corporate acquisitions; certain high-yield obligations with significant “original issue discount”; certain debt obligations that can be paid with equity in, or held by, the borrower corporation or a related party; and certain interest on debt incurred to purchase assets that generate tax-exempt income.

Related-party loans
There is a limitation on deductions for interest paid or accrued by corporations to related persons where the interest is exempt or partially exempt from taxation. The limitation depends on the amount of interest paid, the debt to equity ratio of the company, and certain other factors.

Depending on the debt-equity structure of a company, the Internal Revenue Service may seek to recharacterise debt held by shareholders as equity. This is not a statutory concept but instead governed by case law, which does not provide a bright-line test.

US Taxation of employees

Income tax for private individuals

Income tax is levied at the following rates:

<table>
<thead>
<tr>
<th>Marginal Tax Rate</th>
<th>Single taxpayers or those who are married but file separately</th>
<th>Married taxpayers filing jointly</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>$0-$8,925</td>
<td>$0-$17,850</td>
</tr>
<tr>
<td>15%</td>
<td>$8,925-$36,250</td>
<td>$17,850-$72,500</td>
</tr>
<tr>
<td>25%</td>
<td>$36,250-$87,850</td>
<td>$72,500-$146,400</td>
</tr>
<tr>
<td>28%</td>
<td>$87,850-$183,250</td>
<td>$146,400-$223,050</td>
</tr>
<tr>
<td>33%</td>
<td>$183,250-$398,350</td>
<td>$223,050-$398,350</td>
</tr>
<tr>
<td>35%</td>
<td>$398,350-$400,000</td>
<td>$398,350-$450,000</td>
</tr>
<tr>
<td>39.6%</td>
<td>$400,000 and up</td>
<td>$450,000 and up</td>
</tr>
</tbody>
</table>

The rates above are US federal income tax rates and do not reflect any state or local income taxes, nor do they reflect social security or Medicare taxes (see below).

Social security payments

Employees

- Self-employed individuals currently pay a 10.4% social security tax on earnings up to $110,100 (€85,903) and a 2.9% Medicare tax on all earnings.
- Individuals who are not self-employed pay the employee’s share of those taxes. Currently, employees pay a 4.2% social security tax on wages up to $110,100 and a 1.45% Medicare tax on all wages.
- However, the 2012 Taxpayer Relief Act ended a 2% holiday on the employee’s share of social security taxes and increased the wage base. For tax years beginning after 2012, self-employed individuals will pay a 12.4% social security tax and individuals who are not self-employed will pay 6.2%. These taxes apply to all wages up to $113,700 (€88,712).

Employers

- Employers pay a 6.2% social security tax on wages paid to an employee up to $110,100 ($113,700 for tax years beginning after 2012) and a 1.45% Medicare tax on all wages paid to employees.

Capital gains tax for private individuals

Federal long-term capital gains, which are gains on the sale of capital assets held for more than 1 year, are currently taxed at 15%.

For tax years beginning after 2012, the 2012 Taxpayer Relief Act increases this rate to 20% for individual taxpayers with incomes exceeding $400,000 ($450,000 for married taxpayers).

Short-term capital gains, which are gains on the sale of capital assets held for 1 year or less, are taxed at ordinary income rates. State and local taxes may also apply.

The taxation of stock options

The way in which the stock option is taxed depends on the stock option scheme and the status of the individual who receives it.

- Statutory options (also known as incentive stock options or “ISOs”) are granted to employees with an exercise price at least equal to the fair market value of the company’s stock at the time of the grant. If the ISO requirements are met, an employee does not recognise any income on the grant of the ISO.
If the stock acquired due to the exercise of the ISO is disposed of more than a year after exercise and more than 2 years after the grant of the ISO, then the employee will not be taxed at the time of the exercise and will have capital gain treatment for any gain or loss on the sale.

Non-statutory options are usually taxed at the time of exercise. The amount of taxable income will equal the excess of the fair market value of the stock at the time of exercise over the exercise price. This amount is taxed at ordinary income rates, but gain on a subsequent sale of the underlying stock is generally taxed at capital gain rates. If the exercise price is less than the fair market value at the time of grant, certain penalty taxes will likely be imposed under special “defined compensation” rules.

These results may be altered if vesting restrictions are imposed.

There are no special rules on stock options for certain types of company. Furthermore, generally, no deduction is available for ISOs. However, for non-statutory options, the company is generally entitled to a deduction equal to the amount of ordinary income taxable to the optionee at the time of exercise.

The US provides a couple of special tax regimes, including:

- **Increased Standard Deduction Age Related**
  Single individuals aged 65 and over get an increased standard deduction of $7,400 (€5,774) (normally $5,950).

- **Increased Standard Deduction for Blind Persons**
  Single individuals who are blind get an increased standard deduction of $7,400 (normally $5,950).

- **Increased Standard Deduction for Married Couples Who File Jointly**
  Married couples, who choose to file jointly, get a standard deduction of $11,900 (€9,285), twice the standard deduction of individuals.

### Taxation of stock options

<table>
<thead>
<tr>
<th>Timing</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the ISO requirements are met, an employee does not recognise any income on the grant of the ISO. If the stock acquired due to the exercise of the ISO is disposed of more than a year after exercise and more than 2 years after the grant of the ISO, then the employee will not be taxed at the time of the exercise and will have capital gain treatment for any gain or loss on the sale.</td>
<td>The taxable amount will be taxed at ordinary income rates, but gain on a subsequent sale of the underlying stock is generally taxed at capital gain rates.</td>
</tr>
</tbody>
</table>

### Special rules for certain types of company

No

### Tax reliefs for the grantor

<table>
<thead>
<tr>
<th>Statutory</th>
<th>Generally, no deduction is available for ISOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-statutory</td>
<td>The company is generally entitled to a deduction equal to the amount of ordinary income taxable to the optionee at the time of exercise</td>
</tr>
</tbody>
</table>

### US Fiscal incentives

#### Fiscal incentives at a fund level

**Qualified small business stock**

The US provides a fiscal incentive for domestic investors to invest in venture capital investments by permitting a certain percentage of gain (currently, 100%) realised with respect to “qualified small business stock” held for a prescribed holding period to be excluded from income. The current rate structure, together with the application of the “alternative minimum tax,” reduces this incentive substantially. If proceeds from the sale of qualified small business stock are reinvested in other stock that is qualified small stock, the tax from the original sale may be deferred until the replacement stock is disposed of, if certain requirements are satisfied.
These incentives are generally only beneficial to domestic taxable investors. Other than the tax benefits for qualified small business stock, the US generally does not provide any special federal tax incentives for investing in venture capital or private equity.

Investors
As private equity funds are typically organised as pass-through entities for US federal tax purposes, there is only a single level of US federal income tax imposed at an investor level on a fund’s investment returns. In addition, the character of a fund’s investment returns passes through to its partners, so that individual partners may pay tax on their distributive share of the fund’s net long-term capital gain at a preferential rate. As described above, in the US, net long-term capital gain of individuals bears lower income tax rates vis-à-vis ordinary income tax rates. Unlike individuals, corporations do not benefit from lower income tax rates for net long-term capital gain as the gain is taxed at ordinary income tax rates. Additionally, with the exception of a sale of a US real property interest and capital gain that are ECI at the fund level, non-ECI capital gains of non-domestic investors are generally not taxed by the US.

Furthermore, both domestic and non-domestic investors benefit from pass-through treatment because it generally allows the partnership to distribute stock or other marketable securities free of US federal income tax at both the entity and investor levels.

Moreover, until the end of 2012, certain dividends (qualified dividends) paid by a US corporation or a qualified non-domestic corporation are taxed at the federal level at the same rate as net capital gain (see above).

General partners
General partners may benefit from the grant of carried interests in the fund. Typically, a carried interest is structured as an equity interest granted to the general partner in exchange for services provided to the fund.

Because the carried interest allocation generally corresponds to appreciation in the fund’s capital assets, income allocated with respect to a carried interest is typically treated as long-term capital gain and taxed at a lower US federal income tax rate if allocated to an individual (either directly or through one or more pass-through entities). A carry partner is generally not taxed on the receipt of the interest at the federal income tax level because at grant the interest has no right to current equity and entitles the holder to fund/partnership equity only if the fund has future economic appreciation and income.

The fund sponsors and/or managers generally create one entity to serve as the manager of the fund, and typically the same entity will serve as the manager of each other fund formed by the sponsors. The manager entity is often structured as a pass-through entity (i.e., a partnership or limited liability company) for US federal income tax purposes, but is sometimes structured as a corporation. The fund sponsors and/or managers generally create an additional pass-through entity, for each fund under management, to serve as the fund’s general partner receiving a carried interest.

### Fiscal incentives at a company level

<table>
<thead>
<tr>
<th>Area</th>
<th>Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business R&amp;D expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>R&amp;D capital expenditure</td>
<td>Yes</td>
</tr>
<tr>
<td>Contracting researchers</td>
<td>Yes</td>
</tr>
<tr>
<td>Technology transfer</td>
<td>Yes</td>
</tr>
<tr>
<td>The cooperation between firms and research institutes or universities</td>
<td>No</td>
</tr>
<tr>
<td>The creation or spin-out of innovative firms from their parent</td>
<td>No</td>
</tr>
</tbody>
</table>

> Section 41, which was recently revived as part of the American Taxpayer Relief Act of 2012, provides two different tax credits for research and development. Each credit is equal to 20% of the amount spent on the research.

The Qualified Research Credit applies to increased expenditures on “qualified research.” It applies whether the company undertakes the research itself or contracts it out to others.

The second credit is the Basic Research Credit. This credit is available for research in areas that are outside the scope of the company’s current trade or business. The 20% credit is applied to all research expenditures above a floor amount.

> In general, tax payers can choose whether to capitalise R&D expenses or to take current-year deductions for those expenditures

> In general, gain from the sale of a patent held by an individual investor or certain financial backers of an investor is taxed at the preferential long-term capital gain rates without regard to the holding period. Such preferential rates are otherwise limited to gain from the sale of capital assets held for longer than 1 year. However, there is no tax preference for royalties obtained from the use of patents or other intellectual property.
Young and innovative companies

The Small Business Health Care Tax Credit provides a maximum credit equal to 35% of all employer money paid toward an employee's health care premiums, provided certain requirements are met.

To be eligible, an employer must cover at least 50% of the cost of single (not family) health care coverage for each of its employees. The employer must also have fewer than 25 full-time equivalent employees (FTEs). Those employees must have average wages of less than $50,000 (€39,011) a year.

Additionally, reduced tax rates or deferred taxes may be available in connection with the sale of certain stock that meets the definition of qualified small business stock (see above).