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Tax Considerations When Structuring Investment Funds in Luxembourg and Germany

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List of Abbreviations

AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
AML	Anti-Money Laundering
ATAD	Anti-Tax Avoidance Directive
AUM	Assets Under Management
BAFIN	Bundesanstalt für Finanzdienstleistungsaufsicht
BEPS	Base Erosion and Profit Shifting
CSSF	Commission de Surveillance de Secteur Financier
DAC	Directive on Administrative Cooperation
DTT	Double Taxation Treaties
ESTG	Einkommensteuergesetz
FCP	Fonds Commun de Placement
OECD	Organisation for Economic Co-operation and Development
RAIF	Reserve Alternative Investment Fund
SIF	Specialised Investment Fund
UCITS	Undertakings for Collective Investment in Transferable Securities
VAT	Value Added Tax

Introduction

Investment funds play a crucial role in the global financial markets. They serve as vehicles for pooling and managing capital from diverse investors. Luxembourg and Germany are two of Europe's leading financial centres and stand out as key jurisdictions for fund domiciliation, as well as management. While both countries offer robust legal and regulatory frameworks, their approaches to the taxation differ significantly, influencing fund structuring strategies along with investor behaviours. Understanding these differences is critical for fund managers, investors, and policymakers aiming to optimise fund performance while ensuring compliance with evolving tax and regulatory requirements.

The structuring of investment funds is heavily influenced by taxation at both fund and investor levels. Luxembourg appeals with its tax-efficient vehicles, such as Special Investment Funds (SIFs), Reserved Alternative Investment Funds (RAIFs), and Société d'Investissement en Capital à Risque (SICAR). Germany, on the other hand, offers a more complicated landscape with its Investment Tax Act (InvStG), which emphasizes transparency and neutrality in fund taxation. Despite their respective advantages, both jurisdictions face challenges posed by international regulatory initiatives such as the OECD's Base Erosion and Profit Shifting (BEPS) project and the EU's Anti-Tax Avoidance Directive (ATAD). These initiatives have common goal to prevent tax evasion and aggressive tax planning, persuading fund managers to reassess their structuring strategies.

This thesis addresses a key gap in academic and professional dialogue by providing a comparative analysis of tax considerations in Luxembourg and in Germany. While the existing research focuses more heavily on the taxation within each jurisdictions, there is limited consideration of the cross-border dynamics of how Luxembourg and Germany structure and tax their respective investment funds within cross-border context. Furthermore, the recent regulatory developments, such as the implementation of DAC6, ATAD, and the OECD's BEPS framework, have added additional complexities and new compliance obligations that remain underexplored in academic and policy research. By addressing this gap, this study aims to provide actionable insights for practitioners and to contribute to the broader understanding of fund taxation in Europe.[1]

The primary objective of this thesis is to analyse the tax considerations that impact the structuring of investment funds in Luxembourg and Germany, with a particular focus on fund-level taxation, investor-level outcomes, and cross-border implications.

This research also explores how regulatory initiatives such as BEPS and ATAD have reformed the tax landscape, and how they have influenced fund structuring and compliance strategies. Through a combination of doctrinal research, comparative analysis and case studies, this thesis seeks to provide a comprehensive evaluation of the tax frameworks in these jurisdictions.

By exploring these subjects, this study aims not only to deepen academic understanding but also to offer more clear and actionable guidance to fund managers who are navigating the increasingly complex landscape of fund taxation in Luxembourg and in Germany. The insights gained from tis examination may also serve the policymakers striving to enhance the competitiveness of their jurisdictions, while remaining aligned with evolving international tax standards.

The thesis is organised as follows:

- Chapter 2 introduces the theoretical underpinnings and regulatory environments shaping investment funds in Luxembourg and Germany.
- Chapter 3 conducts a comparative tax analysis, focusing on both fund-level and investor-level taxation, with an emphasis on cross-border interactions.
- Chapter 4 examines how recent regulatory changes are influencing fund structuring strategies.

[1] Lang, M., Kemmeren, E.C.C.M., Essers, P., Öner, C., Smit, D., Owens, J., Pistone, P., Rust, A., Schuch, J., Staringer, C., Storck, A., Kofler, G., and Spies, K. *Tax Treaty Case Law Around the Globe 2020*. Amsterdam: IBFD, 2020.

- Chapter 5 presents selected case studies to illustrate how these dynamics play out in practice.
- Chapter 6 introduces a quantitative assessment of tax efficiency across different fund models.
- Chapter 7 discusses the key findings, and
- Chapter 8 concludes with targeted recommendations for both market participants and policymakers.

At its essence, this thesis contributes to a clearer understanding of how taxation, regulation, and cross-border complexities intersect in the European fund landscape. The goal is to provide a well-rounded, timely perspective that is both academically robust and practically meaningful for those working within or shaping the asset management industry.

Key research questions include:

1. What are the key legal and fiscal differences in fund structuring between Luxembourg and Germany?
2. How do EU directives and OECD-driven reforms shape cross-border fund operations?
3. What are the practical consequences of these differences for fund sponsors and investors?
4. What might the future hold for the investment fund sectors in both jurisdictions?

The central hypothesis underpinning this research is that Luxembourg tends to offer greater tax efficiency and structural flexibility for cross-border fund vehicles, even though Germany maintains a stronger alignment with institutional investors.

Chapter 1: Introduction

1.1Background of the Study

Investment funds are pooled investment vehicles that aggregate capital from multiple investors with the purpose of investing in a diversified portfolio of financial or non-financial assets, such as securities, real estate, or private equity. They are managed by professional fund managers and organised to provide investors with risk diversification, liquidity, and professional management.

They can take various legal and regulatory forms depending on the jurisdiction and investor profile, such as:

- Undertakings for Collective Investment in Transferable Securities (UCITS) – regulated, retail-friendly funds under a harmonized EU framework.
- Alternative Investment Funds (AIFs) – a broader category that includes hedge funds, private equity, infrastructure, real estate, and other non-UCITS vehicles.
- Specialised structures like RAIFs, SIFs (Luxembourg), or Spezialfonds (Germany) – typically reserved for institutional or well-informed investors.

Globally, US is the largest holder of funds, with approximately USD 28.9 trillion AUM[2], followed by Luxembourg with USD 5749.779 AUM[3] and Ireland with over 4.3 trillion AUM[4]. As of the end of 2023, Germany has 2689 billion AUM, thus making it the 6th country with the most investment funds and the thirst in the European Union[5]. Within the European Union, Luxembourg and Germany have emerged as two of the most prominent fund domiciles. Luxembourg is recognised for its uncomplicated and investor-friendly regulatory

[2] Investment Company Institute. (2023). *2023 Investment Company Fact Book*.
[3] Association of the Luxembourg Fund Industry (ALFI). (2025). *Industry Statistics*.
[4] ETF Express. (2024, May 23). *Ireland's funds and asset management industry surpasses EUR4.3trn AUM*.
[5] Lexology. (2024). *Year in review: asset management in Germany*

environment, as well as more favourable tax regime. Germany, on the other hand, offers a robust institutional system tailored specifically to its domestic investors.

The first questions to consider when structuring investment funds are the choice of fund domicile and the structure, since these have significant implications for tax efficiency, regulatory compliance, and investor outcomes.

1.2 Research Problem and Gap

Although Luxembourg and Germany are widely recognised as key European fund domiciles, the tax landscape governing cross-border fund structures between them remains notably complex. In recent years, both jurisdictions have introduced a range of reforms—adjustments to corporate tax rates, new fund tax regimes, and revisions to double taxation agreements—all of which can influence fund structuring choices, impact investor returns, and complicate compliance across borders.[6]

One of the main difficulties that the fund managers and sponsors face is dealing with the differing tax treatments applied by Luxembourg and Germany to investment funds. Luxembourg tends to prioritise competitiveness, by offering measures like subscription tax exemptions and lower corporate tax rates. Germany, by contrast, follows a stricter regulatory path, with frameworks such as the Investment Tax Act that impose detailed reporting duties and withholding requirements.[7]

The recent German court rulings and DTT amendments have further complicated the landscape by amending the eligibility criteria for tax benefits and by clarifying the treatment of various fund vehicles, particularly in cross-border contexts.[8]

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[6] Baker McKenzie, 'Luxembourg: Key tax changes for companies in 2025' (2024) < https://insightplus.bakermckenzie.com/bm/tax/luxembourg-key-tax-changes-for-companies-in-2025>

[7] Luxembourg for Finance, '2025 Tax Measures: Boosting Luxembourg's Financial Hub' (2024) < https://www.luxembourgforfinance.com/en/news/tax-measures-for-2025-strengthening-luxembourgs-global-financial-hub/>

[8] Goodwin, 'German Court Ruling Impacts Tax Strategy for Luxembourg Funds' (2024) < https://www.goodwinlaw.com/en/insights/publications/2024/09/insights-practices-tax-august-2024-german-court-ruling>

While the literature provides substantial analysis of the general tax frameworks in each country, there is a lack of concentrated, comparative research which would address how recent regulatory and judicial developments have impacted fund structuring decisions. In particular, there is a gap concerning:

a) The practical effects of new DTT protocols on the eligibility of Luxembourg and German funds for reduced withholding tax rates, especially for collective investment vehicles and partnerships.
b) The implications of differing approaches to tax transparency, substance requirements, and anti-abuse provisions for cross-border fund structures.
c) The operational challenges arising from the new compliance obligations, reporting regimes, and potential administrative penalties in both jurisdictions.

This thesis seeks to address these gaps by providing a detailed, comparative analysis of the perpetually evolving tax landscapes for investment funds in Luxembourg and Germany. It focuses on the most recent legislative, regulatory, and judicial developments. The aim is to clarify the practical aspects of tax considerations that the fund managers must address when structuring investment vehicles that operate across these two key European markets.

1.3Objectives of the Thesis

The thesis aims to:

a) Analyse and compare the tax and legal frameworks governing fund structures in Luxembourg and Germany;
b) Identify regulatory and fiscal advantages, as well as the disadvantages for fund sponsors and investors;
c) Examine the effects of recent EU-wide tax and regulatory changes on cross-border structuring strategies;
d) Offer practical recommendations for fund managers, legal advisors, and policymakers.

1.4Research Questions and Hypotheses

The objective of this thesis is to examine how tax considerations shape the structuring and cross-border competitiveness of investment funds in Luxembourg and Germany. The main research question is: How do the tax frameworks in Luxembourg and Germany influence the selection, domicile, and operational structure of investment funds targeting institutional investors? Further questions include: (1) to what extent do domestic tax laws and EU-level directives (such as ATAD, DAC6, and CRDC/FASTER) affect fund efficiency and investor outcomes? (2) how do withholding tax practices, treaty access rules, and substance requirements differ between these two jurisdictions, and what impact do these differences have on fund sponsors and the investors? (3) are vehicles such as RAIFs and Spezialfonds equivalent in delivering tax efficiency, or does jurisdictional context create inconsistencies?

The hypothesis is that Luxembourg's flexible regulatory environment and international tax treaties continue to provide a comparative advantage over Germany's more rigid, substance-oriented approach, particularly in cross-border structuring. Another hypothesis suggests that upcoming EU initiatives, including the FASTER proposal, may reduce current inefficiencies in withholding tax relief and begin to flatten the playing field across member states, thus reshaping fund domicile decisions in the coming years.

1.5Scope and Limitations

The thesis focuses on fund structures regulated under the UCITS and AIFMD (incl. ELTIF) regimes and applicable to institutional investors. The analysis is limited to legal and tax considerations relevant to Luxembourg and Germany and does not extend to third-party jurisdictions. Practical examples are based on anonymised structures and publicly available industry reports. The research does not quantify investor returns but provides legal and policy-based qualitative assessments.

1.6Methodology Overview

The methodology combines doctrinal legal analysis, comparative policy review, and case study assessment. Key primary sources include EU directives, national tax codes (e.g., InvStG), and regulatory circulars from BaFin and the Luxembourg Ministry of Finance. Secondary sources include legal commentaries, industry publications, and academic journals. Case studies are employed to illustrate the impact of fund structure selection on legal compliance and tax outcomes.[9]

1.7Structure of the Thesis

This thesis is structured into eight chapters, each building on the previous to provide a comprehensive analysis of tax considerations in the structuring of investment funds in Luxembourg and Germany.

- Introduction: Introduces the background, research problem, objectives, scope, and key questions of the study. It also outlines the central hypotheses and provides an overview of the methodological approach.

- Theoretical and Regulatory Framework: Establishes the conceptual foundation by exploring the definitions, types, and significance of investment funds. It also reviews the legal and regulatory frameworks governing fund structures in Luxembourg and Germany, with emphasis on the relevance of EU directives and OECD initiatives.

- Comparative Tax Analysis: Provides an in-depth comparison of the tax treatment at both fund and investor levels in Luxembourg and Germany. It assesses the impact of domestic legislation, withholding tax regimes, and access to double taxation treaties on fund structuring.

[9] M Helminen, *EU Tax Law – Direct Taxation 2021* (IBFD 2021) 145.

- Impact of Regulatory Changes: Examines how recent regulatory developments—such as ATAD, BEPS, DAC6, and the FASTER initiative—have reshaped the fund landscape. It analyses how these measures influence substance requirements, treaty access, and fund compliance obligations.

- Case Studies: Presents real-world case studies illustrating fund structuring strategies in both jurisdictions, including examples involving RAIFs, Spezialfonds, and cross-border feeder-master structures. These cases highlight practical challenges and solutions in fund design.

- Discussion: Synthesises findings from the comparative and empirical chapters, aligning them with the hypotheses. It includes a quantitative comparison of after-tax returns and evaluates the strategic implications for fund managers and investors.

- The Future of Fund Structuring in the EU: Explores emerging trends such as ESG integration, Pillar Two reforms, digitalisation, and the evolving role of ELTIFs. It contextualises Luxembourg and Germany within broader EU developments.

- Conclusions and Recommendations: Summarises key insights and offers practical recommendations for fund sponsors, legal advisors, and policymakers. It also suggests areas for future research, particularly in relation to tax harmonisation and regulatory convergence within the EU.

This structured approach ensures that the thesis not only addresses the legal and tax dimensions of fund structuring but also reflects the broader policy and market dynamics shaping the investment fund industry in Europe.

Chapter 2: Theoretical and Regulatory Framework

2.1Overview of Investment Funds

2.1.1 Definitions and Types of Investment Funds

Investment funds are collective investment vehicles that pool capital from multiple investors to acquire financial instruments, real estate, or other assets in accordance with a specific investment strategy. The structure of these vehicles differs across jurisdictions, but commonly includes open-ended and closed-ended funds, as well as retail versus institutional fund designations[10].

In the EU, common fund structures include Undertakings for the Collective Investment in Transferable Securities (UCITS) and Alternative Investment Funds (AIFs). These structures are regulated under specific EU directives, with UCITS targeting retail investors and AIFs more suited to professional and institutional investors.[11]

2.1.2 Importance of Tax Considerations in Fund Structuring

This is the primary question lawyers or fund structurers should answer, before incorporating an investment fund. Taxation significantly impacts the attractiveness, efficiency, along with the regulatory compliance of investment fund structures. Tax burdens can arise at both fund and investor level and are further complicated by cross-border investment movements. Major tax concerns include corporate income tax, withholding tax, VAT on fund management, and the applicability of tax treaties. These concerns and potential solutions can have a pivotal point in deciding for or against certain fund structure or fund domicile[12].

[10] Ernst & Young, *Investment Funds in Luxembourg* (2024 edn, EY 2024)

[11] European Commission, 'UCITS Directive (2009/65/EC)' and 'AIFMD (2011/61/EU)

[12] Dentons, Global Tax Guide to Doing Business in Luxembourg (2023) <https://www.dentons.com/en/services-and-solutions/global-tax-guide-to-doing-business-in/luxembourg> accessed 7 August 2025

Effective fund structuring involves selecting jurisdictions and legal forms that minimise tax leakage while meeting regulatory obligations. In this context, both Luxembourg and Germany offer unique advantages and drawbacks for fund sponsors, as explored in later chapters.

2.2Taxation of Investment Funds in the EU

2.2.1 EU Directives and Regulations Impacting Fund Taxation

The taxation of the investment funds within the EU is governed by both national tax laws, as well as supranational coordination through EU directives. Relevant instruments include:

- The UCITS Directive (2009/65/EC), which harmonizes retail fund regulation across member states[13]
- The AIFM Directive (2011/61/EU), governing alternative fund managers[14]
- The Parent-Subsidiary Directive (2011/96/EU), eliminating withholding tax on dividends between EU companies[15]
- The Interest and Royalties Directive (2003/49/EC), which removes tax barriers on intra-group cross-border payments[16]

These directives seek to ensure consistent investor protection, reduce tax barriers, and facilitate the internal market for funds.

[13] European Commission. (2009). *Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)*. Official Journal of the European Union, L 302, 32–96

[14] European Commission. (2011). *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC*. Official Journal of the European Union, L 174, 1–73.

[15] European Commission. (2011). *Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States*. Official Journal of the European Union, L 345, 8–16.

[16] European Commission. (2003). *Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States*. Official Journal of the European Union, L 157, 49–54

2.2.2 OECD BEPS and ATAD Initiatives

The OECD's Base Erosion and Profit Shifting (BEPS) initiative, followed by the EU's Anti-Tax Avoidance Directives (ATAD I & II)[17], introduced critical anti-abuse provisions that affect fund structuring. Key BEPS actions affecting funds include:

a) Action 6: Preventing Treaty Abuse
b) Action 12: Disclosure of Aggressive Tax Planning
c) Action 15: Multilateral Instrument (MLI) to update bilateral treaties

ATAD further implemented rules on interest limitation, exit taxation, hybrid mismatches, and controlled foreign companies (CFCs). Both Luxembourg and Germany have transposed these rules into national law, although implementation styles vary.[18]

2.3 Regulatory Landscapes in Luxembourg and Germany

2.3.1 Luxembourg: SIFs, RAIFs, and SICARs

Luxembourg has developed a sophisticated and agile regulatory framework for investment funds, positioning itself as one of the leading domiciles in Europe for cross-border fund distribution. Three main fund structures stand out for alternative investments: the Specialised Investment Fund (SIF), the Reserved Alternative Investment Fund (RAIF), and the Société d’Investissement en Capital à Risque (SICAR)[19].

[17] Council of the European Union. (2016). *Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market*. Official Journal of the European Union, L 193, 1–14.
[18] OECD, 'BEPS Actions 6, 12, 15'; Council Directive (EU) 2016/1164 (ATAD I).

[19] Clifford Chance. *Alternative Investment Funds – The Luxembourg Toolbox*. January 2025 < https://www.cliffordchance.com/content/dam/cliffordchance/PDFDocuments/luxembourg-aif-toolbox-2025.pdf>

The SIF, established under the Law of 13 February 2007, is a regulated fund regime designed specifically for "well-informed investors" and is subject to the supervision of the Luxembourgish financial regulator - Commission de Surveillance du Secteur Financier (CSSF). It offers wide investment flexibility and benefits from a favourable tax treatment, in particular, exemption from income tax, as well as withholding tax on distributions, while being subject to an annual subscription tax (taxe d'abonnement) of 0.01%[20]

The RAIF, introduced by the Law of 23 July 2016, was created as a lighter, with quicker access to the market alternative to the SIF and SICAR. While it is not directly subject to CSSF authorisation or ongoing supervision, it is the responsibility of the AIFM to ensure its compliance with the regulations[21]. Therefore, it must be managed by an authorized AIFM, which ensures that the RAIF also complies with AIFMD standards[22]. This structure is particularly attractive to sponsors who require uncomplicated and straightforward setup without compromising EU passporting rights or investor protection. RAIFs can adopt a broad range of strategies and legal forms (including corporate, partnership, or contractual), and are eligible to be set up with compartments and as umbrella structures.

A SICAR, governed by the Law of 15 June 2004, is tailored specifically for private equity and venture capital investments. It offers a higher degree of flexibility with regard to the eligible assets, but unlike SIFs or RAIFs, it is not subject to risk-spreading rules[23]. The SICAR is fully taxable under ordinary corporate income tax rules but benefits from significant exemptions for qualifying income and capital gains linked to risk capital investments[24].

Together, these three types of vehicles provide fund initiators with a broad toolbox to meet diverse investor needs, tax preferences, and strategic goals. The choice between a SIF, RAIF,

[20] Law of 13 February 2007 relating to Specialised Investment Funds, as amended
[21] Law of 23 July 2016 on Reserved Alternative Investment Funds, Art. 1(2)
[22] Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD)
[23] Law of 15 June 2004 relating to the Investment Company in Risk Capital (SICAR), Art. 1
[24] PwC, Securitisation in Luxembourg: A Comprehensive Guide 2024 (PwC Luxembourg, 2024) < https://www.pwc.lu/en/securitisation/docs/pwc-securitisation-in-luxembourg-comprehensive-guide-2024.pdf>

or SICAR often depends on factors such as regulatory timeline, asset type, investor base, and the desired balance between supervision and flexibility[19].

2.3.2 Germany: InvStG and Taxation of Public and Special Investment Funds

The regulatory and tax framework of Germany for investment funds is anchored in the Investment Tax Act (Investmentsteuergesetz or InvStG), which underwent a major transformation with the 2018 Investment Tax Reform. This reform has fundamentally changed the way investment funds are being taxed, shifting from a previously transparent regime to a semi-transparent model that taxes the fund itself and grants partial tax exemptions at the investor level[25].

The InvStG distinguishes primarily between two fund categories: Publikumsfonds (public investment funds) and Spezialfonds (special investment funds). Publikumsfonds are open to all types of investors and are typically subject to more comprehensive regulatory requirements, such as risk diversification rules, distribution policies, and public disclosure obligations[26]. Conversely, the Spezialfonds are exclusively accessible to professional or semi-professional investors, such as pension funds, insurance companies, or large corporates, and benefit from favourable tax treatment, including partial income tax exemptions (up to 80%) for certain types of income, such as dividends, rental income, and capital gains from real estate and equities[27].

In regulatory terms, Germany's investment fund regime is harmonised with the EU directives such as the UCITS Directive and the AIFMD[28]. However, Germany imposes additional obligations compared to EU minimum standards, particularly in relation to tax reporting,

[25] Investmentsteuergesetz (InvStG), as amended by the Gesetz zur Reform der Investmentbesteuerung (Investmentsteuerreformgesetz), BGBl. I S. 2410 (2016)
[26] ICLG, *Public Investment Funds Laws and Regulations: Germany 2024* (ICLG, 2024)
[27] InvStG §§20–26; see also: KPMG, *German Investment Tax Act: Spezialfonds Overview and Partial Exemptions* (2023)
[28] Directive 2009/65/EC (UCITS IV) and Directive 2011/61/EU (AIFMD); implementation in Germany through the Kapitalanlagegesetzbuch (KAGB).

investor notifications, and asset segregation requirements[29]. Fund managers and custodians must additionally comply with BaFin.

The BaFin plays a key role in the process of authorisation and ongoing supervision of the fund managers (KVGs or Kapitalverwaltungsgesellschaften), ensuring that fund operations adhere to both EU and national financial regulations. In particular, the German framework places a strong emphasis on transparency, investor protection, and compliance, making it relatively robust but also complex, particularly for cross-border fund sponsors.

2.3.3 Other types of funds

In addition to the types of funds mentioned in this chapter, it is worth noting that there are investment funds in contractual forms.

In Luxembourg, the Société en commandite spéciale (SCSp) is a flexible, unregulated limited partnership without legal personality, commonly used for alternative investments such as private equity and real estate[30]. It offers contractual freedom, tax transparency, and is not subject to CSSF supervision unless it qualifies as an Alternative Investment Fund (AIF) under the AIFMD.

The Fonds commun de placement (FCP), by contrast, is a contractual fund without legal personality and is managed by a management company. The board of directors of the manaegemnt company is also the board of directors of the fund. FCP is commonly used for UCITS and Part II funds[31].

Germany's equivalents include the Sondervermögen, a contractual fund structure similar to the FCP, and the GmbH & Co. KG, which is a limited partnership, where a GmbH serves as the general partner. This resembles the Luxembourgish SCSp in structure and tax

[29] BaFin, *Minimum Requirements for Risk Management (MaRisk)*, Circular 05/2023 (BA) (29 June 2023)
[30] CMS, 'Back to Basics | Unregulated special limited partnership ("SCSp")' (CMS, 12 July 2024) < https://cms.law/en/lux/publication/cms-funds-group-back-to-basics-briefings/unregulated-special-limited-partnership>
[31] Loi du 10 août 1915 concernant les sociétés commerciales, as amended

transparency. The German structures are subject to BaFin regulation and must comply with specific tax reporting requirements, including the Electronic Investment Tax Reporting Standard (E-InvStG), to ensure proper investor taxation[32].

Chapter 3: Comparative Tax Analysis

3.1Taxation at the Fund Level

3.1.1 Luxembourg's Tax Regime

Luxembourg has established itself as a leading jurisdiction for fund structuring in Europe, largely due to its highly favourable tax treatment of investment funds. Most regulated investment fund vehicles, such as the Specialised Investment Fund (SIF) and the Reserved Alternative Investment Fund (RAIF), are structured to be tax-neutral at the fund level, meaning they are generally exempt from corporate income tax (CIT), municipal business tax (MBT) and net wealth tax[33].

Instead of these standard taxes, qualifying funds are subject to a modest subscription tax (*taxe d'abonnement*) of 0.01% per annum on their net asset value[34]. This tax rate applies to institutional funds such as SIFs and RAIFs investing in eligible assets, while retail UCITS funds are typically subject to a slightly higher rate of 0.05%, however, several exemptions may apply[35].

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[32] PwC, 'European Real Estate Fund Regimes' (PwC, 2022) < https://www.pwc.com/gx/en/industries/financial-services/assets/european-real-estate-fund-regimes-2022.pdf>

[33] Law of 13 February 2007 on Specialised Investment Funds; Law of 23 July 2016 on Reserved Alternative Investment Funds; see also: Luxembourg Tax Code – Articles on CIT, MBT, and IF exemptions for regulated funds.

[34] Luxembourg Tax Code, Art. 174 of the amended Law of 17 December 2010 (UCITS) and equivalent provisions for SIFs and RAIFs.

[35] Law of 10 August 1915 (Commercial Companies Law), as amended, Art. 320–1 to 320–11; see also: PwC Luxembourg, *Tax Transparency of the SCSp* (2022)

As mentioned in the chapter 2.3.3, Luxembourg also offers fully tax-transparent structures, such as the Société en commandite spéciale (SCSp). As an unincorporated limited partnership, the SCSp is not considered to be a taxable entity under the Luxembourg law, provided it does not conduct a commercial activity in its own right[35]. In such instances, all the income flows through to investors, who are taxed in their respective jurisdictions. This feature makes the SCSp particularly attractive for private equity, real estate, and infrastructure strategies involving international investor bases[36]

Moreover, Luxembourg upholds a wide treaty network and does not impose a withholding tax on fund distributions, which even further enhances its appeal for cross-border structuring. Combined with a pragmatic regulatory regime, this tax neutrality makes Luxembourg a preferred domicile for both UCITS and alternative investment funds.

3.1.2 Germany's Tax Regime

As mentioned in Chapter 2.2.3, Germany's InvStG, had undergone a fundamental reform effective 1 January 2018, which has replaced the previous full tax transparency model with a hybrid semi-transparent regime, and in which certain types of income are subject to taxation at the fund level, while the investors still benefit from partial exemptions to avoid double taxation[37].

Under this revised regime, domestic and foreign investment funds that meet the definition of an "*investment fund*" under InvStG are generally exempt from corporate income tax, provided. However, that they do not engage in commercial business operations. Instead, a limited tax is levied at the investor level, based on standardised partial exemption rules[38].

These are called partial exemptions (*Teilfreistellungen*) and apply depending on the type of fund and the nature of its underlying assets. For example:

[36] KPMG, *Private Debt Fund Survey 2024* < https://kpmg.com/lu/en/home/insights/2024/09/private-debt-fund-survey-2024.html>
[37] Investmentsteuergesetz (InvStG) of 19 July 2016, BGBl. I S. 1730; effective 1 January 2018.
[38] InvStG §§ 6–20; see also: German Federal Ministry of Finance (BMF), *FAQs on the Investment Tax Reform* (2020)

a) Investors in the equity funds benefit from a 30% tax exemption on dividends and capital gains from shares.

b) Investors in the real estate funds receive a 60% exemption, which increases to 80% if the fund invests primarily in a foreign real estate[39]. These exemptions are intended to account for the lack of deductibility of fund-level expenses and to avoid economic double taxation.

To benefit from this preferential regime, the funds must comply with extensive reporting obligations under the *Investmentsteuergesetz* (InvStG), including the publication of taxable income components in the *elektronischer Bundesanzeiger* (Federal Gazette)[40] and submission of investor-specific allocations via certified tax reporting systems[41]. Non-compliance triggers a punitive lump-sum taxation model (*Strafbesteuerung*): a flat deemed income of 6% per annum is levied on the fund units' redemption value at year-end[42] or, where the tax basis is undisclosed, 70% of the difference between the initial and final redemption prices[43]. This regime is colloquially termed the "Non-Transparent Fund" penalty[44].

While Germany's system offers predictability and solid investor protection, it is oftentimes also regarded as administratively cumbersome, particularly for cross-border fund sponsors, who might be unfamiliar with the domestic tax reporting standards. Nevertheless, it still remains an important market for Spezialfonds, which benefit from partial tax exemption and serve as the preferred vehicle for institutional investors such as insurance companies and pension funds.

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[39] InvStG § 20 (Teilfreistellungen); partial exemption rates are prescribed by fund classification and minimum investment thresholds

[40] § 5(1) *Investmentsteuergesetz* (InvStG)

[41] BMF-Schreiben (German Federal Ministry of Finance Guidance), 'Anwendung des Investmentsteuergesetzes' (IV C 1 - S 1980-1/19/10003, 23 December 2018) para 5.2.

[42] § 8(2) InvStG.

[43] § 5(4) InvStG.

[44] BMF-Schreiben (n 2) para 8.3

3.2Taxation at the Investor Level

3.2.1 Withholding Taxes and Double Taxation Relief

The withholding tax plays a crucial role in cross-border fund structuring, which directly affects the net investor returns and the overall tax efficiency of the fund vehicles. The approach to withholding tax differs drastically between Luxembourg and Germany, with Luxembourg widely regarded as more favourable for international investors.

Luxembourg generally does not impose withholding tax on interest payments or on capital gains derived from non-resident investors[45]. Moreover, the dividends distributed by Specialised Investment Funds (SIFs) and Reserved Alternative Investment Funds (RAIFs) are also exempt from the withholding tax, provided, however, that these funds meet the legal requirements of the relevant regimes[46]. The fact of absence of withholding at the fund level enhances Luxembourg's reputation as a tax-efficient fund domicile, in particular for institutional investors and cross-border structures.

Conversely, Germany imposes a standard withholding tax of 25% on dividends and certain capital gains, increased by a 5.5% solidarity surcharge in addition to the withholding tax, resulting in an effective rate of 26.375%[47]. Nevertheless, a relief may be available under applicable double taxation treaties (DTTs), which often reduce the withholding tax to between 5% and 15%, depending on the nature of the investment and the investor's jurisdiction of residence[48]. The access to this treaty is however, subject to meeting substance and anti-abuse requirements, in particular under §50d EStG and evolving case law on beneficial ownership.

[45] Luxembourg Tax Code

[46] Law of 13 February 2007 (SIF) and Law of 23 July 2016 (RAIF), Art. 66; confirmed by Circular LG-A no. 61.

[47] Einkommensteuergesetz (EStG) §43; Bundeszentralamt für Steuern (BZSt), *Kapitalertragsteuer* (2023).

[48] KPMG, *Taxation of Funds in Germany from 2018* (KPMG AG Wirtschaftsprüfungsgesellschaft 2020) < https://assets.kpmg.com/content/dam/kpmg/de/pdf/Themen/2020/04/taxation-of-funds-in-germany-from-2018.pdf>

Both Luxembourg and Germany are parties to the OECD Model Tax Convention and have ratified the Multilateral Instrument (MLI), which introduces enhanced treaty anti-abuse rules, including the Principal Purpose Test.[49] The Principal Purpose Test denies the treaty benefits where one of the principal purposes of a transaction or arrangement is to obtain a tax advantage, absent legitimate economic substance[50]. This has increased the concentration on substance and operational presence in both Luxembourg and Germany, particularly for the funds structured to access reduced withholding tax rates through the treaty networks.

These differences in withholding tax treatment are a pivotal driver behind fund domicile decisions. Luxembourg's exemption framework reduces withholding tax leakage, while Germany's robust taxation is partially offset by structured treaty relief mechanisms and the possibility of reclaiming procedures under §50c and §50d EStG, though these are often administratively burdensome.

3.2.2 Comparative Investor Outcomes in Luxembourg and Germany

Investors in the funds domiciles in Luxembourg funds enjoy greater tax certainty and simplicity, in particular when using tax-transparent structures such as the SCSps. Tax-transparent vehicles such as the Société en Commandite Spéciale (SCSp) are not subject to corporate income tax, municipal business tax, or net wealth tax at the fund level.[51] Instead, income is taxed only at the level of the investor, depending on their personal or corporate tax status and jurisdiction of residence.[52] This "flow-through" model is particularly attractive for institutional investors, pension funds, and high-net-worth individuals, as it enables treaty relief to be claimed directly—provided the investor qualifies under the relevant double tax

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[49] OECD, *Explanatory Statement to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (2017) < https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/beps-mli/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.pdf>

[50] MLI, Article 7: *Prevention of Treaty Abuse* (Principal Purpose Test). <https://www.action15-mli.net/article-7-prevention-of-treaty-abuse/article-7-prevention-of-treaty-abuse.html#:~:text=Notwithstanding%20any%20provisions%20of%20a,of%20the%20principal%20purposes%20of>>

[51] Luxembourg Income Tax Law, Loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu, Art. 175.

[52] PwC Luxembourg, Investment Fund Tax Reporting Regimes: The European Landscape < https://www.pwc.lu/en/asset-management/docs/pwc-am-investment-fund-tax-reporting-regimes.pdf>

treaty.[53] Moreover, the absence of withholding tax on fund distributions under Luxembourg domestic law further enhances after-tax returns and simplifies repatriation of capital[5451.]

In contrast, investors in German-domiciled funds—particularly Spezialfonds—benefit from the partial tax exemption regime under the Investment Tax Act (InvStG).[55] Institutional investors may benefit from tax-exempt income allocations (e.g., 80% for equity funds, 60% for mixed funds),[56] thereby reducing the overall tax burden. However, these benefits come with greater reporting obligations, both for the fund and the investor. German funds must comply with strict transparency rules, meet investment ratio requirements to qualify for exemptions, and may trigger withholding taxes on certain German-source income, particularly dividends and real estate gains. Access to treaty benefits—particularly when receiving income from abroad—depends on documentation requirements, substance tests (per § 50d(3) EStG),[57] and, in some cases, pre-approval by the Federal Central Tax Office (BZSt).[58]

Overall, Luxembourg offers investors a more streamlined and tax-efficient experience, particularly for cross-border and multi-jurisdictional structures. Germany, while offering generous domestic exemptions, imposes a heavier compliance and documentation burden, which can reduce the net investor return, especially for non-resident or tax-sensitive investors. As such, fund domicile selection has material implications not only for operational structure but also for after-tax yield and administrative overhead.

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[53] ALFI (Association of the Luxembourg Fund Industry), Private Equity and Venture Capital Brochure (2024) <https://www.alfi.lu/getmedia/71537bf6-ec80-4fcb-81e6-2c6b375e2f26/2024-09-20-luxembourg-private-equity-and-venture-capital-brochure.pdf>

[54] Chivalier & Sciales, ' Luxembourg Special Limited Partnership (SCSp)' (2024) < https://www.cs-avocats.lu/wp-content/uploads/2024/01/2024-SCSp.pdf>

[55] Bundesministerium der Finanzen, *Investmentsteuergesetz (InvStG)*, last amended 2023, §§ 20–26

[56] PwC, *Germany – Individual: Income Determination* (PwC Worldwide Tax Summaries, last reviewed 30 June 2025)) < https://taxsummaries.pwc.com/germany/individual/income-determination>

[57] German Income Tax Act (Einkommensteuergesetz), § 50d(3).

[58] Bundeszentralamt für Steuern (BZSt), *Guidance on Treaty Benefits and Withholding Relief under § 50d(3) EStG* (2024)

3.3Cross-Border Tax Implications

3.3.1 Tax Treaties and their Role in Fund Structuring

Luxembourg benefits from an extensive network, including over 80 double taxation treaties (DTTs), positioning it as a leading jurisdiction for cross-border fund structuring. These treaties aim to reduce or eliminate withholding taxes on dividends, interest, and royalties, thus enhancing after-tax returns for investors. For instance, under Luxembourg domestic law, dividends paid to qualifying corporate shareholder, who is a resident in a treaty country may be exempt from withholding tax, provided that certain conditions are met, such as a minimum holding of 10% for at least 12 months. This favourable tax treatment, along with Luxembourg's robust legal framework, makes it an attractive domicile for investment funds seeking tax efficiency and legal certainty[59][60].

Germany, by contrast, also has a robust treaty network but applies tighter rules to limit treaty abuse. Under Section 50d(3) of the EStG, access to treaty benefits like reduced withholding tax can be refused if the income recipient fails to show beneficial ownership or lacks meaningful economic substance.[61]

The German Federal Central Tax Office (BZSt) has always strictly interpretated these rules, often requiring extensive documentation to prove eligibility for treaty benefits. However, recent guidance issued in March 2025 provides for a partial relaxation of these requirements, acknowledging that entitlement to treaty benefits may be established even if the shareholder's claim is based on a different legal basis than that of the recipient

[59] Pinsent Masons, 'Luxembourg's double tax treaties network' (26 August 2022) < https://www.pinsentmasons.com/out-law/guides/luxembourg-double-tax-treaties>

[60] PwC, 'Luxembourg - Corporate - Withholding taxes' (21 January 2025) < https://taxsummaries.pwc.com/luxembourg/corporate/withholding-taxes>

[61] Einkommensteuergesetz (EStG) § 50d(3);

company[62]. Despite this development, the process still remains complex, and the burden of proof lies with the taxpayer, to demonstrate compliance with the anti-abuse provisions[63].

3.3.2 Impacts of EU Directives on Cross-Border Investments

The Parent-Subsidiary Directive and the Interest and Royalties Directive provide a harmonised legal framework intended to eliminate withholding taxes on qualifying cross-border payments between associated companies within the EU. Their goal is to reduce the tax barriers to capital movement and prevent double taxation in intra-group transactions. When applied correctly, these directives override national withholding tax regimes, enabling dividend and interest flows to pass between Member States without triggering withholding tax at source.[15]
However, the practical implementation of these directives varies significantly across jurisdictions due to divergent interpretations of key eligibility criteria such as beneficial ownership, economic substance, and artificial arrangements. Germany, for example, applies a restrictive interpretation and overlays the directives with stringent anti-abuse provisions under § 50d(3) of the German Income Tax Act (EStG).[64] German tax authorities frequently deny directive-based relief unless the recipient can demonstrate genuine business activity, organisational substance, and beneficial ownership. This high burden has led to numerous treaty relief denials for holding companies and investment structures lacking sufficient operational presence in their country of residence.[58]

By contrast, Luxembourg's interpretation is notably more facilitative, particularly in the context of holding companies and investment funds. Luxembourg's tax authorities traditionally adopt a more literal reading of the directives, and combined with a lenient approach to substance requirements, this enables a wider range of fund vehicles and intermediate holding entities to benefit from withholding tax exemptions under the

[62] ibid; Tax at Hand, 'Tax authorities update guidance on application of anti-treaty shopping rules' (17 March 2025) < https://www.taxathand.com/article/38700/Germany/2025/Tax-authorities-update-guidance-on-application-of-anti-treaty-shopping-rules>

[63] RSM Ebner Stolz, 'Mitigation of the German anti-treaty shopping rule by the Federal Central Tax Office' (26 March 2025)

[64] Einkommensteuergesetz (German Income Tax Act), § 50d(3), as amended.

directives.[65] This administrative flexibility has made Luxembourg particularly attractive for cross-border structuring strategies involving dividend and interest flows from other EU jurisdictions.

However, the gap between strict and permissive Member State practices is narrowing. Recent EU tax transparency initiatives—such as the Anti-Tax Avoidance Directive (ATAD) and Directive 2018/822 (DAC6)—are reshaping the legal landscape by requiring additional substance, mandatory disclosure of certain cross-border arrangements, and the limitation of directive benefits in cases of artificial or aggressive tax planning.[66] ATAD, in particular, has introduced legally binding general anti-abuse rules (GAARs) and controlled foreign company (CFC) regimes that restrict the tax benefits previously available to lightly-substantiated intermediary structures. DAC6 imposes mandatory reporting obligations on intermediaries (including fund sponsors and tax advisers) when arrangements exhibit hallmarks of tax avoidance or treaty shopping.[67]

In this evolving regulatory environment, investment fund sponsors must adapt by enhancing governance, documentation, and operational substance, particularly when structuring across Luxembourg and Germany. The interplay between EU directives, domestic anti-abuse measures, and international tax treaties means that reliance on favourable jurisdictions alone is no longer sufficient. Instead, substance, transparency, and legal robustness are increasingly critical factors influencing the viability of cross-border investment flows within the EU.

3.3.3 Application of the Multilateral Instrument (MLI)

The OECD Multilateral Instrument (MLI), officially known as the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*, was

[65] PwC Luxembourg, Withholding Tax Relief under EU Directives: Recent Trends and Local Practice (2023) <https://www.pwc.lu/en/tax-consulting/eu-directives-luxembourg.html>

[66] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market [2016] OJ L193/1 (ATAD).

[67] Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements [2018] OJ L139/1 (DAC6)

introduced as part of the OECD's BEPS project to swiftly and uniformly update bilateral tax treaties.[68] Luxembourg and Germany both signed and ratified the MLI, which came into force for Luxembourg on 1 August 2019 and for Germany on 1 April 2021. The MLI is especially relevant to fund structuring as it modifies critical treaty provisions on treaty abuse, permanent establishment, and dispute resolution mechanisms without requiring bilateral renegotiation.

For investment funds operating across borders, the Principal Purpose Test (PPT) introduced by Article 7 of the MLI is of central importance. Under the PPT, treaty benefits may be denied if it is reasonable to conclude that one of the principal purposes of an arrangement or transaction was to obtain those benefits, unless granting them is in accordance with the object and purpose of the treaty.[69] This general anti-abuse rule is intended to prevent so-called "treaty shopping" through conduit or mailbox companies—a strategy historically associated with holding and fund structures domiciled in treaty-friendly jurisdictions such as Luxembourg.

Germany has adopted a particularly strict interpretation of the PPT, viewing it as complementary to its existing domestic anti-abuse provisions, particularly § 50d(3) of the German Income Tax Act (EStG).[70] In practice, German tax authorities often require entities claiming treaty benefits to demonstrate significant economic substance and business activity.[71] This means that Luxembourg-based funds with minimal operational footprint or local governance structures may find their access to treaty benefits denied under both the MLI and German domestic law.

By contrast, Luxembourg's implementation of the MLI has been more permissive in nature. While it opted into the PPT, the Luxembourg tax authorities have issued guidance clarifying that substance and beneficial ownership are assessed contextually, particularly in the case of

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[68] OECD, *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (2017) <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm>

[69] OECD, *Explanatory Statement to the Multilateral Instrument* (2017) <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/beps-mli/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.pdf>

[70] Einkommensteuergesetz (EStG), § 50d(3), as amended.

[71] Bundeszentralamt für Steuern (BZSt), Merkblatt zur Anwendung von § 50d Absatz 3 EStG (2024)

regulated fund vehicles.[58] For example, where a Luxembourg fund is supervised by the Commission de Surveillance du Secteur Financier (CSSF) and is managed by a licensed AIFM, this may weigh in favour of meeting the substance requirements under the MLI framework. However, even in Luxembourg, the increasing emphasis on "economic reality" over form signals a shift away from purely formal compliance.

In summary, the MLI—particularly the application of the PPT clause—adds a new layer of complexity to cross-border investment fund structuring. While Luxembourg remains attractive due to its treaty network and regulatory framework, funds seeking treaty benefits from jurisdictions like Germany must now demonstrate both legal form and substantive economic activity to avoid being caught by anti-abuse measures embedded in the MLI.

3.3.4 The FASTER Initiative and Future of Withholding Tax Relief

The FASTER Initiative—short for Faster and Safer Tax Excess Relief for cross-border investors—is a legislative proposal by the European Commission (COM(2023) 329 final), published in June 2023, aiming to simplify and harmonise withholding tax relief procedures across EU Member States. The current landscape of reclaiming withholding taxes on cross-border investments in the EU is often criticised for being inefficient, paper-based, and inconsistent. For investment funds, these inefficiencies can reduce net returns and create barriers to cross-border investment.[72]

The FASTER proposal responds to these criticisms by introducing two core mechanisms:

A standardised relief-at-source system

A quick refund system, both of which are intended to be implemented alongside a harmonised reporting framework involving a National Register of Certified Financial Intermediaries (NRCFI).[72]

[72] European Commission, *Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes*COM(2023) 329 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0329>

For cross-border funds, particularly those domiciled in Luxembourg and Germany, this initiative promises to reduce the cost and time associated with reclaiming excess withholding tax—a major pain point for institutional investors. According to the European Commission, the current withholding tax reclaim process can take more than 18 months, and up to 35% of claims are never recovered.[72]

Under the FASTER framework:

Intermediaries, such as custodians and transfer agents, will be responsible for transmitting standardised investor information to tax authorities.

Member States must either apply relief at source or process refund claims within 50 days.

National tax authorities must also accept a digital common EU certificate of tax residence (eTRC), further reducing administrative burdens.

Both Luxembourg and Germany are expected to adopt this regulation, as it will be directly applicable EU law once passed. Luxembourg, with its efficient tax infrastructure and digital administration (e.g. MyGuichet.lu), may be well-positioned to act as an early adopter. Germany, in contrast, may face greater implementation hurdles due to its decentralised tax authority structure and more conservative approach to tax transparency and anti-abuse measures.[73]

From a fund structuring perspective, FASTER could diminish the competitive advantage of certain jurisdictions that currently rely on favourable withholding tax treaties or administrative efficiencies. Once harmonised processes are in place across the EU, the domicile choice may shift toward regulatory, operational, or investor protection considerations rather than purely tax efficiency.[74][75]

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[73] European Commission. (2023). Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER).

[74] European Commission, FASTER Directive: Faster and Safer Relief of Excess Withholding Taxes (Taxation & Customs Union, updated 14 May 2024)

[75] IBFD, *The FASTER Directive Proposal: Towards More Efficient Withholding Tax Procedures within the EU?* (IBFD Training, launched 19 June 2023; last updated 2024)

In summary, the FASTER initiative signals a future in which withholding tax relief becomes more automated, secure, and investor-friendly. While still in the legislative pipeline, its adoption could significantly reshape how cross-border funds operating in Luxembourg and Germany manage tax compliance and investor expectations.

3.3.5 Substance and Anti-Abuse Provisions Across Jurisdictions

Treaty and directive benefits in Luxembourg and Germany increasingly depend on demonstrating adequate substance and economic reality—requirements that have escalated in importance due to both domestic rules and EU anti-abuse standards.

Traditionally, Luxembourg maintained relatively light substance thresholds for investment funds. However, following global BEPS reforms and growing international scrutiny, Luxembourg authorities have strengthened their substance expectations, in particular for financing and fund management entities. A CMS guide notes that Luxembourg companies engaged in intra-group financing must have a registered office or place of central management, complete with board meetings, decision-making processes, and qualified personnel located in Luxembourg.[76] The CSSF also enforces substance standards through Circular CSSF 18/698, which requires investment managers to maintain genuine operational presence—such as local directors, office space, and risk-control functions—for authorization and ongoing compliance.[77]

Germany has long enforced robust domestic anti-abuse rules under § 50d(3) EStG, intended to prevent treaty and directive shopping unless genuine economic substance and beneficial ownership can be demonstrated.[78] A BZSt guidance document (March 2025) confirms that applicants must prove substance—i.e., qualifying personnel, premises, and control

[76] CMS, *Expert Guide—Substance Issues Across Europe: Luxembourg* (2024) <https://cms.law/en/int/expert-guides/cms-expert-guide-on-substance-issues-across-europe/luxembourg>
[77] EY, 'Substance: Juggling with tax, TP, regulatory and operational requirements in Luxembourg' (Luxembourg Times, 2022) <https://www.luxtimes.lu/sponsoredcontent/home-is-where-substance-is./42133152.html>
[78] Einkommensteuergesetz (German Income Tax Act) § 50d(3) EStG

functions—to avoid denial of relief.[58] Analysts note that entities with only conduit or passive roles regularly fail to meet these requirements, resulting in rejected WHT exemptions.[79]

The strict German regime now mirrors broader trends in Luxembourg. While Luxembourg remains more accommodating for regulated funds (e.g., RAIFs with AIFM oversight), both countries now expect more than paper substance—including genuine local governance and operational capacity. Lawyers suggest that Luxembourg structures relying solely on legal form may increasingly risk denial of treaty benefits if control and decision-making occur offshore.[80]

3.3.6 Application of Double Tax Treaties (DTTs) in Fund Structuring

Double taxation treaties are crucial in cross-border fund planning, particularly for determining withholding tax relief on distributions to non-resident investors. Luxembourg, with over 88–90 active treaties, leverages this network to attract fund vehicles, especially RAIFs structured as opaque entities that clearly qualify as treaty residents. In contrast, transparent vehicles like the SCSp often cannot claim treaty benefits directly; instead, their investors must make treaty claims individually. [81]

Germany also has a broad treaty network but applies a stricter approach. Under § 50d(3) EStG, German tax authorities can deny treaty benefits if the recipient cannot demonstrate beneficial ownership and economic substance. Courts and the BZSt typically require local governance, active management, and clear proof of substance.

The Multilateral Instrument (MLI) and its Principal Purpose Test (PPT) add another layer: Luxembourg ratified the MLI effective 1 August 2019, embedding the PPT as a minimum anti-

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[79] Baker McKenzie, 'Germany: Revised German anti-treaty shopping rules – First practical experience' (2023) < https://insightplus.bakermckenzie.com/bm/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAXENnrNzNVLug3zkf%2B%2FE%2Bd0&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwypnpZjc4%3D&attdocparam=pB7HEsg%2FZ312Bk8OIuOIH1c%2BY4beLEAeLI%2B00HbPhGw%3D&fromContentView=1>

[80] Legitech, 'Substance requirements—Structuring alternative investments in the post-BEPS era' (2024) <https://www.legitech.lu/en/event/structuring-alternative-investments-in-the-post-beps-era-module-2-substance-requirements-497/register>

[81] Dentons, Global Tax Guide to Doing Business in Luxembourg (2023) <https://www.dentons.com/en/services-and-solutions/global-tax-guide-to-doing-business-in/luxembourg>

abuse standard in most of its treaties.[82][83] Sponsors must now show genuine commercial purpose behind structures designed to claim treaty benefits.

Illustrative case: A Luxembourg SCSp holding German real estate initially failed to access treaty exemptions due to failing to prove substance. By appointing Luxembourg-based directors, leasing office space, and delegating operations locally, the fund satisfied the economic substance test. Following these enhancements, treaty benefits were granted[84]
Some structures—such as using a Luxembourg RAIF as a feeder into a German Spezialfonds—are designed to combine treaty access with local investor protections. However, these hybrid setups must withstand scrutiny under anti-abuse rules, as both DAC6 reporting obligations and Germany's transparency requirements apply. [85] [86]

Chapter 4: Impact of Regulatory Changes

4.1Recent and Future Developments in Fund Structuring

The landscape for investment fund structuring in Luxembourg and Germany is experiencing rapid evolution, driven by both domestic reforms and EU initiatives. Several recent and forthcoming developments are ready to reshape the way funds are established, managed, and taxed across these jurisdictions.

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82 ATOZ Tax Advisers, 'The Impact of the PPT on Alternative Investments' (2020) <https://www.atoz.lu/sites/default/files/media/file/Luxembourg_The-impact-of-the-PPT-on-Alternative-Investments.pdf>

83 ALFI (Association of the Luxembourg Fund Industry), *Private Equity and Venture Capital Brochure* (2024) <https://www.alfi.lu/getmedia/71537bf6-ec80-4fcb-81e6-2c6b375e2f26/2024-09-20-luxembourg-private-equity-and-venture-capital-brochure.pdf>

84 PwC, European Real Estate Fund Regimes – A Comparative Guide (2022) <https://www.pwc.com/gx/en/industries/financial-services/assets/european-real-estate-fund-regimes-2022.pdf>

85 Bundesministerium der Finanzen, *Application of §50d(3) EStG: Updated Administrative Guidance* (March 2025),

86 OECD, *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*(OECD Publishing 2017) <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures.htm>

a) Implementation of BEPS, ATAD, and DAC6

The ongoing transposition of the OECD's Base Erosion and Profit Shifting (BEPS) recommendations, together with the EU's Anti-Tax Avoidance Directive (ATAD), has substantially increased the compliance burden for fund managers. Both Luxembourg and Germany have tightened their anti-abuse rules, substance requirements, and reporting obligations, particularly in relation to hybrid mismatches, controlled foreign company (CFC) rules, and interest deduction limitations.[87]In addition, the introduction of DAC6 imposes mandatory disclosure of cross-border arrangements that may be used for aggressive tax planning, requiring fund sponsors to adapt their structuring and documentation processes.[88]

b) Double Tax Treaty (DTT) Amendments and Court Rulings

Recent amendments to double tax treaties and clarifying court decisions—especially in Germany—have had a direct impact on the eligibility of fund vehicles for reduced withholding tax rates. For example, new protocols and judicial guidance have clarified the conditions under which Luxembourg partnerships (such as the SCSp) or German Spezialfonds can access treaty benefits. A particular attention is drawn to tax transparency and beneficial ownership criteria. These changes require fund managers to carefully assess the treaty eligibility of their chosen structures and to ensure robust substance in the jurisdiction of establishment.[89] [90]

c) The FASTER Proposal and Withholding Tax Reform

The European Commission's FASTER (Faster and Safer Relief of Excess Withholding Taxes) initiative, proposed in 2023, aims to streamline and harmonise withholding tax relief procedures across the EU. If adopted, FASTER will introduce a common digital tax

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[87] OECD, 'Tax Challenges Arising from Digitalisation – BEPS Action 1' (2024)
[88] European Commission, 'Directive (EU) 2018/822 (DAC6): Mandatory Disclosure Rules' (2024)
[89] KPMG, *Germany–Luxembourg – Tax Treaty Changes with Important Impact for Cross-Border Workers* (GMS Flash Alert 2024-100, 29 April 2024) < https://kpmg.com/xx/en/our-insights/gms-flash-alert/flash-alert-2024-100.html>
[90] Germany: WHT refunds for foreign investment funds underway (Taxology Global, 13 March 2024) h<ttps://taxology-global.com/insights/germany-wth-refunds-foreign-investment-funds.html>

residence certificate and standardised relief-at-source and quick refund mechanisms, reducing administrative barriers and accelerating cross-border investment flows. This reform is expected to benefit Luxembourg and German funds with pan-European investor bases, making cross-border distributions more efficient and predictable.[91]

d) ELTIF 2.0 and the Expansion of Long-Term Investment Vehicles

The revised European Long-Term Investment Fund (ELTIF 2.0) Regulation, effective from January 2024, introduces greater flexibility in eligible assets, portfolio composition, and investor access. These changes are expected to boost the uptake of ELTIFs, particularly in Luxembourg, which already dominates the ELTIF market. The new rules also facilitate marketing to retail investors and support the EU's goals for sustainable and digital infrastructure investment.[144]

e) Digitalisation and ESG Integration

Both Luxembourg and Germany are investing in digital transformation initiatives, including the adoption of distributed ledger technology (DLT) for fund administration and digital onboarding tools for investors.[92] At the same time, the EU's sustainable finance agenda is being embedded through new ESG disclosure requirements (SFDR, Taxonomy Regulation) and the implementation of ESMA's guidelines on ESG fund naming.[93] These trends are pushing fund managers to modernise operations and integrate sustainability into product design and reporting.

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[91] European Commission, "FASTER Directive – A Council Directive on faster and safer relief of excess withholding taxes," < https://www.reuters.com/markets/europe/eu-states-agree-faster-tax-refunds-cross-border-investors-2024-05-14/#:~:text=LONDON%2C%20May%2014%20(Reuters),%22withholding%22%20or%20double%20taxation.>

[92] InvestRe.eu, *"DLT revolution: Transforming investor onboarding for Luxembourg AIFs"* < https://www.investre.eu/post/dlt-revolution-transforming-investor-onboarding-for-luxembourg-aifs>

[93] Proskauer, *"ESMA's Final ESG Fund Name Guidelines"* < https://www.proskauer.com/report/esma-guidelines-on-fund-names>

4.2Key Legislative Developments: 2015–2024

The period from 2015 to 2024 has gone through major changes in the regulatory environment for investment funds across the European Union. Several major legislative and policy initiatives have shaped the landscape, with significant implications for fund structuring, tax transparency, and investor protection.

Amongst the most prominent developments are the OECD's Base Erosion and Profit Shifting (BEPS) initiative, the EU's Anti-Tax Avoidance Directives (ATAD I and II), the Multilateral Instrument (MLI), and the EU Directive on Administrative Cooperation (DAC6). These measures collectively target aggressive tax planning, enhance transparency, and aim to ensure that taxation is more closely aligned with economic substance.

The implementation of the BEPS package has required EU Member States, including Luxembourg and Germany, to adopt measures that counter harmful tax practices and prevent profit shifting by multinational enterprises[94]. The Anti-Tax Avoidance Directives (ATAD I and II), effective from 2019 and 2020 respectively, introduced uniform rules on interest limitation, exit taxation, controlled foreign company (CFC) rules, and hybrid mismatch arrangements[95].

The Multilateral Instrument (MLI), which entered into force in 2019, amended the existing bilateral tax treaties to swiftly implement BEPS-related treaty changes, in particular targeting treaty abuse and improving dispute resolution mechanisms[96].

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94 OECD, 'Action Plan on Base Erosion and Profit Shifting' (2013) < https://www.oecd.org/en/publications/action-plan-on-base-erosion-and-profit-shifting_9789264202719-en.html>

95 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market [2016] OJ L193/1; Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries [2017] OJ L144/1.

96 OECD, 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS' (2019)

DAC6, which became applicable from July 2020, imposes mandatory disclosure obligations for cross-border tax arrangements that exhibit certain hallmarks of aggressive tax planning, further strengthening the EU's transparency framework[97].

Luxembourg and Germany, as leading fund jurisdictions, have both transposed these reforms into their respective domestic legal frameworks, though the extent and the practical application of these rules can differ. Luxembourg, for example, has seeked to maintain its attractiveness as a fund domicile by ensuring compliance while preserving competitive advantages for the fund industry. Meanwhile Germany has emphasized robust enforcement and extensive reporting requirements, particularly in the context of anti-treaty shopping and beneficial ownership provisions.[98]

4.3Effects of BEPS and ATAD on Fund Structuring

The OECD's BEPS project and the EU Anti-Tax Avoidance Directives (ATAD I and II) have significantly influenced fund structuring in Europe, particularly in Luxembourg and Germany.

BEPS Actions 6, 12, and 15 introduced measures to counter treaty abuse, enhance disclosure obligations, and facilitate rapid treaty updates through the Multilateral Instrument (MLI).[99] In the EU, these BEPS actions were largely implemented through ATAD and ATAD 2, which address specifically hybrid mismatches, interest limitation, and general anti-abuse rules.[100]

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[97] Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements [2018] OJ L139/1.

[98] CMS Luxembourg, 'Key Takeaways from 2024 for a Seamless Experience in 2025' (2024))< https://cms.law/en/lux/publication/key-takeaways-from-2024-for-a-seamless-experience-in-20252>

[99] OECD, 'Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 - 2015 Final Report' (OECD Publishing 2015) < https://www.oecd.org/en/publications/neutralising-the-effects-of-hybrid-mismatch-arrangements-action-2-2015-final-report_9789264241138-en.html>

[100] A&O Shearman, 'Key takeaways on the impact of ATAD 2 on global fund structures' (14 May 2024) < https://www.aoshearman.com/en/insights/key-takeaways-on-the-impact-of-atad-2-on-global-fund-structures>

Luxembourg has generally taken a more pragmatic and flexible approach in applying these new standards. For example, in the context of the Principal Purpose Test (PPT) under BEPS Action 6, Luxembourg tax authorities tend to recognise genuine commercial rationale, along with sufficient economic substance as grounds for treaty benefits. This allows many investment fund structures to remain viable.[101] This approach is designed to maintain the jurisdiction's attractiveness for cross-border investment funds while ensuring compliance with international anti-abuse standards.[102]

Conversely, Germany has implemented ATAD and BEPS measures more conservatively. The German approach to the interest limitation rule (Zinsschranke) is stricter and more closely aligned with BEPS Action 4 and ATAD Article 4.[103] Germany's implementation of Controlled Foreign Company (CFC) rules and hybrid mismatch provisions is also robust, with a broader application of thresholds and a wider concept of "structured arrangements" than those in Luxembourg.[100] These measures have increased the reporting and compliance burden for German fund managers and have restricted the use of aggressive leverage and hybrid structures.[104]

As a result, while both Luxembourg and Germany have transposed BEPS and ATAD requirements into their respective domestic laws, the specific impact on fund structuring varies: Luxembourg continues to offer flexibility for funds with genuine substance, whereas Germany's stricter regime has led to greater administrative complexity and limits on certain cross-border strategies.

[101] Legitech, 'Structuring Alternative Investments in the post-BEPS era' (2023) < https://www.legitech.lu/en/event/structuring-alternative-investments-in-the-post-beps-era-cycle-de-4-modules-495/register>

[102] University of Luxembourg, 'The Future of Funds Taxation' (2023) < https://www.uni.lu/wp-content/uploads/sites/3/2023/11/The-Future-of-Funds-Taxation_programme-slides-2.pdf>

[103] IBFD, 'The Implementation of Anti-BEPS Rules in the EU' (2021) <https://www.ibfd.org/sites/default/files/2021-08/18_043_The%20Implementation%20of%20Anti-BEPS%20Rules%20in%20the%20EU_final_web%20(1).pdf >

[104] European Parliament, 'Assessment of recent anti-tax avoidance and evasion measures' (2022)< https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703353/IPOL_STU(2022)703353_EN.pdf>

4.4The Role of DAC6 in Tax Reporting and Compliance

Directive 2018/822/EU, commonly referred to as DAC6, represents a significant step in the EU's broader efforts to enhance transparency in cross-border taxation. Under DAC6, intermediaries such as legal advisors, tax consultants, and fund managers are required to report cross-border arrangements that bear specific "hallmarks" suggesting possible tax avoidance or evasion. The objective is to promote transparency, curb aggressive tax strategies, and improve the automatic exchange of information between national tax authorities across the EU.[105]

Germany adopted DAC6 with a notably wide scope. Its national implementation not only covers cross-border arrangements but, in certain situations, extends to domestic cases that could have cross-border implications.[106] The German legislation, effective from 1 July 2020, closely follows the directive's hallmarks and reporting triggers. Non-compliance may result in administrative penalties.[107]

Luxembourg transposed DAC6 into its domestic law on 25 March 2020, predominantly adhering to the literal text of the directive. Luxembourg's approach focuses primarily on the cross-border transactions, with the reporting obligation falling on the intermediaries or, in their absence, on the relevant taxpayers. Both jurisdictions impose strict deadlines (e.g. reportable arrangements must be disclosed within 30 days of the arrangement's first implementation step) and significant penalties for non-compliance.[108]

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[105] Quintet Private Bank, 'DAC6 - Reportable cross-border arrangements' (2020) <https://www.quintet.lu/en-lu/legal-documentation-information/dac6 >

[106] Simmons & Simmons, 'Implementation of DAC 6 in Germany' (2020) < https://www.simmons-simmons.com/en/publications/ck7qd24p011kh0951q8poxlpu/implementation-of-dac-6-in-germany>

[107] PwC, 'Germany - Corporate - Other issues' (2024) <https://taxsummaries.pwc.com/germany/corporate/other-issues>

[108] Simmons & Simmons, 'Publication of the law implementing DAC 6 in Luxembourg domestic law' (2020) < https://www.simmons-simmons.com/en/publications/ck7qd24p011kh0951q8poxlpu/implementation-of-dac-6-in-germany>

As a result, fund sponsors in both countries have been obligated to integrate robust compliance mechanisms into fund structuring and ongoing operations to mitigate regulatory risk.[109]

In summary, the fund structuring environment in Luxembourg and Germany is being reshaped by a convergence of regulatory, tax, and technological developments. Fund managers and sponsors must stay abreast of these changes to ensure compliance, maintain competitiveness, and seize new opportunities in the evolving European market.

Chapter 5: Case Studies

5.1Case Study 1: Luxembourg RAIF/SCSp for Pan-European Private Equity

A global asset manager seeks to raise a €500 million private equity fund targeting institutional investors across the EU, the UK, and Asia. The manager's priorities are tax neutrality, rapid setup, and broad distribution capability.

The fund is established as a Luxembourg Reserved Alternative Investment Fund (RAIF) in the form of a Société en Commandite Spéciale (SCSp). The RAIF is managed by an authorised AIFM and invests in unlisted companies across Europe.

Tax and Regulatory Considerations:

- Fund-level taxation: The SCSp is tax transparent, incurring no corporate income tax or net wealth tax at the fund level in Luxembourg.[119] [134]
- Withholding tax: Luxembourg does not levy withholding tax on profit distributions to non-resident investors, provided the fund is structured as an SCSp.[119]
- VAT: Management services are exempt from VAT under Luxembourg law.[134]

[109] EY, 'Luxembourg Tax Authority revises MDR guidance' (2022) < https://www.ey.com/en_lu/insights/tax/luxembourg-tax-authority-revises-mdr-guidance#:~:text=On%204%20May%202022%2C%20the,as%20DAC6%20or%20the%20Directive).>

- Regulatory flexibility: The RAIF regime allows for rapid launch without direct CSSF approval, provided the AIFM is authorised.[119]
- Treaty access: While the SCSp itself may not access tax treaties, investors can benefit from treaty relief at their level, and the fund's transparency avoids entity-level tax leakage.[134]

Outcome:

The fund achieves efficient cross-border fundraising, rapid time-to-market, and maximises after-tax returns for a diversified international investor base.

5.2Case Study 2: German Spezialfonds for Domestic Institutional Investors

A German insurance group intends to invest €200 million in a diversified real estate and infrastructure portfolio, prioritising regulatory certainty and partial tax exemption.

The investment is structured through a German Spezialfonds, managed by a BaFin-supervised KVG (Kapitalverwaltungsgesellschaft).

Tax and Regulatory Considerations:

- Fund-level taxation: Spezialfonds benefit from partial tax exemptions on certain income classes (e.g., 80% exemption for dividends, 40% for real estate income) under the Investment Tax Act (InvStG §20, §26).[110]
- Withholding tax: German investors may benefit from reduced withholding tax rates, and the Spezialfonds structure is recognised by the German tax authorities.[110]
- Regulatory alignment: Spezialfonds are tailored for institutional investors and comply with Solvency II and other domestic regulatory requirements.
- Reporting: The KVG is responsible for comprehensive tax and regulatory reporting to both investors and authorities.[110]

Outcome:

The structure provides stable, tax-efficient returns for the insurance group, with robust compliance and reporting in line with German regulatory expectations.

5.3Comparative Insights

These case studies highlight the practical implications of jurisdictional choice.

Luxembourg offers maximum flexibility, tax neutrality, and cross-border fundraising efficiency, making it ideal for global sponsors and multi-jurisdictional investor bases.[119] [134]

Germany provides a predictable, partially tax-exempt environment for domestic institutional investors, with strong regulatory alignment and reporting infrastructure.[110]

5.4Successful Fund Structures in Luxembourg and Germany

The structuring of investment funds in Luxembourg and Germany reflects each jurisdiction's approach to regulation, tax efficiency, and investor needs. This section provides practical examples to illustrate how these frameworks shape fund design.

Luxembourg: RAIF Structured as SCSp

In Luxembourg, the Reserved Alternative Investment Fund (RAIF) structured as a Société en commandite spéciale (SCSp) is a leading choice for private equity and real estate strategies. The RAIF regime, introduced by the Law of 23 July 2016, allows funds to be launched without direct authorisation from the Commission de Surveillance du Secteur Financier (CSSF), provided that the fund is managed by an authorised alternative investment fund manager. This regulatory efficiency reduces time-to-market and administrative costs for sponsors.[111]

[110] German Investment Tax Act (Investmentsteuergesetz, InvStG) §20, §26 (2024).
[111] Law of 23 July 2016 on Reserved Alternative Investment Funds (RAIF Law), Mémorial A No. 162 of 28 July 2016.

The SCSp, a limited partnership without legal personality anad offers contractual flexibility and tax transparency. As mentioned above, since it is a tax-transparent vehicle, the SCSp itself is generally not subject to corporate income tax, municipal business tax, or net wealth tax, provided, however that it does not engage in commercial activities outside its investment scope.[112] Taxation occurs at the investor level, supporting tax neutrality. In addition, Luxembourg's extensive double tax treaty network can facilitate reduced withholding taxes on cross-border income, enhancing after-tax returns for investors.[113]

It is important to note that the SCSp will need to appoint an authorised depositary, in order to qualify as an investment fund.

Germany: Spezial-Investmentfonds

In Germany, Spezial-Investmentfonds (special funds) are tailored to institutional investors such as pension funds, insurance companies, and corporates. Governed by the Investment Tax Act (Investmentsteuergesetz, InvStG), these funds benefit from partial tax exemptions, most notably, a significant portion of dividend income and capital gains may be exempt from corporate income tax at the fund level, provided the fund meets specific diversification and investor criteria.[114]

Spezialfonds are subject to strict regulatory and reporting requirements, reflecting Germany's focus on investor protection and tax compliance. While from administrative perspective they are more complex than some Luxembourg structures, Spezialfonds are designed to meet the preferences of German institutional investors and are recognised for their stability and compliance with domestic standards.[115]

These case studies demonstrate how Luxembourg and Germany leverage their respective legal and tax environments to support successful fund structures. Luxembourg's RAIF-SCSp

[112] Luxembourg Income Tax Law, art 159;
[113] Luxembourg for Finance, 'Investment Funds in Luxembourg: A Guide' (2024) 22–24.
[114] Investmentsteuergesetz (InvStG), §§ 8–10
[115] Federal Financial Supervisory Authority (BaFin), *Indirect investments in Special Funds (Spezial-AIF): BaFin has investor-protection concerns about circumvention structures* (BaFin Journal Fachartikel, 15 December 2023) <https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Fachartikel/2023/fa_bj_2311_Spezial_AIF_en.htm>

model emphasises flexibility, regulatory efficiency, and international tax neutrality, making it attractive for cross-border alternative investments. In contrast, Germany's Spezialfonds offer tailored tax benefits and strong investor protections within a comprehensive regulatory framework, appealing to domestic institutional investors seeking compliance and security.

5.2ELTIFs in the Cross-Border Fund Landscape

The European Long-Term Investment Fund (ELTIF) regime, recently updated by Regulation (EU) 2023/606 ("ELTIF II"), has further expanded the options available for cross-border fund structuring in the EU. ELTIFs are designed to channel capital into long-term projects such as infrastructure, SMEs, and real estate. They are accessible to both professional and retail investors across Member States.[116] ELTIF II, effective from January 2024, introduces greater flexibility in eligible assets, diversification, and borrowing, and permits master-feeder and fund-of-funds structures.[117] These changes make ELTIFs a more attractive option for sponsors seeking a regulated vehicle with a true pan-European passport.[118]

From a tax perspective, ELTIFs do not benefit from a harmonised EU tax regime. Instead their tax treatment is determined by the laws of the fund's domicile and the investor's jurisdiction. In Luxembourg, for example, ELTIFs are commonly structured as tax-transparent partnerships (such as the SCSp), allowing income to be taxed at the investor level and facilitating access to double tax treaties.[119] In Germany, the tax treatment of ELTIFs depends on their legal form and compliance with domestic investment tax rules. German investors may benefit from partial tax exemptions if the ELTIF qualifies as a Spezial-Investmentfonds under the InvStG.[120]

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[116] Regulation (EU) 2023/606 of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds [2023] OJ L79/1

[117] Association of the Luxembourg Fund Industry (ALFI), 'ELTIF 2.0: The European Long-Term Investment Fund' (2024) < https://www.alfi.lu/getattachment/45d430ba-aa78-454b-b182-2f0c64ec0e80/app_data-import-alfi-eltif-2-0-the-european-long-term-investment-fund-eltif-.pdf> accessed 7 June 2025.

[118] Elvinger Hoss Prussen, 'European Long-Term Investment Funds (ELTIFs) in a Nutshell' (2024) 2– < https://elvingerhoss.lu/sites/default/files/documents/publications/EHP_ELTIF%20II%20in%20a%20nutshell.pdf> accessed 7 June 2025.

[119] ALFI, 'Investment Funds in Luxembourg: A Guide' (2024) 22–24.

[120] Investmentsteuergesetz (InvStG), §§ 8–10.

However, the cross-border ELTIF structures must also satisfy substance requirements and comply with anti-abuse provisions to secure treaty benefits and avoid adverse tax consequences.[119] Furthermore, ELTIFs—like other hybrid and cross-border funds—are subject to reporting obligations under DAC6 and must ensure their structuring does not fall foul of ATAD's anti-hybrid and general anti-abuse rules.[118]

Overall, the ELTIF II reforms position the ELTIF as a flexible, regulated, and cross-border vehicle, but sponsors must carefully consider the interplay of local tax rules, treaty access, and EU-wide anti-avoidance measures in their structuring decisions.

5.3 Comparative Analysis of Cross-Border Funds

Cross-border fund structures frequently leverage Luxembourg's favourable regulatory and tax environment, while providing German institutional investors with access to familiar and credible domestic vehicles. A common example is the use of a Luxembourg Reserved Alternative Investment Fund (RAIF) as a feeder fund into a German master Spezial-Investmentfonds. This arrangement allows the sponsors to combine the regulatory efficiency, tax neutrality, and international treaty benefits of the Luxembourg RAIF, while also benefiting from the robust investor protections and partial tax exemptions available to German Spezialfonds.

The master-feeder model requires that at least 85% of the feeder fund's assets be invested in a single master fund. This ensures alignment of investment policy and risk management between the two vehicles.[121] The RAIF, managed by an authorised AIFM, benefits from indirect supervision and the EU marketing passport, while the German Spezialfonds is tailored to meet the expectations of domestic institutional investors and align with German tax

[121] Association of the Luxembourg Fund Industry (ALFI), 'Master-Feeder Structures: Made in Luxembourg UCITS IV' (2020) 3–4. < https://www.alfi.lu/getattachment/c9ea0359-702c-4cac-a546-5c2b445cf6f0/app_data-import-alfi-master-feeder-structures-made-in-luxembourg.pdf>

preferences. The central administration of the RAIF must be in Luxembourg, and both the feeder and master funds are subject to annual audits and strict governance requirements.[122]

Despite these advantages, fund sponsors must pay careful attention to economic substance and reporting compliance. To benefit from reduced withholding taxes and double tax treaty protection, both Luxembourgish and German authorities require fund structures to demonstrate genuine business activity and sufficient substance in the relevant jurisdiction.[123]

The presence of hybrid or cross-border structures further triggers additional scrutiny under the EU's DAC6 and ATAD regimes, particularly where tax advantages are achieved in the absence of a clear business rationale. Reporting obligations under DAC6 require intermediaries and, in some cases, fund sponsors to disclose arrangements that exhibit hallmarks of aggressive tax planning, while ATAD imposes anti-hybrid and anti-abuse rules that may limit the effectiveness of certain cross-border structures.

Overall, while cross-border fund models can offer significant operational and tax benefits, they must be carefully designed and managed to ensure ongoing compliance with evolving European regulatory standards and anti-abuse provisions.

5.4Tax Challenges and Solutions in Real-Life Scenarios

Real-world cases highlight the practical complexities and solutions fund sponsors use to address cross-border tax challenges in Luxembourg and Germany.

A significant example involved a Luxembourg domiciled fund that was denied treaty benefits by the German tax authorities. This denial was based on insufficient evidence of beneficial

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122 ALFI, 'RAIF (Luxembourg Reserved Alternative Investment Fund)' (2024) <https://www.alfi.lu/en-gb/pages/setting-up-in-luxembourg/alternative-investment-funds-legal-vehicles/raif-(luxembourg-reserved-alternative-investment-f>

123 Arendt, 'Reserved Alternative Investment Funds (RAIF)' (2024) 5–7<https://www.arendt.com/wp-content/uploads/2024/04/brochure_-_reserved_alternative_investment_funds_-_raifs.pdf>

ownership and a lack of economic substance, as required under § 50d of the German Income Tax Act (EStG). The fund resolved this issue by restructuring its governance framework, introducing local directors, and enhancing operational substance in Luxembourg. These changes satisfied the German substance and anti-abuse requirements, ultimately restoring access to double tax treaty benefits.[124]

In another case, a German real estate Spezialfonds met limitations on interest deductibility, as a result of ATAD-driven rules implemented in Germany. To address this, the fund sponsors utilised Luxembourg based financing entities structured under the RAIF regime, to facilitate intra-group loans. This approach allowed for more favourable interest deduction treatment, leveraging the tax neutrality and structuring flexibility of the Luxembourg RAIF. However, this arrangement also triggered DAC6 reporting obligations, since the cross-border financing structure exhibited hallmarks of tax planning, that required disclosure to the relevant tax authorities.[125]

These examples demonstrate that while cross-border fund structures offer significant tax and operational advantages, they require careful attention to substance, governance, and compliance with evolving anti-abuse and reporting standards in both Luxembourg and Germany.[126]

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[124] § 50d Einkommensteuergesetz (EStG) (German Income Tax Act); EY, 'German Federal Central Tax Office publishes new fact sheet on eligibility for relief under anti-treaty shopping rule' (2025) <https://taxnews.ey.com/news/2025-0721-german-federal-central-tax-office-publishes-new-fact-sheet-on-eligibility-for-relief-under-anti-treaty-shopping-rule >

[125] Investmentsteuergesetz (InvStG), §§ 4h, 8–10; Bundesministerium der Finanzen, 'ATAD-Umsetzungsgesetz' (2021)

[126] Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements [2018] OJ L139/1;

Chapter 6: Discussion

6.1Key Insights from Comparative and Quantitative Analyses

The comparative analysis of Luxembourg and Germany reveals opposing and yet balancing approaches to fund structuring in both jurisdictions.

Luxembourg's fund vehicles are characterised by tax neutrality, administrative ease, and broad international treaty access. This makes Luxembourg the preferred jurisdiction for cross-border and alternative investment funds. The Reserved Alternative Investment Fund (RAIF) and the Société en commandite spéciale (SCSp) are particularly attractive due to their fiscal transparency and operational flexibility. The SCSp, for example, is generally not subject to Luxembourg corporate income tax, municipal business tax, or net wealth tax, provided it does not engage in commercial activities, with taxation occurring at the investor level.[127] RAIFs benefit from exemption from income and wealth taxes, being subject only to a low annual subscription tax.[128] These features, combined with Luxembourg's extensive double tax treaty network, enhance after-tax returns for international investors.

Equally, Germany's regulatory and tax framework offers greater tax certainty for domestic investors and aligns with a more conservative regulatory oversight.[129] Spezial-Investmentfonds (Spezialfonds) are designed for institutional investors and benefit from partial tax exemptions on dividend income and capital gains, provided they meet specific diversification and investor criteria under the Investment Tax Act (InvStG).[130] Although administratively more complex, Spezialfonds provide predictability and are tailored to the needs of regulated sectors, such as pension funds and insurance companies.

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[127] Roundtable, 'SCSp Luxembourg: What is it and when to use it?' (2025)< https://www.roundtable.eu/learn/scsp>

[128] Elvinger Hoss Prussen, 'Reserved Alternative Investment Funds' (2024) <https://elvingerhoss.lu/sites/default/files/documents/publications/EHP-RAIF-Memo-ENG.pdf>

[129] PwC Luxembourg, 'German Investment Tax Act ("GITA")' (2024) <https://www.pwc.lu/en/global-tax-compliance/alternatives-funds/germany.html>

[130] IPE, 'SIFs' challenge to German "Spezials"' (2007) <https://www.ipe.com/sifs-challenge-to-german-spezials/22477.article>

Recent German court rulings and amendments to the Luxembourg-Germany Double Tax Treaty have clarified the eligibility of Luxembourg funds for treaty benefits and reinforced the principle of equal treatment between domestic and foreign funds.

Quantitatively, investors in Luxembourg-based RAIFs and SCSp structures often benefit from higher after-tax returns due to zero fund-level tax and the absence of withholding on most distributions, subject to the investor's own tax position.[131] In contrast, German Spezialfonds offer stability and partial exemptions that may be more advantageous for institutional investors with domestic regulatory and compliance obligations.

6.2Alignment with Hypotheses

The hypothesis that Luxembourg provides greater tax efficiency for fund structures is validated by the analysis. Fund vehicles such as the RAIF and SCSp are especially advantageous for global sponsors due to their transparency, VAT exemptions, and ease of access to treaty benefits.[122] The RAIF, in particular, benefits from a regulatory regime that allows for rapid setup without direct CSSF supervision, and the SCSp offers tax neutrality by ensuring income is taxed at the investor level rather than the fund level.[132] These features make Luxembourg highly attractive for cross-border and alternative investment funds.

However, the compliance burden introduced by DAC6 and substance requirements under the BEPS framework has moderated this advantage to some extent, as sponsors must now demonstrate genuine economic activity and comply with enhanced reporting standards.

Germany's regulatory framework, while less flexible, offers a more structured environment for domestic investments and features institutional alignment with pension and insurance regulatory requirements. The Spezialfonds regime provides predictability and partial tax exemptions, making it a preferred choice for regulated institutional investors.

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[131] Roundtable, 'SCSp Luxembourg: What is it and when to use it?' (2025) https://www.roundtable.eu/learn/scsp

[132] Luxembourg for Finance, 'Private Equity in Luxembourg' (2022) 8–10 <https://www.luxembourgforfinance.com/wp-content/uploads/2022/03/LFF_PrivateEquity.pdf>

6.3Quantitative Comparison of Tax Efficiency: Luxembourg vs. Germany

To illustrate the practical impact of fund- and investor-level taxation, this section models after-tax returns for a typical institutional investor allocating €10 million to a private equity fund structured in Luxembourg (RAIF/SCSp) and in Germany (Spezialfonds). The analysis is based on prevailing tax rates and regulatory frameworks as of 2025.

Assumptions and Sources:

- Initial investment: €10,000,000
- Gross annual return: 8%
- Investment horizon: 5 years
- Luxembourg RAIF/SCSp: No fund-level tax, no withholding tax on distributions, investor taxed at 20% on distributed gains[133][134]
- German Spezialfonds: 15% partial exemption at fund level (InvStG §20), 25% withholding tax on distributions (subject to treaty relief), investor taxed at 15% after exemption[135]
- No leverage, fees, or currency effects considered

Luxembourg RAIF/SCSp Calculation:

- Gross return over 5 years:
  €10,000,000 × (1.08^5 – 1) =€4,693,280
- No fund-level tax or withholding tax
- Investor-level tax (20%):
  €4,693,280×0.20=€938,656€4,693,280×0.20=€938,656
- **Net after-tax return:**
  €4,693,280−€938,656=€3,754,624

[133] ALFI, 'Luxembourg Investment Vehicles' (2019) 8–10 <https://www.alfi.lu/getattachment/23bdaeb3-ad81-47a3-a011-6214ad39d8ee/app_data-import-alfi-luxembourg_investment_vehicles_2019_update.pdf>

[134] PwC Luxembourg, 'Introduction to Luxembourg Alternative Investment Vehicles' (2024) 4-6 < https://www.pwc.lu/en/alternative-investments/docs/pwc-introduction-to-luxembourg-alternative-investment-vehicles.pdf>

[135] Investmentsteuergesetz, InvStG) §20, §7 (2024)

German Spezialfonds Calculation:

Gross return over 5 years:

€10,000,000×(1.085−1)= €4,693,280

- 15% exemption at fund level: €4,693,280×0.85=€3,989,288€4,693,280×0.85=€3,989,288
- Withholding tax (25%): €3,989,288×0.25=€997,322€3,989,288×0.25=€997,322
- Investor-level tax (15%): €3,989,288×0.15=€598,393€3,989,288×0.15=€598,393
- **Net after-tax return:** €3,989,288−€997,322−€598,393=€2,393,573€3,989,288−€997,322−€598,393=€2,393,573

Structure	Gross Return (5 yrs)	Net After Tax Return	Effective Tax Rate
Luxembourg RAIF/SCSp	€4,693,280	€3,754,624	20%
German Spezialfonds	€4,693,280	€2,393,573	~49%

This model demonstrates that, under typical conditions, a Luxembourg RAIF/SCSp delivers a significantly higher after-tax return to international institutional investors compared to a German Spezialfonds. The difference is primarily due to Luxembourg's fund-level tax neutrality and the absence of withholding tax on distributions. In contrast, the German regime, while offering partial exemptions and stability, results in higher overall tax leakage due to combined fund-level and investor-level taxation.

6.4Implications for Fund Managers and Policymakers

For fund managers, jurisdictional choice should be aligned with the investment strategy and investor base. Luxembourg remains the jurisdiction of choice for multi-jurisdictional fundraising, private equity, and real estate funds, owing to its tax-neutral structures, flexible regulatory environment, and global distribution reach.[136] The RAIF and SCSp regimes, in particular, offer sponsors the ability to tailor fund vehicles for cross-border investors and to benefit from Luxembourg's extensive treaty network and efficient fund administration. Germany, by contrast, is more suited for domestic strategies involving regulated investors such as pension funds and insurance companies, where the Spezialfonds structure provides tax predictability and compliance with local regulatory expectations.

Policymakers in both jurisdictions can enhance competitiveness by further harmonising tax definitions, increasing treaty clarity, and minimising duplication in reporting under frameworks such as ATAD, DAC6, and AIFMD. Greater transparency and coordination in EU-wide tax policy would promote market efficiency and reduce compliance overheads for fund sponsors, supporting the continued growth and innovation of the European investment fund sector.[19]

6.5Tax Treatment and Cross-Border Appeal

The tax treatment of the ELTIFs depends on both their legal form and the jurisdiction in which they are established. In Luxembourg, ELTIFs are frequently structured as Reserved Alternative Investment Funds (RAIFs) or as Société d'Investissement à Capital Variable (SICAVs). When set up as an SCSp, ELTIFs benefit from tax neutrality. This means that the income is generally taxed at the investor level, rather than at the fund level.[137] Additionally, recent reforms have introduced an exemption from the annual subscription tax for ELTIFs. This has further enhanced their tax efficiency in Luxembourg.[138]

In Germany, the ELTIFs can be structured to operate under the Spezialfonds regime, provided they meet the specific requirements of the Investment Tax Act (InvStG). The tax advantages

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[136] Chambers and Partners, 'Investment Funds 2025 – Luxembourg' (2024) <https://practiceguides.chambers.com/practice-guides/investment-funds-2025/luxembourg>

[137] ALFI, 'European Long Term Investment Funds (ELTIF) FAQs Issue 1' (2016) 3–4 <https://www.alfi.lu/getattachment/54a1e7a6-569b-49a1-a4da-dcdde967a4ba/app_data-import-alfi-eltifs-faq-final-december-2016.pdf>

[138] EY, 'Infrastructure tax updates: ELTIF, investment tax credits, Pillar 2, German tax reforms and substance' (2024) < https://www.ey.com/en_lu/insights/wealth-asset-management/infrastructure-tax-updates-eltif-investment-tax-credits-pillar-2-german-tax-reforms-and-substance

available to ELTIFs in Germany, such as partial exemptions on certain income, are dependant on compliance with InvStG rules and the tax status of the investor.[136] For German institutional investors, these vehicles can offer quite attractive features. The fund, however, must be properly classified and managed to access the Spezialfonds' tax regime[139].

ELTIFs benefit from EU passporting rights, allowing them to be marketed across Member States to both professional and retail investors. This cross-border attractiveness has further been strengthened by the ELTIF II, which expands eligible assets, relaxes investment thresholds, and removes minimum entry requirements for retail investors.[140] ELTIFs are also recognised as suitable vehicles for long-term retirement and pension portfolios, particularly following the introduction of the Pan-European Personal Pension Product (PEPP) framework, which encourages the use of regulated, transparent, and diversified long-term investment funds for retirement planning.[141]

6.6 Strategic Outlook and Market Growth

The European investment fund landscape is poised for robust growth, supported by a resilient macroeconomic environment and a wave of regulatory innovation. As of early 2025, underlying economic conditions in Europe remain strong, with the Eurozone experiencing its highest growth rates in two years and positive momentum expected to continue.[142] This stability, combined with accommodative monetary policy and improving investor sentiment, provides a favourable backdrop for fund market expansion.

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[139] Norton Rose Fulbright, 'The 2023 ELTIF Regulation' (2023) < https://www.nortonrosefulbright.com/en/knowledge/publications/d6656466/the-2023-eltif-regulation>

[140] EY, 'Cross-sector point of view: ELTIF, the retail route for alternatives?' (2024) < https://www.ey.com/en_lu/insights/wealth-asset-management/cross-sector-point-of-view-eltif-the-retail-route-for-alternat>

[141] Mondaq, 'ELTIFs (European Long-Term Investment Funds) And Luxembourg ELTIF structures' (2024) < https://www.mondaq.com/fund-finance/1332598/eltifs-european-long-term-investment-funds-and-luxembourg-eltif-structures>

[142] BlackRock, 'Europe Investment Trust Market Outlook 2025' (2025) < https://www.blackrock.com/uk/solutions/investment-trusts/our-range/blackrock-greater-europe-investment-trust/trust-information/insights/outlook-2025#:~:text=The%20BlackRock%20Greater%20Europe%20Investment%20Trust%20Market%20Outlook%20for%202025&text=At%20the%20start%20of%202025,rate%20in%20two%20years1>

Luxembourg continues to solidify its position as Europe’s leading fund domicile, driven by its adaptive regulatory framework and operational excellence.[143] The jurisdiction is especially well placed to capitalise on the revised European Long-Term Investment Fund (ELTIF 2.0) regime, which is expected to drive further growth and innovation in the sector.[144] Out of 132 ELTIFs as of September 2024, 84 are domiciled in Luxembourg, underscoring its cross-border appeal and expertise in structuring complex, multi-jurisdictional vehicles. The trend toward sustainable and retail-focused funds is also accelerating, with Luxembourg seeing a 12.3% increase in assets under management for sustainable funds from 2022 to mid-2024.[143]

ELTIF 2.0, effective from January 2024, has significantly enhanced the product’s market appeal by broadening eligible assets, relaxing investment restrictions, and improving access for retail investors. These reforms enable ELTIFs to channel private capital into long-term projects such as infrastructure, energy transition, digitalisation, and SME development—key priorities for Europe’s economic future. The ability to market ELTIFs widely across the EU, combined with the removal of minimum investment thresholds and the introduction of more flexible portfolio rules, is expected to accelerate both institutional and retail participation.[144]

Market momentum is also evident in European real estate and private markets, where improving liquidity and capital inflows are supporting higher returns and renewed investor interest.[145] Forecasts suggest that European all-property total returns could reach 7.4% in 2025, with three- and five-year annualised returns projected at 9.3% and 8.8%, respectively. These trends reflect a broader shift towards diversified, long-term investment strategies that align with the evolving regulatory landscape and investor demand for sustainable, real-economy impact.[146]

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[143] BSP, ‘Chambers | Investment Funds 2025 Guide’ (2025) < https://www.bsp.lu/lu/publications/articles-books/chambers-investment-funds-2025-guide>

[144] BNP Paribas Securities Services, ‘ELTIF 2.0: new opportunities in 2025 for European AIFs’ (2025)) < https://securities.cib.bnpparibas/eltif-2-0-regulation/>

[145] Hamilton Lane, ‘European Long Term Investment Fund | Hamilton Lane’ (2025) < https://www.hamiltonlane.com/en-us/strategies/evergreen/austria/european-long-term-investment-fund>

[146] Aberdeen Investments, ‘European real estate market outlook Q2 2025’ (2025) <https://www.aberdeeninvestments.com/en-sg/investor/insights-and-research/european-real-estate-market-outlook-q2-2025>

In summary, the strategic outlook for European investment funds—particularly those domiciled in Luxembourg and structured under the ELTIF 2.0 framework—is highly positive. Enhanced regulatory clarity, growing demand for sustainable and infrastructure investments, and a supportive macroeconomic environment are set to drive continued market growth and innovation in the years ahead.[146]

Chapter 7: The Future of Fund Structuring in the EU

7.1Emerging Regulatory Trends

The future of fund structuring in the European Union is being shaped by a dynamic regulatory environment focused on deepening market integration, enhancing competitiveness, and supporting sustainable growth. The European Commission's 2025 strategy for a Savings and Investments Union (SIU) underscores the EU's commitment to removing persistent barriers in cross-border fund distribution and streamlining the regulatory landscape for asset managers.[147]

A central trend is the push toward harmonisation and simplification of rules across Member States. The Commission has announced plans to replace certain Directives with directly applicable Regulations, aiming to reduce "gold-plating," lower operational costs, and accelerate time-to-market for EU-authorised funds.[148] Legislative proposals expected in late 2025 will target the removal of barriers to cross-border activity, modernise frameworks for central securities depositories and settlement, and further recognise the role of new

[147] ICMA, 'EUROPEAN UNION SAVINGS & INVESTMENT UNION: Summary' (2025) <https://www.icmagroup.org/assets/2025.03.19-ICMA-summary-EC-SIU-19-March-2025.pdf>

[148] European Commission, 'Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: Savings And Investments Union' Com(2025) 124 final, 19 March 2025.

technologies such as distributed ledger technology (DLT) and artificial intelligence (AI) in trading and post-trading infrastructure.[148]

The revised ELTIF 2.0 framework exemplifies this regulatory evolution, offering greater flexibility in eligible assets, investment strategies, and investor access, while also streamlining operational requirements for fund managers. The ELTIF reforms are already driving increased supply and demand for long-term investment vehicles, particularly among retail and semi-institutional investors seeking exposure to real assets and sustainable projects.[149]

Another key trend is the move toward more unified and efficient supervision. The EU is considering transferring certain supervisory tasks from national competent authorities to the European level and encouraging greater convergence in supervisory practices to reduce fragmentation and regulatory arbitrage. Enhanced enforcement mechanisms and dedicated channels for market participants to report single market barriers are also being established to accelerate the removal of obstacles and improve the functioning of the single market.

Finally, the regulatory agenda is increasingly attentive to the operational realities of fund managers, with a focus on reducing duplicative reporting under frameworks such as ATAD, DAC6, and AIFMD, and on promoting digitalisation and data-driven supervision. These measures are expected to lower compliance costs, foster innovation, and support the EU's broader strategic objectives in sustainable finance and capital markets integration.[148]

7.2ESG and Sustainable Fund Structuring

The landscape for ESG (Environmental, Social, and Governance) and sustainable fund structuring in the EU is undergoing rapid transformation as regulatory standards tighten and investor expectations evolve. The European Securities and Markets Authority (ESMA) has

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[149] Arendt & Medernach, 'EU Commission unveils strategy for the Savings and Investments Union' (2025) < https://www.arendt.com/news-insights/news/eu-commission-unveils-strategy-for-the-savings-and-investments-union/>

introduced new guidelines on the use of ESG and sustainability-related terms in fund names, which became effective for new funds in November 2024 and will apply to all existing funds by May 2025.[150] These guidelines require that funds using ESG or sustainability-related terms allocate at least 80% of their assets to investments aligned with environmental or social objectives, and exclude exposure to controversial sectors such as fossil fuels, arms manufacturing, and tobacco. The aim is to combat greenwashing and ensure that ESG claims are substantiated by robust investment policies and transparent disclosures.[151]

National regulators across the EU are taking varied approaches to enforcement, with some jurisdictions—such as Austria and Belgium—adopting stringent penalties for non-compliance, while others, including Luxembourg and Italy, favour supervisory dialogue and corrective action.[152] In Luxembourg, the CSSF has formally integrated the ESMA guidelines through Circular CSSF 24/863, requiring fund managers to review and, if necessary, adapt their investment policies or fund names to ensure compliance. Failure to comply may result in regulatory sanctions or the requirement to remove ESG-related terms from fund names, which can be operationally complex.[150]

Beyond fund naming, the EU's broader sustainable finance agenda is advancing through initiatives such as the ESG Omnibus Directive, which seeks to streamline and simplify sustainability reporting and due diligence requirements. The directive postpones certain reporting deadlines and reduces the regulatory burden for smaller entities, while reinforcing the need for all UCITS and AIF managers to integrate sustainability risks into their investment processes.⁶ Complementary regulations, including the EU Taxonomy and the

[150] Loyens & Loeff, 'ESG regulations in 2025: key changes and what to expect for fund managers' (2025) < https://www.loyensloeff.com/insights/news--events/news/esg-regulations-in-2025-key-changes-and-what-to-expect/>

[151] Regulatory & Compliance, 'EU Regulators Take Different Enforcement Paths for ESMA ESG Fund Name Guidelines' (2025) <https://www.regulatoryandcompliance.com/2025/04/eu-regulators-take-different-enforcement-paths-for-esma-esg-fund-name-guidelines/>

[152] Societe Generale Securities Services, 'Sustainable Finance: What is the ESG Omnibus Directive?' (2025) < https://www.securities-services.societegenerale.com/de/insights/views/news/sustainable-finance-what-is-the-esg-omnibus-directive/>

European Green Bond Standard, are raising the bar for what qualifies as a “green” investment and increasing transparency around environmental credentials.[153]

For fund managers, these developments necessitate a proactive approach to compliance, governance, and product design. Integrating ESG criteria into investment decision-making, securing third-party verification of ESG claims, and adopting voluntary sustainability labels can enhance market credibility and attract a broader investor base.⁴ As the regulatory environment matures, sustainable fund structuring is set to become a core competitive differentiator in the European market, aligning financial products with the EU’s transition to a sustainable economy.[154]

7.3Tax Harmonisation and Pillar Two Effects

The EU’s tax landscape is undergoing a profound transformation as Member States implement the OECD’s Pillar Two framework, establishing a global minimum effective tax rate of 15% for multinational groups with consolidated revenues exceeding €750 million. The EU Pillar Two Directive (Council Directive (EU) 2022/2523) required all Member States, including Luxembourg and Germany, to transpose these rules into national law by the end of 2023, with the Income Inclusion Rule (IIR) and Qualified Domestic Minimum Top-up Tax (QDMTT) in effect for fiscal years starting on or after 31 December 2023, and the Undertaxed Profits Rule (UTPR) coming into force from 2025.[155]

This harmonisation effort aims to reduce tax competition and profit shifting within the EU, but it also introduces significant compliance and reporting complexity for fund managers and

[153] Plana.earth, ‘All 2025 ESG and non-financial reporting regulations in the EU’ (2024) < https://plana.earth/academy/eu-esg-regulations>

[154] EY, ‘Staying ahead with ESG 2025: Key regulatory updates and strategic actions’ (2024) < https://www.ey.com/en_lu/insights/sustainability/staying-ahead-with-esg-2025-key-regulatory-updates-and-strategic-actions>

[155] European Parliament Think Tank, ‘Implementation of the Two-Pillar corporate tax framework’ (2025) <https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2025)772847>

multinational groups.[156] The interaction between the EU Pillar Two Directive and evolving OECD administrative guidance presents challenges, particularly as Member States interpret and implement the rules with some variations. The introduction of DAC9 in May 2025 seeks to streamline Pillar Two reporting obligations across the EU, facilitating centralised filing of the GloBE Information Return (GIR/TTIR) and enhancing the exchange of information among tax authorities.[157] However, the need for unanimity among Member States to adapt the reporting template may slow the process of incorporating future OECD guidance.[158]

For fund structures, especially those with cross-border activities or multi-jurisdictional investor bases, the Pillar Two regime necessitates intensive data collection, system upgrades, and ongoing monitoring to ensure compliance with the minimum tax standard.[159] The UTPR, effective from 2025, adds further complexity by requiring groups to assess top-up tax liabilities across all jurisdictions in which they operate, raising concerns about potential double taxation and the effectiveness of dispute resolution mechanisms.[160]

While the harmonisation of tax rules through Pillar Two is a major step toward a level playing field in the EU, it also underscores the need for further alignment of definitions and administrative practices to minimise compliance burdens and avoid fragmentation. The ongoing evolution of both EU and OECD guidance will shape the practical impact of these reforms on fund structuring, tax planning, and market competitiveness in the years ahead.[160]

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[156] EY, 'Five things to watch as EU Member States roll out Pillar Two rules' (2024) < https://www.ey.com/en_lu/insights/tax/five-things-to-watch-as-eu-member-states-roll-out-pillar-two-rules?linkId=248713069>

[157] oecdpillars.com, 'Pillar Two Implementation' (2025) <https://oecdpillars.com/pillar-tab/pillar-two-implementation/>

[158] Loyens & Loeff, 'Pillar Two: EU Council adopts DAC9 proposal' (2025) < https://www.loyensloeff.com/insights/news--events/news/eu-council-adopts-dac9-proposal/>

[159] PwC Luxembourg, 'Pillar Two' (2024) <https://www.pwc.lu/en/tax/corporate-tax/pillar-2.html> accessed 8 June 2025.

[160] A&O Shearman, 'What does 2025 hold for the Global Minimum Tax (Pillar Two)?' (2025) < https://www.aoshearman.com/en/insights/what-does-2025-hold-for-the-global-minimum-tax-pillar-two>

7.4Digitalisation and Cross-Border Automation

Digitalisation and automation are rapidly reshaping the European fund industry, with the EU investing heavily in digital infrastructure, advanced technologies, and cross-border interoperability. The Digital Europe Programme (DIGITAL), with a budget exceeding €8 billion for 2021–2027, is at the forefront of these efforts, supporting projects in artificial intelligence, cybersecurity, high-performance computing, and digital skills development. This programme aims to accelerate the digital transformation of businesses, public administrations, and SMEs, ensuring widespread adoption of advanced digital solutions across the economy and society.[161]

A key priority is the creation of a seamless, interoperable digital environment that enables efficient cross-border fund operations. Initiatives such as the European Digital Innovation Hubs (EDIHs) and the European Digital Infrastructure Consortia (EDICs) are fostering collaboration between Member States, industry, and research communities to deploy secure, high-performance digital public services and platforms.[162] The focus on interoperability is particularly relevant for fund managers seeking to streamline KYC, AML, and regulatory reporting processes across jurisdictions, reducing operational friction and compliance costs.

The EU's 2025–2027 Digital Europe work programme places special emphasis on the deployment and testing of generative AI, the development of secure data spaces, and the integration of digital identity solutions.⁴ These advancements are expected to drive automation in fund onboarding, transaction processing, and investor communications, while also enhancing cybersecurity and data protection in cross-border activities. The integration of digital technologies is further supported by complementary EU programmes such as Horizon Europe and the Connecting Europe Facility, which together aim to ensure that Europe remains globally competitive and technologically sovereign.[163]

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[161] European Commission, 'The Digital Europe Programme' (2025) <https://digital-strategy.ec.europa.eu/en/activities/digital-programme>

[162] Interoperable Europe Portal, 'EU Digital Funding Opportunities' (2025) < https://interoperable-europe.ec.europa.eu/eu-digital-funding-opportunities>

[163] Welcomeurope, 'Digital Europe Programme 2021-2027' (2025) < https://www.welcomeurope.com/en/programs/digital-europe-programme-2021-2027/>

For the fund industry, digitalisation and automation are not only operational imperatives but also strategic differentiators. Enhanced digital capabilities enable fund managers to deliver faster, more transparent, and scalable services to investors, while also supporting the EU's broader objectives of sustainable growth, market integration, and resilience.[164] As regulatory and technological frameworks continue to evolve, embracing digital transformation will be essential for maintaining competitiveness and unlocking new opportunities in the cross-border European fund market.

7.5Fund Domicile Trends & Market Sentiment Post-2024

Over the past year, Luxembourg has reaffirmed its position as Europe's leading fund domicile, encouraged by strong inflows into both UCITS and alternative funds. According to the 2024 ALFI Annual Report, Luxembourg remains the top hub for alternative funds, with €2.6 trillion in AIF assets, representing nearly two-thirds of the country's fund industry.[165] Furthermore, a February 2025 update from Luxembourg for Finance confirmed that 54% of all cross-border funds domiciled in Europe are based in Luxembourg.

Compared to other domiciles, Luxembourg and Ireland dominate: as of Q3 2024, they accounted for approximately 25% and 21% of total European fund assets, respectively, while Germany ranked lower in terms of cross-border fund hosting despite its strong domestic market.[166] According to EFAMA, European UCITS and AIF net assets grew by 3.2% in Q4 2024, with net inflows of €237 billion, reflecting continued investor appetite.[167]

One notable indicator of Luxembourg's strength is its lead in ELTIF issuance. Out of 126 ELTIFs authorised by mid-2024, 84 were domiciled in Luxembourg, with none in Germany under

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[164] European Investment Bank, 'EIB Investment Report 2024/2025: Innovation, integration and ...' (2025)

[165] ALFI, 'Annual Report 2024' (Association of the Luxembourg Fund Industry, December 2024) https://www.alfi.lu/en-gb/publications/annual-report-2024 accessed 9 June 2025.

[166] EFAMA, 'Quarterly Statistical Release Q3 2024' (November 2024) < https://www.efama.org/sites/default/files/quarterly-statistical-release-q3-2024.pdf>

[167] EFAMA, 'Trends in European Investment Funds – Q4 2024' (March 2025) < https://www.efama.org/sites/default/files/fact-book-2025_lowres.pdf>

BaFin.[137] German institutional investors have increasingly subscribed to Luxembourg-domiciled ELTIFs, reflecting structural and operational preferences.[144] Moreover, Luxembourg accounts for 51% of European private-equity AIFs and €5.54 trillion in cross-border fund assets as of mid-2024.

Market sentiment confirms Luxembourg's attractiveness. According to ETF Express in June 2025, Luxembourg has further strengthened its lead in multi-asset and cross-border fund structuring. EFAMA also reports that cross-border fund assets reached €10.9 trillion in mid-2024, underscoring Luxembourg's appeal to global sponsors and distributors.

Germany, while maintaining a solid domestic fund base, continues to rely on Luxembourg as a host for internationally oriented vehicles. German investor demand for ELTIFs grew by 24% in 2023 (€1.9 billion), yet this demand is largely serviced through Luxembourg structures.[168]

Chapter 8: Conclusions and Recommendations

8.1Summary of Findings

This thesis has provided a comparative evaluation of fund structuring and taxation between Luxembourg and Germany, two of the EU's leading fund domiciles. Luxembourg emerges as the more tax-efficient jurisdiction, especially for cross-border and private fund sponsors, due to its subscription tax regime, lack of withholding taxes, and investor-oriented legal vehicles like the RAIF and SCSp.

Germany, though more administratively complex, provides strong alignment with

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[168] Scope Group, *A New Era: ELTIF Study 2024* (Scope Group, May 2024) 5–6 < https://www.scopegroup.com/dam/jcr:2d90e111-d620-4183-aecf-f6c222d2799f/Scope%20ELTIF%20study%202024%20final%20(3).pdf>

institutional investors and domestic regulatory expectations through the Spezialfonds framework. It offers structured partial tax exemptions and strong compliance infrastructure, making it well-suited to pension and insurance fund investments.

The comparative analysis of fund structuring in the EU, with a focus on Luxembourg and Germany, reveals a rapidly evolving environment shaped by regulatory innovation, increasing harmonisation, and growing emphasis on sustainability and digitalisation. Luxembourg has maintained its leadership as a preferred domicile for cross-border, alternative, and private market funds, leveraging its flexible legal structures, tax neutrality, and efficient regulatory framework. Germany, meanwhile, continues to offer a robust and predictable environment for domestic institutional investors through its Spezialfonds regime, aligning with the needs of pension funds and insurance companies.

Recent years have seen a surge in regulatory activity at both the EU and national levels. The implementation of AIFMD II, enhanced sustainability disclosure requirements, and the integration of digital tools such as the proposed European Business Wallet are all reshaping the operational and compliance landscape for fund managers.[169][170] The EU's commitment to sustainable finance is evident in new ESG guidelines and reporting standards, which are now central to fund structuring and investor communications.[171] At the same time, digitalisation initiatives are streamlining cross-border fund distribution and administration, with the Digital Europe Programme and related projects supporting greater automation and interoperability.[170]

Despite these advances, challenges remain. Innovative firms and fund managers still face barriers to scaling and cross-border expansion, including fragmented regulatory interpretations and the complexity of overlapping reporting regimes such as ATAD, DAC6, and AIFMD. The European Commission and ESMA are responding with efforts to harmonise rules,

[169] European Commission, 'EUROPEAN COMMISSION Brussels, 28.5.2025 COM(2025) 270' (2025)
[170] CMS, 'Key takeaways from 2024 for a seamless experience in 2025' (2025) < https://cms.law/en/lux/publication/key-takeaways-from-2024-for-a-seamless-experience-in-20252>
[171] European Investment Bank, 'Investment Report 2024/2025 – Executive Summary' (2025) <https://www.eib.org/en/publications/20240354-investment-report-2024-executive-summary>

clarify definitions, and reduce compliance duplication, but full convergence across Member States is still a work in progress.[172]

Overall, the findings indicate that the EU fund industry is on a path toward greater integration, transparency, and efficiency. The sector's future growth will depend on continued regulatory alignment, the successful implementation of digital and sustainable finance initiatives, and the ability of fund managers to adapt to an increasingly sophisticated and competitive market environment.

8.2Practical Recommendations for Fund Structuring

The evolving regulatory and tax landscape in the EU, particularly in Luxembourg and Germany, requires fund managers, legal advisors, and policymakers to adopt proactive and forward-looking strategies. The following recommendations are grounded in recent legislative and regulatory developments:

1. Enhance Cross-Border Tax Efficiency

- Fund managers should prioritise structures that maximise treaty access and minimise tax leakage, such as Luxembourg RAIFs and German Spezialfonds, while ensuring compliance with substance and anti-abuse requirements introduced by BEPS and ATAD.
- Policymakers in both jurisdictions should continue to support the harmonisation of withholding tax relief, including the swift adoption and implementation of the FASTER proposal, to foster a more efficient cross-border investment environment.

2. Strengthen Substance and Compliance

- Fund sponsors must ensure that fund vehicles meet the enhanced substance requirements and reporting obligations under DAC6, ATAD, and local anti-abuse rules.

[172] Proskauer Rose LLP, 'European Regulatory Timeline 2025' (2025) < https://www.proskauer.com/report/european-regulatory-timeline-2025>

- Regular reviews of fund documentation and operational practices are recommended to avoid penalties and maintain eligibility for tax treaty benefits.

3. Leverage Digital and ESG Innovations

- Embrace digitalisation in fund administration, including the use of distributed ledger technology and digital onboarding, to increase efficiency and transparency.
- Integrate ESG criteria and comply with EU sustainable finance regulations (SFDR, Taxonomy Regulation, and ESMA guidelines) to meet investor expectations and regulatory demands.

4. Continuous Monitoring and Policy Engagement

- Fund managers and legal advisors should actively monitor legislative and regulatory changes at both EU and national levels, and participate in public consultations to shape future policy.
- Collaboration between industry, regulators, and policymakers is essential to address emerging challenges and maintain the competitiveness of Luxembourg and Germany as fund domiciles.

The evolving EU regulatory and tax landscape demands proactive, strategic planning from fund managers. Below are actionable recommendations for structuring funds effectively in Luxembourg, Germany, and cross-border contexts, informed by current trends and challenges.

1. Prioritise Regulatory Alignment and Substance
    a. Leverage Luxembourg's RAIF and SCSp structures for cross-border funds requiring tax neutrality, treaty access, and rapid setup. Ensure central administration and sufficient economic substance (e.g., local directors, offices) to satisfy BEPS and anti-abuse rules under §50d EStG and ATAD.[175]

b. Adopt ELTIF 2.0 frameworks for long-term infrastructure or sustainable projects, leveraging relaxed diversification rules and EU-wide passporting to attract retail and institutional capital.[173]

c. Monitor AIFMD II compliance, particularly liquidity risk management and leverage limits, to avoid penalties and ensure cross-border distribution readiness.[174]

2. Optimise Tax Efficiency
    a. Structure hybrid vehicles (e.g., Luxembourg RAIF feeder into German Spezialfonds) to combine treaty benefits with domestic tax exemptions. Pre-clear structures with German tax authorities to mitigate withholding tax disputes.
    b. Pre-empt Pillar Two compliance by implementing GloBE-compliant reporting systems and assessing top-up tax exposure for multinational fund groups (revenue >€750M).[159]
    c. Minimize DAC6 reporting triggers by avoiding hallmarks of aggressive tax planning (e.g., cross-border hybrid mismatches) unless supported by clear commercial rationale.[175]

3. Integrate ESG into Fund Design
    a. Align fund names and policies with ESMA guidelines: Allocate ≥80% of assets to ESG-aligned investments if using sustainability terms, and exclude exposure to fossil fuels, arms, or tobacco.[174]
    b. Adopt voluntary labels (e.g., EU Ecolabel) to enhance credibility and access ESG-focused capital pools. Secure third-party verification for green bonds or Taxonomy-aligned investments.[174]
    c. Embed ESG due diligence into investment processes to meet SFDR Article 6–9 requirements and mitigate greenwashing risks.[174]

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[173] Regulation (EU) 2023/606 (ELTIF 2.0) [2023] OJ L79/1.
[174] CSSF Circular 24/863 on ESMA ESG Guidelines (2024).
[175] Arendt & Medernach, 'EU Commission Unveils Strategy for the Savings and Investments Union' (2025) <https://www.arendt.com/news-insights/news/eu-commission-unveils-strategy-for-the-savings-and-investments-union/>

4. Leverage Digital Tools for Cross-Border Efficiency
    a. Implement AI-driven KYC/AML platforms to streamline investor onboarding across jurisdictions. Explore the EU's proposed European Business Wallet for standardized digital identity verification.[176]
    b. Adopt distributed ledger technology (DLT) for real-time NAV calculations and shareholder registries, reducing administrative costs and enhancing transparency.[177]
    c. Utilise EU digital infrastructure programs (e.g., Digital Europe, EDIHs) to automate reporting under AIFMD, DAC6, and ESG frameworks.[177]

5. Tailor Structures to Investor Base
    a. For pan-European fundraising: Choose Luxembourg-domiciled RAIFs or ELTIFs, combining regulatory efficiency with access to 80+ double tax treaties.[136]
    b. For German institutional investors: Use Spezialfonds to align with InvStG partial exemptions and domestic regulatory expectations (e.g., pension fund diversification rules).[175]
    c. For retail investors: Structure ELTIFs as UCITS-compliant vehicles under ELTIF 2.0, leveraging reduced minimum thresholds (€1,000) and PEPP compatibility.

6. Engage with EU Policy Developments
    a. Participate in EU consultations (e.g., Savings and Investments Union proposals) to shape harmonised rules on fund distribution, fintech, and sustainability reporting.[177]
    b. Prepare for regulatory shifts: Anticipate replacement of Directives with Regulations (planned for Q4 2025) to reduce gold-plating and cross-border fragmentation.[175]

[176] EIF Operational Plan 2025–2027 (European Investment Fund). < https://www.eif.org/news_centre/publications/operational-plan-2025-2027.pdf>

[177] European Commission, 'Savings and Investments Union Strategy' COM(2025) 124 final.

c. By adopting these strategies, fund managers can navigate complexity, reduce compliance costs, and align structures with the EU's strategic goals of market integration, sustainability, and digital transformation.

8.3Policy Suggestions for Luxembourg and Germany

Both jurisdictions could enhance their attractiveness by aligning fund taxation rules more closely with one another to reduce investor confusion and streamline compliance.

Luxembourg should provide more clarity around substance thresholds for tax-transparent structures, while Germany could consider relaxing its documentation demands under §50d EStG to reduce barriers to treaty access.[178]

The ongoing evolution of the European fund industry requires Luxembourg and Germany to adapt their policy frameworks to maintain competitiveness, foster sustainable growth, and support cross-border innovation. The following policy suggestions are grounded in recent trends, regulatory developments, and the strategic ambitions of both jurisdictions:

I. Deepen Cross-Border Harmonisation and Regulatory Alignment

a) Luxembourg and Germany should actively support EU-level initiatives aimed at harmonising fund regulation, tax definitions, and reporting standards. Reducing fragmentation—particularly in areas such as AIFMD, ATAD, and DAC6—will lower compliance costs and facilitate seamless fund distribution across the EU.[143]

b) Both countries should advocate for clearer and more consistent application of ELTIF 2.0 rules, ensuring that long-term investment vehicles can be efficiently marketed to both institutional and retail investors throughout the EU.[136]

[178] German Federal Tax Office, 'Withholding Tax Access and §50d EStG Interpretations', 2022.

II. Enhance Sustainable Finance Leadership

a) Luxembourg should continue to build on its global leadership in sustainable finance by expanding the scope and depth of its green and impact investment frameworks. Policymakers can incentivise the development of new sustainable products—such as green bonds and blended finance vehicles—by leveraging the EU taxonomy and developing additional frameworks for retail investors.[179]

b) Germany, as a leading institutional market, should further integrate ESG requirements into its Spezialfonds regime and promote best practices in sustainable fund governance. Both jurisdictions can collaborate to share expertise and accelerate the adoption of responsible investment standards across the EU.[179]

III. Foster Innovation and Digital Transformation

a) Luxembourg should reinforce its position as a hub for fintech and digital fund administration by investing in digital infrastructure, supporting the adoption of distributed ledger technology, and encouraging the integration of AI-driven compliance and reporting tools.

b) Germany can complement this by promoting digitalisation in fund servicing and investor communications, ensuring that domestic and cross-border investors benefit from efficient, transparent, and secure digital processes.[179]

IV. Strengthen Governance and Human Capital

a) Both countries should continue to prioritise strong governance standards and responsible regulation. Ongoing initiatives to enhance fund governance, such as

[179] Luxembourg for Finance, 'Ambitions 2025: Financing a sustainable future' (2025) < https://www.luxembourgforfinance.com/en/publication-mag/financing-a-sustainable-future/>

those highlighted in Luxembourg's Fund Governance Survey, should be reinforced through targeted education, training, and the nurturing of skilled professionals.[180]

b) Policymakers should also support the expansion of the financial industry workforce, ensuring a pipeline of talent to meet the growing complexity and internationalisation of fund operations. [179]

V. Expand International Reach and Complementarity

a) Luxembourg should further consolidate its role as a cross-border centre of excellence by attracting new financial institutions, expanding its international distribution network, and strengthening its wealth management and alternative investment offerings.[179]

b) Germany can leverage its strong domestic investor base and regulatory expertise to serve as a complementary hub for pan-European and global fund sponsors seeking stable, predictable access to the EU market.[143]

c) By pursuing these policy directions, Luxembourg and Germany can reinforce their leadership in the European fund industry, support sustainable and innovative growth, and ensure that their financial centres remain at the forefront of global investment trends.

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[180] PwC Luxembourg, 'Luxembourg Fund Governance Survey 2024' (2024) < https://www.pwc.lu/en/asset-management/fund-governance-survey-2024.html>

8.4Limitations and Future Research Directions

The scope of this thesis is limited to the analysis of fund structures regulated under the UCITS and AIFMD regimes in Luxembourg and Germany, with a primary focus on institutional investors. Retail-specific vehicles and third-country regimes are not addressed.

The research is based on publicly available legal documents, regulatory guidance, and official reports. Proprietary fund data and confidential tax rulings were not accessible.

The findings reflect the legal environment as of June 2025. Ongoing changes, especially in the implementation of FASTER and future EU directives, may require future revision.[181] [182] Case studies are illustrative and based on composite scenarios rather than specific, real-world funds.

Effectiveness of FASTER: Empirical research should assess the practical impact of the FASTER directive on reducing administrative barriers and tax leakage for cross-border investors once implemented.[182] [183]

ESG Integration: Further studies are needed on the operational integration of ESG criteria in fund structuring and the real-world impact of EU sustainable finance regulations.

Comparative Analysis Beyond the EU: Including other leading fund domiciles (e.g., Ireland, the Netherlands, UK) in future research would provide a broader perspective on best practices and competitiveness.

Quantitative Impact of Regulatory Change: As more granular data becomes available, future research could model the quantitative impact of new reporting and substance requirements on fund costs and investor returns.

Technological Innovation: The role of blockchain, AI, and digital onboarding in fund administration and compliance warrants further exploration.

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[182] European Commission, 'Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER)'< https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0329>
[183] European Commission, 'Anti-Tax Avoidance Directive (ATAD)'

The dynamic and evolving nature of the European fund industry, shaped by regulatory reforms, technological innovation, and shifting market demands, presents numerous avenues for future academic and applied research. This thesis identifies several key areas where further investigation could deepen understanding and support policy and industry development.

i. Impact of EU Budgetary Changes on Fund Innovation and Competitiveness

The European Commission’s roadmap for the 2028–34 Multiannual Financial Framework (MFF) signals potential shifts in research and innovation funding, with concerns about the integration of Horizon Europe into a broader Competitiveness Fund.¹ Future research should examine how these budgetary changes might affect innovation in fund structuring, fintech adoption, and sustainable finance initiatives across Luxembourg, Germany, and the wider EU. Assessing the implications for breakthrough research and the financing of emerging asset classes will be critical to understanding the EU’s long-term competitiveness.[184]

ii. Cross-Border Fund Distribution and Market Integration

With cross-border investment funds reaching EUR 7 trillion in assets under management by the end of 2024, the global footprint of European funds continues to expand rapidly.[185]

Research could explore the drivers and barriers to further cross-border distribution, including regulatory harmonisation, investor protection, and tax treaty effectiveness. Comparative studies on the role of Luxembourg and Germany as fund domiciles in facilitating international capital flows would provide valuable insights into market integration and competitive positioning.[185]

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[184] Science Business, ‘Research faces uncertain future in EU budget shakeup’ (2025) <https://sciencebusiness.net/news/eu-budget/research-faces-uncertain-future-eu-budget-shakeup>

[185] ALFI and Broadridge, ‘Cross-border distribution of investment funds 2025’ (2025) < https://www.alfi.lu/en-gb/news/cross-border-distribution-of-investment-funds-2025>

iii. Addressing the Scale-Up Gap Through Fund Structuring

European innovative companies face significant financing constraints, particularly in the scale-up phase, compared to their US and Chinese counterparts. Future work should investigate how fund structuring innovations, including ELTIFs and private market vehicles, can better support scale-ups by mobilising institutional and retail capital. The role of public-private partnerships and targeted policy interventions in overcoming capital market fragmentation and labour shortages warrants further empirical analysis.[186]

iv. Evolving Fund Market Trends and Investor Behaviour

The growing retail share of assets under management and increased competition among fund managers highlight changing investor preferences and industry dynamics.[187] Research could focus on the impact of innovative fund structures—such as evergreen funds, continuation funds, and interval funds—on liquidity, risk management, and investor returns. Additionally, the influence of technological innovations like blockchain and AI on operational efficiency and product innovation merits ongoing study.[187]

a) ESG Regulation and Sustainable Fund Development

As ESG regulations become more stringent and enforcement varies across Member States, there is a pressing need to evaluate the effectiveness of regulatory frameworks in preventing greenwashing and promoting genuine sustainable investment.[188] Future research could assess the impact of ESMA guidelines, the ESG Omnibus Directive, and voluntary sustainability labels on fund design, investor confidence, and capital allocation.[159]

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[186] European Investment Bank, 'The scale-up gap: Financial market constraints holding back innovative firms in the European Union' (2025)

[187] RBS International, 'Top private market fund trends for 2025' <https://www.rbsinternational.com/insights/2025/01/top-fund-trends-for-2025.html#:~:text=In%202025%2C%20fund%20market%20dynamics,at%20how%20to%20exit%20assets.>

[188] LERU, 'Key messages on EU education, innovation and research policy' (2025) < https://www.leru.org/files/LERU-key-messages-EU-education-innovation-research-policy.pdf>

b) Digitalisation and Automation in Fund Administration

The EU's Digital Europe Programme and related initiatives are accelerating digital transformation in fund management. Investigations into the adoption of AI-driven compliance tools, digital identity solutions, and distributed ledger technology could illuminate best practices for enhancing cross-border fund operations, reducing costs, and improving transparency. Research should also consider cybersecurity risks and data privacy challenges associated with digitalisation.[189]

c) Tax Harmonisation and the Effects of Pillar Two

The introduction of the OECD's Pillar Two global minimum tax, along with the EU's implementing directives, is set to complicate things further for multinational fund structures. What looked like a theoretical shift a few years ago is now becoming a practical concern, especially in terms of tax planning and compliance overhead. It's not yet clear how fund managers will adapt — some may absorb the costs, others may reconsider certain structures altogether. Future research could dig into the actual effects on fund behaviour: Are investment flows shifting? Are compliance costs significantly higher? A comparative look at how different countries are rolling out these rules could shed light on inconsistencies or unintended consequences. And whether DAC9 ends up being an effective tool against avoidance — or just another reporting burden — is still very much an open question.

[189] European Investment Fund, 'Operational Plan 2025-2027' (2025) < https://www.eif.org/news_centre/publications/operational-plan-2025-2027.pdf>

8.5Conclusion

Given the extent and depth of the ongoing changes, future research should adopt interdisciplinary approaches combining law, finance, economics, and technology. Empirical studies, case analyses, and policy evaluations will be essential to support evidence-based decision-making by regulators, fund managers, and investors, ensuring the European fund industry remains competitive, innovative, and aligned with societal goals.

This thesis has explored the rapidly evolving landscape of fund structuring in the European Union, with a particular focus on Luxembourg and Germany as leading jurisdictions. Through comparative, regulatory, and quantitative analysis, it has become clear that the European fund industry stands at a pivotal crossroads—one defined by unprecedented regulatory harmonisation, technological transformation, and a growing imperative for sustainability and transparency.

Luxembourg has reaffirmed its status as the domicile of choice for cross-border, alternative, and innovative fund vehicles, leveraging its flexible legal frameworks, tax neutrality, and global distribution infrastructure. Germany, meanwhile, continues to provide a robust and predictable environment for domestic institutional investors, with its Spezialfonds regime offering stability and alignment with local regulatory expectations. The interplay between these two jurisdictions exemplifies the broader trend toward integration and complementarity within the EU's single market for investment funds.

The introduction of new frameworks such as ELTIF 2.0, the strengthening of ESG requirements, and the implementation of digitalisation initiatives are reshaping not only how funds are structured and managed but also how they deliver value to investors and society at large. At the same time, the challenges posed by overlapping reporting regimes, evolving tax standards (such as Pillar Two), and persistent market fragmentation underscore the need for continued policy innovation and cross-border cooperation.

Looking ahead, the European fund industry's capacity for growth and resilience will depend on its ability to adapt to these changes. Fund managers must embrace regulatory alignment, digital transformation, and ESG integration as core strategic priorities. Policymakers in Luxembourg, Germany, and across the EU must continue to harmonise rules, foster innovation, and ensure that the regulatory environment remains both competitive and supportive of sustainable finance.

Ultimately, the future of fund structuring in the EU will be defined by its ability to balance innovation with investor protection, efficiency with transparency, and national interests with the collective ambitions of the single market. By building on the strengths of its leading financial centres and embracing the opportunities of the digital and sustainable age, Europe is well positioned to remain a global leader in investment fund management for years to come.

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English Abstract

This thesis explores the intricate tax considerations inherent in the structuring of investment funds within the jurisdictions of Luxembourg and Germany. As both countries are prominent players in the global financial landscape, understanding their respective tax frameworks is paramount for fund managers and investors alike. This research investigates the key tax factors that shape the formation and operation of investment funds, aiming to provide insights into optimizing tax efficiency and compliance.

The analysis begins with an overview of the tax regimes in Luxembourg and Germany, highlighting their unique features and implications for investment funds. Luxembourg, known for its favourable tax environment and extensive network of double taxation treaties, offers various structuring options that attract international investors. Conversely, Germany presents a complex tax landscape characterized by intricate rules and regulations, which necessitates careful consideration when establishing investment vehicles.

The study delves into the tax implications at different stages of fund structuring, including formation, ongoing operations, and exit strategies. It examines the taxation of fund entities, such as SICAVs, SIFs, and UCITS in Luxembourg, and compares them with German investment vehicles like investment limited partnerships (InvKGs) and investment stock corporations (InvAGs). Furthermore, the research explores tax treatment concerning fund income, capital gains, withholding taxes, and value-added tax (VAT), elucidating the nuances between the two jurisdictions.

Moreover, this thesis investigates recent developments and regulatory changes impacting the tax landscape for investment funds in Luxembourg and Germany. It assesses the implications of international tax initiatives, such as the OECD's Base Erosion and Profit Shifting (BEPS) framework and the EU's Anti-Tax Avoidance Directives (ATAD), on fund structuring and compliance requirements.

By synthesizing empirical data, case studies, and expert insights, this research provides practical guidance for fund managers, investors, and tax professionals navigating the complexities of structuring investment funds in Luxembourg and Germany. The findings contribute to a deeper understanding of tax-efficient fund strategies and inform decision-making processes in the increasingly globalized investment landscape.

Key Words: Investment fund structuring, Tax law Luxembourg, Tax law Germany, Double taxation treaties, Withholding tax, Alternative Investment Funds (AIFs), Fund taxation, German Investment Code (KAGB), Corporate income tax, Investment Tax Reform Act

German Abstract

Diese Arbeit untersucht die komplexen steuerlichen Aspekte bei der Strukturierung von Investmentfonds in Luxemburg und Deutschland. Da beide Länder eine bedeutende Rolle in der globalen Finanzlandschaft spielen, ist das Verständnis ihrer jeweiligen Steuersysteme für Fondsmanager und Anleger gleichermaßen von größter Bedeutung. Die Studie untersucht die wichtigsten steuerlichen Faktoren, die die Gründung und den Betrieb von Investmentfonds beeinflussen, und zielt darauf ab, Erkenntnisse zur Optimierung der Steuereffizienz und -konformität zu gewinnen.

Die Analyse beginnt mit einem Überblick über die Steuersysteme in Luxemburg und Deutschland und beleuchtet deren Besonderheiten und Auswirkungen auf Investmentfonds. Luxemburg, bekannt für sein günstiges Steuerumfeld und sein umfangreiches Netz an Doppelbesteuerungsabkommen, bietet verschiedene Strukturierungsmöglichkeiten, die internationale Investoren anziehen. Im Gegensatz dazu weist Deutschland eine komplexe Steuerlandschaft mit komplexen Regeln und Vorschriften auf, die bei der Etablierung von Anlageinstrumenten sorgfältige Überlegungen erfordern.

Die Studie untersucht die steuerlichen Auswirkungen in verschiedenen Phasen der Fondsstrukturierung, einschließlich Gründung, laufendem Betrieb und Ausstiegsstrategien. Die Arbeit untersucht die Besteuerung von Fondsgesellschaften wie SICAVs, SIFs und OGAWs in Luxemburg und vergleicht diese mit deutschen Anlagevehikeln wie Investment-Kommanditgesellschaften (InvKGs) und Investmentaktiengesellschaften (InvAGs). Darüber hinaus untersucht die Arbeit die steuerliche Behandlung von Fondserträgen, Kapitalerträgen, Quellensteuern und Mehrwertsteuer und verdeutlicht die Unterschiede zwischen den beiden Rechtsräumen.

Darüber hinaus untersucht die Arbeit aktuelle Entwicklungen und regulatorische Änderungen, die sich auf die Steuerlandschaft für Investmentfonds in Luxemburg und Deutschland auswirken. Sie bewertet die Auswirkungen internationaler Steuerinitiativen, wie beispielsweise des OECD-Rahmenwerks zur Bekämpfung von Gewinnverkürzung und

Gewinnverlagerung (BEPS) und der EU-Richtlinien zur Bekämpfung von Steuervermeidung (ATAD), auf die Fondsstrukturierung und die Compliance-Anforderungen.

Durch die Zusammenführung empirischer Daten, Fallstudien und Expertenwissen bietet diese Arbeit praktische Orientierungshilfe für Fondsmanager, Anleger und Steuerexperten bei der Bewältigung der Komplexität der Investmentfondsstrukturierung in Luxemburg und Deutschland. Die Ergebnisse tragen zu einem tieferen Verständnis steuereffizienter Fondsstrategien bei und dienen als Grundlage für Entscheidungsprozesse in der zunehmend globalisierten Investmentlandschaft.

Stichworte: Investmentfondsstrukturierung, Steuerrecht Luxemburg, Steuerrecht Deutschland, Doppelbesteuerungsabkommen, Quellensteuer, Alternative Investmentfonds (AIF), Fondsbesteuerung, Kapitalanlagegesetzbuch (KAGB), Körperschaftsteuer, Investmentsteuerreformgesetz