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## Efama, KPMG outline Ucits IV tax issues

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Efama is to make recommendations to the incoming internal market and services commissioner Michel Barnier on the tax treatment of investors under Ucits IV.

According to a completed mapping exercise by audit firm KPMG, fragmented tax regimes could mean use of the management company passport and cross-border fund mergers poses risks.

Georges Bock, a partner at KPMG Luxembourg, says: "We have done a study from the point of view of the consumer, and we see there are some very specific issues, purely around tax, that constitute problems in terms of risk management."

The passporting of the management company, for example, could entail unexpected tax retentions for the clients of an exported fund. Cross-border mergers may also not be considered as tax neutral.

If funds start being taxed because the management company is in another country, it is likely to create disgruntled investors – even if the tax event has been described in a prospectus.

"An investor in Belgium could pay Spanish withholding tax, but that would be done in Luxembourg where the fund is based," Mr Bock gives as an example.

It is made even more complex by the fact countries have different income tax regimes for funds. Some, such as Spain, have low levels of tax, while others completely exonerate this type of levy.

Efama and KPMG are expected to ask the Commission that member states focus on the domicile of the fund – and not the management company – when applying income tax. Proposals are due in January and will also include a call for mergers to be made tax neutral.

Peter De Proft, director general at Efama, says: "For Ucits to be effective, we need to do a complete inventory of tax issues so that we attract the attention of

the Commission and the environment becomes more efficient.”

Ed Venner, international CFO at Legg Mason, adds: “Tax is a possible deal-breaker for many of the Ucits IV efficiencies. I think that the possibility of cross-border master-feeders provides the biggest potential savings, but has the most tax issues.”

Issues around tax mergers have long been documented, with several groups already saying they are unsure about using the reform, which is intended to reduce inefficiencies within the single market.

The fact that there are tax problems with other parts of the Ucits IV directive is a surprise to many, including national tax services, believes Mr Bock.

He says: “Ucits IV was unthinkable before, but now it is becoming a reality. For the directive to reach its goals, the European Union and member states must resolve their different tax issues.”

The Committee of European Securities Regulators has already warned the Commission of the “potential adverse tax implications” of the directive, and that Brussels should keep the issue under review.

But, as a new commissioner arrives, no progress has been made. During an open hearing with the fund industry, Carlo Comporti, secretary general of CESR, called on representatives to address the issue. “Please do what you can on your own as well,” he told an audience comprising members of the French, British, German and European fund associations.

European reforms on tax, however, are notoriously tricky. In spite of the introduction of the Lisbon Treaty, they still require unanimity of votes.

Philip Warland, head of public policy at Fidelity, believes it will be a difficult task. He says: “Efama seem to have an idea they are going to get some standard tax treatment throughout the EU. I just can’t see it happening.

“The tax structure of funds is so different throughout Europe that I just can’t see the taxmen [of different member states] getting together and saying ‘we’ll do it one way’.”

KPMG’s mapping exercise has highlighted other tax issues. Mr Bock says there could be issues with double-taxation for the underlying investments of some funds.

He adds that real uncertainty will be about the “scale of the risk” for companies. “We can’t be sure for certain what the reaction of member states will be,” he says.

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