WTS Global Financial Services Infoletter

Editorial

Tax developments affecting the international Financial Services industry

Dear Madam/Sir,

We hope you may find interesting the latest version of the WTS Global Financial Services Newsletter presenting taxation related news from twelve countries with a focus on the international Financial Services industry[1].

The following participants in the WTS Global network are contributing with a diverse range of FS tax topics, e.g. the new regime for the set-up of a captive reinsurance company in France, the new tax treaty between Luxembourg and the United Kingdom or the VAT exemption applicable for management companies in Portugal:

- Australia – Nuwaru
- Austria – ICON
- Czech Republic – WTS Alfery
- Finland – Castrén & Snellman
- France – FIDAL Avocats
- Germany – WTS Germany
- India – WTS Dhruva Advisors
- Luxembourg – Tiberghien Luxembourg
- Poland – WTS SAJA
- Portugal – Vieira de Almeida
- Serbia – WTS Porezi i Finansije
- United Kingdom – Hansuke Consulting

Thank you very much for your interest.

Frankfurt, 17 January 2024

With best regards,

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For details on WTS Global Financial Services please click here.

1 The editors would very much like to thank their WTS colleague Sergi Meseguer for his valuable support.

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Please find the complete list of contact details at the end of the newsletter.

Australia

NUWARU

Commitment to Pillar Two

Australia has firmly committed to implementing Pillar Two, which will ensure that multinational enterprises with annual global revenue of EUR750 million (approximately AUD $1.2 billion) or more pay a minimum tax rate of 15% on their global income.. In line with the BEPS 2.0 framework, Australia will introduce a domestic minimum tax (DMT) to ensure that large multinationals with Australian residency pay a minimum level of tax in Australia, even if they have low-taxed income from overseas.

Current status

The Australian Government has undertaken extensive public consultation on the implementation of BEPS 2.0, seeking feedback from stakeholders across various industries. The consultation period closed on 24 September 2023, and the Government is currently considering the feedback received. The final legislation for BEPS 2.0 is expected to be finalized in late 2023 or early 2024 and will then need to be passed by Parliament. Alongside legislative developments, the Government is working to establish the administrative arrangements for BEPS 2.0 to ensure a smooth and effective implementation process. The DMT is expected to apply to income years starting on or after 1 January 2024.

Thin capitalisation

The Australian government introduced the Multinational Tax Integrity – Strengthening Australia's interest limitation (thin capitalisation) rules bill 2023 in Parliament on 22 June 2023. The bill passed the House of Representatives on 14 September 2023 and is currently before the Senate.

Expected implementation

The new thin capitalisation rules came into effect for income years starting on or after 1 July 2023.

The new thin capitalisation rules will introduce a number of significant changes, including:

- A new earnings-based approach for determining allowable debt deductions for certain entities, including funds and financial services institutions.
- New debt creation rules that will affect funds and financial services entities.
- A carve-out for Authorized Deposit-Taking Institutions (ADIs) from certain aspects of the thin capitalisation rules.

Debt creation rules

The new debt creation rules prevent entities from circumventing the thin capitalisation rules by artificially creating debt through related-party transactions.

Carve-out for ADIs

The proposed carve-out for ADIs (authorized deposit taking institution) would exempt them from the new earnings-based approach for determining allowable debt deductions. Instead, ADIs would continue to be subject to the existing asset-based approach.

ADIs would also be exempt from the new debt creation rules.

Implications for other financial entities
Other financial entities, such as insurance companies, investment funds, and superannuation funds, will be subject to the full extent of the proposed thin capitalisation amendments.

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ICON.
YOUR GLOBAL TAXPERTS

Foreign (US) investment funds – Austrian Supreme Administrative Court files ECJ ruling request – US fund and WHT (2013 / 2014)

In September 2023, the Austrian Supreme Administrative Court (VwGH) filed a preliminary ruling request with the European Court of Justice ("ECJ") concerning the Austrian investment funds legislation. The case concerns a US trust requesting a full withholding tax refund. The decision is the continuation of a feud before Austrian courts that has been going on for some years now.

The appellant is a Delaware-based "trust" made up of seven "series" (sub-funds), each of which was treated as a taxable entity under US law (hereinafter referred to as the "US trust"). The US Trust could claim distributions as a business expense under US tax law, provided at least 90% of taxable income (excluding realized appreciation) was distributed to investors, effectively reducing US federal tax to zero. Hence, foreign withholding tax (WHT) could not be credited in the US. In 2013 and 2014, the US trust received dividends from two listed Austrian stock corporations. In accordance with the treaty between Austria and the US and based on a refund request for its shareholders filed by the appellant, the Austrian tax office reduced the Austrian WHT to 15%. Additionally, the appellant applied for a full refund of the remaining WHT. This claim was based on sec. 21 para. 1 subpara. 1a Austrian CIT law, which allows a full recovery of WHT to corporations resident in an EU/EEA Member State or in certain third countries, if the WHT cannot be credited in the country of residence.

Austrian investment fund legislation and the practice of the Austrian Tax Authorities (ATA) regularly treat foreign investment funds as tax transparent, particularly based on special legislation in sec. 188 investment fund law ("InvFG" – please note the law has been amended since the relevant years for the case at hand). The prevailing opinion among the ATA is that claims for WHT refunds must be filed on sub-fund level. Moreover, tax transparency of the trust in question would mean that the WHT reduction for individual fund investors would be limited to the treaty rate, as sec. 21 para. 1 subpara. 1a Austrian CIT law is not accessible to them and there is no comparable rule in the income tax act.

In its previous decision in this matter, the Supreme Administrative Court referred the case back to the lower Austrian court, in order to clarify, whether the US trust was entitled to file a WHT refund request. The lower court found that the US trust was

comparable to an Austrian corporation and attributed the dividend income to the trust, hence ruled in favor of the US trust and its WHT reclaim. According to the court, sec. 188 InvFG prevents this attribution of income, which is why there is a restriction on the free movement of capital for which there is no justification. However, the ATA filed a complaint with the Austrian Supreme Administrative Court, who has now decided to file a preliminary ruling request with the ECJ. The following questions have been raised to the European court:

1. Does Sec 188 InvFG constitute a restriction on the free movement of capital?

   The question focuses on the fact that an Austrian UCITS may only operate in the legal form of a special fund (transparent) but does not allow a UCITS to operate as a corporation. In contrast, the foreign (US) fund at issue does in fact correspond to a UCITS and operates in the form of a corporation. from an Austrian perspective.

2. If yes: Is there an objectively comparable situation between:

   a) an Austrian corporation whose assets are invested in accordance with the principle of risk spreading but which is not considered a UCITS, as its monies are not raised from the public; and
   b) a foreign investment fund company which would be considered a UCITS under Austrian principles and who raised funds from the public, and who is permitted to operate as a corporation in Austria?

3. If yes: Is there any justification for the restriction of the free movement of capital, considering the purpose of Austrian tax provision, i.e. to ensure that neither a domestic nor a foreign fund should provide any tax shielding effect, but should focus on the taxation of the actual beneficial owners of the funds according to their actual situation?

Conclusions

Based on Austrian investment fund law, foreign funds are regularly treated as tax transparent hence their income is attributed to their shareholders, allowing the Austrian Tax Authorities to refuse WHT claims filed by such funds. While the individual fund investor can only reduce the Austrian WHT to 15% based on most treaties, foreign corporations have the chance to reduce the WHT to zero. This reduction to 0% WHT is available if the foreign corporation is situated in the EU/EEA or in a country with comprehensive administrative assistance and if the Austrian WHT cannot be credited in the country of residence. This differentiation is especially crucial in the case at hand, as the US tax burden of the fund can be reduced to zero, hence the Austrian WHT of 15% would constitute an additional burden. Depending on the ECJ's response, the outcome and consistent execution could lead to a milestone in the treatment of foreign funds and comparable WHT cases, as it might offer the possibility of claiming a full refund of the Austrian WHT on dividends. We will continue to monitor the ECJ's answer and keep you informed.

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Czech Republic Changes in corporate income tax

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From 2024, the so-called government austerity consolidation package will come into force in the Czech Republic, bringing changes to up to 60 legal regulations. Most of the changes are proposed to take effect from 1 January 2024.

Below, we would like to inform you about the most important changes concerning corporate income tax.

Increase in corporate income tax rate
The tax rate will increase from 19% to 21%.

Functional currency
Accounting entities will have the option to keep their accounts in a foreign currency (namely in Euros, US dollars or British pounds) if the foreign currency is a so-called functional currency for them. This is the primary currency of the economic environment in which the entity operates.

The tax calculation will be based on the profit/loss in a foreign currency. The items included in the tax return will be converted into Czech crowns based on the exchange rates of the Czech National Bank, at the exchange rate at the end of the tax period.

The tax can be paid in Czech crowns or in a foreign currency. Arrears or overpayments due to exchange rate differences from the payment of the tax will not arise, or there will be no right to their refund.

Option to tax only realised exchange rate differences
Unrealised exchange rate differences usually arise at the time of valuation of foreign currency assets and debts as of the date as of which the financial statements are prepared. These exchange rate differences are accounted for in results as expenses or income. Until now, the unrealised exchange rate difference entered the tax base at the time of realisation, i.e. at the moment when the currency risk ceases. This can be both a payment of a debt and a write-off of a receivable.

The taxpayer will now have the option to exclude unrealised exchange rate differences from the tax base in the taxation period in which they arise and to tax them only in the taxation period in which they are realised. This means that the exchange rate loss would not be a tax-deductible expense and the exchange rate gain would not be a taxable income.

The taxpayer must inform the tax administrator about entering this regime and must then apply it to any exchange rate differences the taxpayer incurs.

The period for which the taxpayer will be in this regime should not be shorter than three taxation periods, and any previously untaxed exchange rate differences will need to be re-taxed when exiting such regime.

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Finland

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Real estate – modifications to transfer taxation

Several changes to the Finnish transfer tax legislation became effective on 1 January 2024. Transfer tax is payable in Finland for the purchase of real estate and shares in housing companies and other securities. The transfer tax amendments will have effect on the taxation of M&A transactions and real estate transactions, and they also have a broader impact overall as the changes also impact private individual homebuyers.

The transfer tax rates were reduced with the principle aim to boost the housing and real estate market, which has slowed down since the pandemic. The reduced rates entered into force on 1 January 2024. However, the reduced rates are applied retroactively to acquisitions made on or after 12 October 2023. The transfer tax rates were reduced as follows:

- real estate: from 4% to 3%;
- shares in housing companies and real estate companies: from 2% to 1.5%; and
- other securities: from 1.6% to 1.5%.

Effective as of 1 January 2024, the transfer tax base was also expanded to cover loan receivables purchased in connection with shares or other securities when the proceeds from the transfer of loan receivables is paid to or otherwise benefits the seller.

Furthermore, the transfer tax legislation was amended so that the tax exemption is also applied to qualified business transfers in which the recipient company is an existing company. According to the old wording of the law, the tax exemption was only applicable to business transfers in which the recipient company was a newly established company. The old provision unnecessarily restricted the possibilities for taxpayers to make appropriate corporate arrangements and new companies were often established simply to avoid transfer tax.

In connection with the other transfer tax changes, the transfer tax exemption of first-time homebuyers was also abolished.

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France

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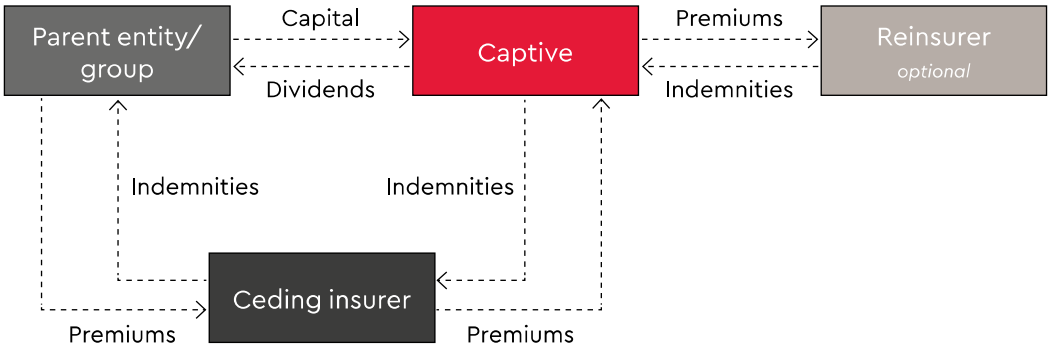
New regime for the set-up of a captive reinsurance company

For FYs opened as from 1 January, 2023, groups have the possibility to set up a captive reinsurance company in France whose purpose is to exclusively reinsure the own risks of the group. For the time being, only risks of a given nature incurred by non-financial groups are concerned.

For these non-financial groups, the list of the eligible risks is broad enough however to include all the major risks incurred by large groups with respect to their business (liability, cyber-crime, natural catastrophes, pandemic...) and to mutualize these risks into the captive before finding for each or several of them an "appropriate" insurance coverage (extent and pricing) from the market. It is expected that within a near future,

the need for a captive company will be increasing and that this tool will not be used only by very large groups but more and more also by groups of an intermediate size.

The usual scheme may be summarized as follows:



Before 2023, the set-up of a French captive reinsurance company was theoretically possible but onerous. Most of the French large groups having a captive had set it up in countries like Luxembourg, Ireland or Malta where the tax regime of the captive was favorable and the regulator welcomed this type of companies. Since 2023, France has been eventually inspired by these other EU Member States and the regulatory and tax regime of the captive have been significantly improved.

In particular, a French reinsurance company is entitled to book for a new technical reserve called "provision pour resilience" which allows the French captive to pay a low amount of corporate income tax and maintains therefore a significant net equity which can be used as a buffer if a significant business risk occurs (for the part of the risk which is retained by the captive). The regime of the "provision pour resilience" is pretty similar to the one of the "provision pour fluctuation de sinistralité" existing in Luxembourg and which is well known by the risk managers.

Many European groups having a significant presence in France may also have an interest to use a French reinsurance captive by preference to the usual ones referred above because it is easier to manage the captive with in-house people and to avoid that the competent tax authorities challenge the captive for not having a sufficient substance.

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Fidal was honored to be involved in the conception of this new regime which turns out to be attractive notably to so-called ETI (intermediate size companies in France) who did not set up a captive before. With our strong expertise on insurance and reinsurance, we can assist on regulatory, legal and tax aspects of such a captive.

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Latest key French VAT updates

New calendar for the e-invoicing and e-reporting reform

A couple of months ago, the e-invoicing and e-reporting reform was still foreseen to progressively enter into force as from 1 July 2024, with a timetable extending until 1 January 2026.

Taking note of the difficulties faced by the businesses to comply with the deadlines, the French Parliament included in the Finance Bill for 2024 a new calendar as follow:

- As from 1 September 2026:
  - All companies must be able to receive electronic invoices in the formats specified by the reform.
  - Large and intermediate-sized companies must be able to issue their invoice to French B2B counterparts using these formats and to transmit transactions and payments data to the French tax administration (e-reporting).

- As from 1 September 2027, medium and small-sized companies must be able to issue their invoice to French B2B counterparts using the reform's formats and to transmit transactions and payments data to the French tax administration.

Official comments published by tax authorities on bundled supplies

Since 31 December 2020, article 257 ter of the French tax code provides rules governing the VAT treatment of bundled transactions.

On 23 August 2023, the French tax authorities ("FTA") published their official guidelines on these rules (BOI-TVA-CHAMP-60 dated 23/08/2023). In respect to the financial sector, these comments notably cover the specific topic of banking and financial services provided along with the sale of goods and (other) services (BOI-TVA-CHAMP-60–40 dated 23/08/2023).

In these comments, the FTA specify that, based on the CJEU case law, they will consider as ancillary to the main supply of goods/services (and thus subject to the latter's VAT treatment):

- Fees invoiced by the seller for the use of a means of payment.
- Fees invoiced by the seller to grant a payment extension.
- Free credit granted as defined by the French Consumer Code.

In addition, the FTA will consider that a consumer credit bearing interest cannot be considered as ancillary to another transaction and must, in any case, be considered as a unique (VAT exempt) supply.

Furthermore, the FTA rely on the CJEU case law to assume that lease purchase agreements must be considered as unique (VAT taxable) supplies, unless the terms and financial conditions dissociate the leasing and credit operations.

The FTA also recall that in principle, when it comes to bundled (financial) transactions, the VAT treatment of such transactions must be analyzed on a case-by-case basis.

VAT update for the art market

To date, the French VAT regime of transactions on works of art provides two combinable advantages:

- In one hand, it allows to apply the reduced French VAT rate (5,5%) on intracommunity acquisitions and importations of works of art as well as on the sale of works of art directly by their author/right holders.
- On the other hand, it allows taxable dealers to only apply VAT on their profit margin upon sale of works of art (provided that certain conditions are met) and to consider, in certain circumstances, that this profit margin is equal to 30% of the sale price.

However, the Directive no. 2022/542 dated 5 April 2022 on VAT rates provides that it is not possible anymore (as from 1st January 2025) to combine the above-mentioned provisions. EU Members States must choose between those.

After discussions with representatives of the sector, the French legislator decided, in the Finance Bill for 2024, to:

- Maintain and extend the reduced VAT rate on all transactions on works of art (i.e. now including domestic transactions and sales by others than authors/right holders).
- Exclude all transactions on works of art subject to the reduced VAT rate from the above-mentioned margin scheme, meaning that taxable dealers will have to apply VAT on the whole sale price.

This specific reform will enter in force as from 1 January 2025 and will be of interest for all businesses involved in works of art (investors, dealers, etc.).

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French WHT on dividends – Banking institutions and beneficial ownership

The French tax administration tried to increase the scope of French withholding tax by increasing the beneficial ownership requirements in cases where French banks acquire shares temporally from foreign shareholders. The French Banking Association challenged the tax administration position successfully before the highest French tax court (Conseil d'Etat).

In its comments, the tax administration had expanded the implicit beneficial owner requirement by stating that the withholding tax provided for in Article 119 bis-2 of the French General Tax Code *"applies even when the recipient has their tax domicile or registered office in France, provided that the beneficial owner of the income in question, i.e. the person who has the right to dispose of it freely, has their tax domicile or registered office outside France"* (BOI-RPPM-RCM-30–30–10–10 no. 1). This instruction (as well as the 2 rulings reported in the June 2023 Newsletter) particularly targeted certain activities of banking establishments concerning temporary acquisitions of

shares in French companies and certain derivatives transactions. The administrative instruction was issued in connection with a tax probe conducted on banks operating in this market.

The Fédération Bancaire Française (FBF) brought an ultra vires action before the Conseil d'Etat challenging this instruction and the two rulings of 15 February 2023, which were aimed at providing banks with clarifications on the application of the beneficial owner requirement. The FBF obtained an annulment of the expansive comments made by the administration in these three publications.

On 8 December 2023, the Conseil d'Etat ruled the following. The Court firstly limited the scope of Article 119 bis 2 of the General Tax Code which provides for a WHT to distributions when they benefit persons who do not have their tax domicile or registered office in France. The Court clearly stated that *"said provisions cannot be construed as providing that a withholding tax should apply to distributions made to a right holder who has their tax domicile or registered office in France, when the sums in question are remitted, in whole or in part, to a person who does not satisfy this condition and who is considered by the tax administration to be the beneficial owner".*

On the other hand, the Court ruled that *"apart from the situations provided for by Article 119 bis A of the General Tax Code, the tax administration cannot, unless it implements the anti-abuse of rights procedure provided for by Article L. 64 of the Tax Procedure Code, dismiss as unenforceable the interposition, between the paying establishment and the non-resident person it considers to be the beneficial owner of the income in question, of a resident person who holds the right to receive the distributions".*

Article 119 bis A set up the Article 119 bis 2 WHT to payments made by a French domiciled person to a foreign one when the following conditions are met: The payment is made as part of a temporary transfer or of any transaction giving the right or obligation to return or resell these shares or rights relating to these shares; the transaction mentioned above is carried out during a period of less than forty-five days including the date on which the right to a distribution of income from shares or similar income arises.

Consequently, in stating that the withholding tax provided for in Article 119 bis 2 of the General Tax Code *"applies even when the recipient has their tax domicile or registered office in France, provided that the beneficial owner of the income in question, i.e. the person who has the right to dispose of it freely, has their tax domicile or registered office outside France",* the comments at issue are *ultra vires* additions to the legislative provisions which they are supposed to clarify. Clearly, the French tax administration is no longer allowed to claim the WHT in such a situation, when not covered by Article 119 bis A provisions unless they carry out the anti-abuse of right procedure.

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Germany

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VAT exemption for the management of AIFs

This revision of German VAT law is particularly important for international asset managers with offices in Germany and international investment advisors.

The Financing for the Future Act ("Zukunftsfinanzierungsgesetz, ZuFinG"), applicable from 1 January 2024, brings significant changes to the German tax landscape, specifically in the realm of the management of Alternative Investment Fund (AIF). Notably, management services provided to all AIFs will now be VAT-exempt in Germany.

This legislative amendment seeks to establish a level playing field in terms of VAT treatment, aligning Germany with other key fund jurisdictions.

VAT exemption in detail

Under the current national regulations in Germany, the VAT exemption encompasses a limited scope of investment funds, only funds that are in line with the EU UCITS Directive and comparable (e.g. regulated, open-ended) Alternative Investment Funds addressed to the retail market, including venture capital funds.

As of 1 January 2024, all AIFs, irrespective of their set-up and the nature of their investments, will benefit from the VAT privilege. It is not possible for the AIFM to opt into the VAT regime voluntarily.

The term "management services" encompasses all services provided by the German Capital Management Company ("KVG" or AIFM) to the funds it oversees, for which the management company charges a fee. The VAT exemption covers not only the services provided by the AIFM itself but also third-party services like those of a delegated (international) asset manager and other services, if closely related to the asset management function (such as portfolio managements services) but also fund accounting services. However, services related to the distribution of fund units of the AIF will usually not be covered by the exemption for funds management services, but could fall within the scope of the exemption applicable to the intermediation in shares (e.g. Private Equity funds organized as a German GmbH or GmbH & Co. KG).

Consequences of VAT exemption

Positive impact on AIF

The abolition of VAT on asset management services introduces a substantial cost-saving measure for German AIF structures, thereby increasing the available capital for investment for the benefit of the fund investors. Furthermore, the exemption may also have a positive effect on the so-called "hurdle rate" of the performance remuneration of the fund initiators.

Negative impact on AIFM (loss of input VAT deductibility)

However, the VAT exemption results in the loss of input VAT recovery for the KVG to the extent that it renders tax-exempt services. This affects all VAT-taxable input services of the KVG, including legal and tax advisory costs, travel expenses, supplies, and other services not borne by the fund as fund expenses, particularly potential payments by the KVG for rent and lease agreements.

Practical considerations (e.g. rented office space of the AIFM)
Affected German asset managers and investment advisors of AIFs lose their right to recover input VAT, necessitating a review of existing service agreements with regard to potential price adjustment clauses or statutory compensation claims (cf. Sec. 29 of the German VAT Act).

Rental agreements should also be scrutinized for clauses on contractual penalties or compensation claims that may arise, as the VAT exemption named may lead to a breach of rent / lease obligations, triggering liability for damages, for example, when an AIF manager acts as the lessee of office space. This is because the new VAT exemption for the AIF manager simultaneously limits or eliminates the lessor's entitlement to input VAT deduction. Rent / Lease agreements frequently contain respective provisions imposing liability to the lessee for such damages. These negative consequences cannot be avoided by the AIFM opting into the VAT regime voluntarily.

Conclusion
While the VAT-related amendments initially seem positive, particularly in enhancing the appeal of the German fund domicile and ensuring competitive fairness, it is essential for the AIFM to monitor the impact of this change on VAT recovery. Contingent input VAT deductibility should be incorporated into financial planning, lease agreements scrutinized, and outsourcing scenarios reviewed to proactively address potential challenges.

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Foreign insurance company – Cologne fiscal court grants reduction of German WHT to 0%

In its decision of 20 April 2023, the Cologne Fiscal Court awards a Belgian (composite) insurance company a refund of German WHT suffered on German portfolio dividends in 2009 (from 15% to 0%) under the free movement of capital of European law (Article 63 TFEU). The decision is not yet final, as the German tax authority appealed before the German Federal Fiscal Court ("BFH").

The ruling is good news for foreign insurance companies whether domiciled in the EU or in third countries (in particular life, health and pension insurance companies) that suffered WHT on their German dividend income and seek to recover such WHT. The current German decision reflects comparable developments in other EU jurisdictions.

German case law landscape
German WHT reclaim applications have been submitted by investment funds for over a decade un-der the label of "Fokus-Bank" claims. While the case law issued by the CJEU in relation to Fokus-Bank claims by regular investment funds already led to a change in German legislation and thus supposedly to the abolishment of an infringement on the free movement of capital, there is still uncertainty in the area of insurance companies, in particular for life insurers and pension schemes such as pension funds.

In its decision in the case (C-641/17) "College Pension Plan of British Columbia" ("CPP"), the CJEU clarified that the de facto tax exemption of a German pension fund ("Pensionsfonds") – due to the possibility to recognize tax-deductible insurance technical reserves in Germany, while foreign pension schemes comparable to a German Pensionsfonds are denied such possibility to decrease their tax base – principally results in a disadvantageous tax treatment of the foreign pension scheme and thus in a breach of Article 63 TFEU.

With regard to reasons for justification of such limitation, the CJEU addressed the comparability of the tax-legal situation of a German Pensionsfonds and a Canadian pension fund under the aspect of a "direct link" between the income in the form of dividends and the deductible expenses (via the formation of insurance technical reserves). The CJEU held that it is necessary that the foreign pension fund "voluntarily or in accordance with the law applicable in its state of residence" allocates the dividends received from Germany to provisions for retirement benefits.

The Cologne Tax Court decision of 20 April 2023

It is noteworthy that the Fiscal Court of Cologne in its recent judgement dated 20 April 2023 concerning a Belgian (composite health and) life insurance company accepts and applies the principles set out by the CJEU in the "CPP" decision concerning a Canadian pension fund, without prior reference to the CJEU. This fiscal court is now competent for all German WHT reclaim proceedings based on the EU free movement of capital.

In the CPP case, the claimant Canadian pension fund was ultimately denied a refund of German WHT as the referring Munich Tax Court found that the claimant had not sufficiently demonstrated such direct link between German dividend income and expenses via the formation of insurance technical reserves in its balance sheets.

As certain German insurance companies (in particular life and pension insurers as well as health insurers) – similar to German pension funds – establish tax-effective reserves for their obligations to policyholders, while this option is not available to comparable foreign insurance companies under German tax law, the Cologne Tax Court finds such German tax law to be in breach with the EU free movement of capital under Article 63 TFEU.

The Cologne Tax Court therefore refrains from applying the relevant German tax law provisions which would have led to the taxation of the German outbound portfolio dividends of the Belgian insurance company. The court decides that the Belgian insurance company sufficiently demonstrated a "direct link" within the meaning of the CPP decision of the CJEU and is entitled to the WHT refund.

Implications of the Cologne decision

The decision of the Cologne Fiscal Court is a positive development insofar as it clarifies that the infringement on the free movement of capital as recognized by the CJEU in the CPP case with regard to the lack of possibility for foreign pension funds to assert technical provisions for tax purposes also applies to foreign life insurance companies.

Insurance companies domiciled in the EU or in third countries, in particular life and health insurers as well as foreign pension funds, which do recognize technical reserves in their balance sheets, should take the judgment of the Cologne Tax Court as an

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opportunity to evaluate the chances of success of the reclaim of German WHT suffered on dividend income from portfolio holdings in Germany equity.

Applications for the refund of German WHT can be submitted retroactively for a maximum period of four years, i.e. until the end of 2024 for the years 2019 to 2023.

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Real Estate Investment Trusts ('REITs') – Fractional Ownership Platforms ('FOPs')

REITs can invest in real estate assets located in India, either directly or through holding companies and/ or special purpose vehicles ('SPVs'). Although there is immense potential in real estate investment, one of the reasons for lesser number of REITs may be attributed to the requirement of minimum asset size of INR 500 crores and minimum offer size of INR 250 crores as envisaged in the REIT Regulations.

In the last few years, India has witnessed an emergence of web-based platforms that provide investors an opportunity to invest in real estate assets, in exchange for fractional ownership in these real estate assets. Usually, the investors are required to invest on these platforms, popularly known as, FOPs. The strategy generally adopted by these FOPs is that the investors subscribe to the securities of a SPV established by the FOPs, which in turn purchases the actual real estate asset. Through this approach, the cost of acquisition of any identified real estate is split among several investors. It has been seen that these FOPs do not register themselves as real estate agents under RERA, even though they act as real estate agents or property managers.

SEBI Consultation Paper – Micro, Small and Medium ('MSM') REITs
In May 2023, SEBI had floated a consultation paper for regulating the FOPs. SEBI has suggested that there is a need to govern the FOPs as the varying nature of structures adopted by the FOPs raise concerns regarding adequate protection to the investors and potential violation of the norms relating to Companies Act, 2013, Prevention of Money Laundering Act, 2022 and other laws.

SEBI intends to label these FOPs as MSM REITs. Under the proposed MSM REITs regulations, SEBI has indicated the MSM REIT be set up as a trust under the Indian Trusts Act, 1882. Further, similar to the existing REITs, MSM REITs shall have parties such as trustee, sponsor and investment manager.

While the criteria for a sponsor of a MSM REITs is similar to that of existing REITs, the net worth for manager of MSM REIT is proposed to be reduced.

The consultation paper proposes mandatory unitholding of 15% for 3 years (from the date of the listing of the units of the MSM REITs) by the sponsor of MSM REITs. This will ensure that the party establishing the MSM REIT will have skin in the game – resulting in comfort to the investors.

The minimum asset size to be acquired by such MSM REITs is INR 25 crores (which is far less as compared to the minimum asset size of INR 500 crores applicable to existing REITs).

The MSM REIT will be required to hold 100% equity share capital in all the SPVs, which is much stricter when compared to 26% threshold for existing REITs.

The minimum number of investors in case of MSM REITs is proposed to be 20 which is significantly less than 200 investors required in case of existing REITs. Under the MSM REITs, the minimum ticket price is proposed at INR 10 Lakhs (as compared to INR 1 Lakh in case of existing REITs). MSM REITs would not be allowed to raise debt whereas REITs have historically been allowed to raise external debt.

SEBI in its consultation paper has indicated that such MSM REITs shall be eligible for the same taxation framework as those applicable to the existing REITs, as MSM REITs will qualify as business trusts. The table below depicts the taxability of interest, capital gains, dividend and rental income for the REIT and its' unit holders:

Particulars	Interest	Dividend	Rental income	Capital Gains
Unit Holders	Taxable	Taxable	Taxable	Exempt
TDS by REITs	Yes	Yes	Yes	No
REITs	Exempt	Exempt	Exempt	Taxable

Note: The above taxability is based on the assumption that SPVs have adopted the concessional tax regime.

With respect to repayment of debt by REITs, typically, REITs lend to SPVs and SPVs may repay this loan with interest ('surplus'). REIT will then distribute this surplus to the unit holders. This surplus (considered as repayment of debt) was earlier not being subject to tax. Effective 1 April 2023, the repayment of debt will be taxable as income from other sources as per a prescribed formula in the hands of the unit holders.

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New tax treaty between Luxembourg and the United Kingdom

The new Treaty is of particular importance and may therefore be of particular interest to asset managers as well as real estate investors / promoters in view of changes relating to collective investment vehicles and pension funds and changes pertaining to the allocation of taxing rights to shares in "real estate rich" companies.

Following the publication of the Luxembourg law of 18 September 2023 in the Luxembourg official gazette on 4 October 2023, the new tax treaty between Luxembourg and the United Kingdom (the "**Treaty**") can now enter into force and develop its effects as from 2024, as planned in Article 29. The UK already completed its own ratification process in 2022.

This means that the Treaty will commence its application as follows:

- For Luxembourg:
  - With respect to withholding taxes, to income derived on or after 1 January 2024.
  - In respect of other taxes on income or capital, for any tax year beginning on or after 1 January 2024.

- For the UK:
  - With respect to withholding taxes, to income derived on or after 1 January 2024.
  - In respect of income and capital gains tax, for any year of assessment as from 6 April 2024.
  - In relation to corporation tax, for any financial year beginning on or after 1 April 2024.

The Treaty is in line with the new international tax tendencies that seek to ensure a fairer tax system and tackle aggressive tax planning, and contains, amongst other things, the following changes:

- Granting treaty benefits to collective investment vehicles (under certain conditions) and recognized pension funds.
- Cancelling the withholding tax on dividends and royalties (with some exceptions.
- Introducing a 'real estate rich' clause for capital gains on shares of real estate companies.
- Detailing and formal inclusion of transfer pricing (especially adjustments), a mutual agreement procedure, the exchange of information, assistance in the collection of taxes and entitlement to Treaty benefits.

Please find below a summary of the most relevant changes:

Collective investment vehicles (CIVs) and recognized pension funds (Article 3 and Protocol)

CIVs established and treated as a body corporate for tax purposes are formally included in the notion of 'resident' for the Treaty's application, to the extent that it is an undertaking for collective investment in transferrable securities (UCITS) within the meaning of EU Directive 2009/65/EC, or 75% owned by equivalent beneficiaries (for Luxembourg CIVs, the notion of 'equivalent beneficiaries' means being a resident of Luxembourg, or a resident of any other jurisdiction with which the UK has arrangements that provide for information exchange who would be entitled under a tax treaty

with the UK, to a rate of tax that is at least as low as the rate claimed under this Treaty by the collective investment vehicle with respect to that item of income).

In other cases, Luxembourg CIVs, including specialized investment funds (SIFs) and reserved alternative investment funds (RAIFs), will be treated as individuals who are residents of Luxembourg and beneficial owners of the income received, if they are held by equivalent beneficiaries.

The Treaty expressly includes now recognized pension funds in the notion of resident, this notion being defined in the Protocol.

Dividends and royalties (Articles 10 and 12)
Under the former treaty, a reduced withholding tax of 5% applies to dividend distribution if the company receiving the dividends holds more than 25% of the voting powers in the distributing company; otherwise, a maximum withholding tax of 15% can be levied by the source State.

The new Treaty now provides a general exemption of withholding tax on dividends. However, this exemption does not apply for dividends paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle, which distributes most of this income annually and whose income from such immovable property is exempt from tax. In this case, the tax charged will not exceed 15%. However, the exemption continues to apply where the beneficial owner of the dividends is a recognized pension fund.

Currently, royalties can be subject to a maximum withholding tax of 5% in the source State. The new Treaty now provides that royalties are not subject to withholding tax in the source State.

Real estate (Article 13)
Another major change in the new Treaty is the introduction of a 'real estate rich' clause. Capital gains generated via the alienation of shares or comparable interests, such as any interest in a partnership or trust, that derive more than 50 per cent of their value directly or indirectly from immovable property located in a contracting State may be taxed in that State.

Transparent entities (Article 1)
The Treaty gives some consideration to transparent entities, confirming that income or gains derived by or through an entity or arrangement that is treated as being wholly or partly fiscally transparent under the tax law of either contracting State will be considered to be income or gains of a resident of a contracting State but only to the extent that the income or gain is treated, for the purposes of taxation by that State, as the income or gain of a resident of that State.

Concept of 'resident' (Articles 4 and Protocol)
The Treaty excludes from the concept of 'resident' any person who is liable to tax in a contracting State in respect only of income or capital gains from sources in that State or capital situated therein. UK resident non-domiciled individuals are now expressly excluded from the Treaty's benefits.

The term 'resident' in the Treaty also includes an organization that is established and operates exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

Where a person other than an individual is a resident of both contracting States, the Treaty provides now that the tax residency of entities will be determined by mutual agreement between the contracting States, considering relevant factors such as the place of effective management or place of incorporation. In the absence of such a mutual agreement, the entities will not be entitled to any relief or exemption from tax provided by the Treaty. In contrast to the current tax treaty, the entity will thus not be deemed to be resident in the State where its place of effective management is located.

The Protocol provides that where a company has been resident in both Luxembourg and the UK before the Treaty's entry into force, and the status of that company has been determined in accordance with the current tax treaty, then Luxembourg and the UK will not seek to revisit that determination so long as all the material facts remain the same.

Permanent establishment, associated enterprises and transfer pricing (Articles 5 and 9)
Regarding the concept of permanent establishment, the Treaty provides that a building site, a construction, installation or dredging project constitutes a permanent establishment only if it lasts more than twelve months, whereas 6 months are sufficient in the current tax treaty.

Transfer pricing adjustments are also more precisely determined in the Treaty compared to its current version.

The Treaty includes a new article about associated enterprises, which provides specific adjustments that can be made when transactions do not comply with the arm's length principle.

Entertainer or a sportsperson (Article 16)
Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, the new Treaty expressly provides that this income may be taxed in the State in which the activities of the entertainer or sportsperson are exercised.

Pensions and other similar remuneration (Article 17)
The Treaty now provides that pensions and other similar remuneration arising in a contracting State and paid to a resident of the other contracting State may be taxed in the first-mentioned State; whereas the current treaty in force provides that, except for pensions paid under the social security legislation of a contracting State (taxable in that State only), pensions and other similar remuneration paid to a resident of a contracting State in consideration of past employment are taxable only in that State.

Regarding second pillar pension scheme, the Treaty provides that pensions and other similar remuneration (including lump-sum payments) arising in Luxembourg and paid to a UK resident will be taxable only in Luxembourg, provided that such payments

derive from contributions paid to or from provisions made under a complementary pension scheme by the recipient or on his behalf and to the extent that these contributions, provisions, or the pensions or other similar remuneration have been subjected to tax in Luxembourg under the ordinary rules of its tax laws).

Methods to avoid double taxation for Luxembourg (Article 22)
Regarding Luxembourg residents, the Treaty still provides the exemption method for avoiding double taxation but provides the credit method for the following income dividends, gains realized on the transfer of land-rich entities, the income of an entertainer or sportsperson and the income of a member of the regular complement of a ship or aircraft, which is exercised aboard a ship or aircraft operated in international traffic.

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Entitlement to benefits (Article 28 and Protocol)
The Treaty includes an article about entitlement to benefits, which is the formal incorporation of the 'principal purpose' test of the Multilateral Instrument already in force.

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Foreign funds – Top tax court decision regarding interest on overpaid WHT (Case No. II FSK 2108/20)

On 19 December 2023, the Supreme Administrative Court ("NSA") handed down its judgment in case number II FSK 2108/20 concerning interest on overpaid WHT for foreign investment funds. This new decision is interesting case law in the context of CJEU's verdict of 8 June 2023 in case C-322/22.

As a reminder, CJEU's ruling was that a national provision is incompatible with EU law if, when a request for a refund of overpaid tax is submitted more than 30 days after publication of the relevant judgment of CJEU, the provision limits the running of the interest on the overpayment due to the taxable person to the 30th day after the publication, or even excludes interest entirely in a situation where that overpayment was incurred by the taxable person after that 30th day.

NSA's recent decision upholds the lower court's judgment that where tax was held to be overpaid due to the incompatibility of national law with Union law, interest on such overpayment accrues from when the tax was improperly withheld **until the 30th day after publication of CJEU's judgment of 10 April 2014 in case C-190/12** *Emerging Markets Series of DFA Investment Trust Company*. Importantly, the case before NSA involved a refund request relating to overpaid tax for December 2017.

NSA is yet to publish a statement of reasons for its decision, so we will inform you of the details of the court's reasoning at a later point in time. However, we note that the lower court's judgment that was upheld by NSA is inconsistent with CJEU's judgment of 8 June 2023 in case C-322/22 and is inherently contradictory in its ratio because:

- on the one hand, the statement of facts suggests the judgment applies to interest on overpaid tax that was withheld on behalf of a Luxembourgian fund for years 2012 to 2016, which was after introduction of the national law offering exemption for foreign investment funds from EEA or EU (Article 6(1)(10a) of the CIT Act); and
- on the other hand, according to the statement of reasons for the judgment, any incompatibility between national law and Union law may be seen only until 1 January 2011, with no incompatibility found for years 2012 to 2016.

Home loans in Swiss currency – Banks hit by top tax court decision

In the aftermath of a series of CJEU's decisions, Poland is now seeing a wave of cancellations of home loans that are linked to or denominated in CHF. Where a bank that offered such a Swiss franc mortgage loses its case in court and has the loan cancelled, it must refund to the customer both the principal and interest payments received from the borrower and the loan commissions charged by the bank (together, "cancellation costs").

This development gave rise to the question whether the banks may treat the cancellation costs as regularly deductible for tax purposes. The banks argued that such cancellation costs are deductible by reference to the current period.

In contrast, the tax authorities insisted that:

- banks are only allowed to make retroactive income adjustments by "zeroing" income for the periods in which it was declared; but
- cancellation costs are not deductible in current periods.

The tax authorities argue in essence that, under civil law, a declaration of invalidity of a contract operates retroactively *(ex tunc)*, which means an invalid contract is treated as never having had any legal effect since its very inception. Consequently, any tax impact of a Swiss franc home loan cancellation should be accounted for through taxable income, not tax costs.

This argument is extremely unfavourable for the banks due to the issue of limitation periods. In Poland, the liability to pay a tax expires 5 years after the end of the calendar year in which the tax fell due. This means that tax liabilities for 2017 expired as of the end of 2023, and those for 2018 will expire at the end of 2024. The problem is that banks may not make their downward income adjustments with respect to any years for which their tax liabilities have expired.

The dispute came before judges and initially things were good for banks as they won before lower tax courts. But those judgments were appealed by tax authorities to the top tax court NSA, which dealt with the appeals in early December 2023. NSA issued a number of judgments on 4 and 6 December 2023 which reversed the lower courts' decisions that were favourable for the banks (see NSA case numbers II FSK 334/22, II FSK 1264/23, II FSK 1442/23, II FSK 1443/23 and II FSK 1658/23).

According to NSA, tax-deductible costs include only expenses incurred with a view to, and an objective possibility of, generating income or preserving or securing a source of income. This is not the case where expenses represent reciprocal payments in the settlement of an invalidated contract.

As a result, the only available relief in the event of Swiss franc mortgage cancellation is to adjust taxable income.

Given the number of NSA's December decisions, the way they interpret the contested tax regulations against the banks should be considered to form prevailing, or even settled, case law.

WHT on insurance services – Tax authorities change their approach

Since 2018, tax authorities have been claiming that insurance services in Poland are subject to withholding tax at the rate of 20% as services similar in nature to guarantees. Any preferential treatment was available subject to a number of substantive and formal conditions.

That claim was heavily criticised by the consulting industry and contested by tax courts which reversed tax rulings containing such interpretation. Yet, tax authorities consistently stuck to their controversial approach for many years. But changes began to appear in late 2023. The first sign of a departure from the taxpayer-unfriendly interpretation came on 17 November 2023 with private tax ruling ref. 0111-KDIB1–2.4010.473. 2023.2.END. The ruling authority agreed with the applicant that insurance services purchased from non-residents are not among services subject to WHT so that no tax should be withheld from payments for such services that are made to foreign residents. Consequently, those making such payments do not have obligations as WHT agents.

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The VAT exemption applicable for management companies: An opportunity for businesses?

Pursuant to article 135(1)(g) of the VAT Directive *"the management of special investment funds as defined by Member States"* is exempt from VAT.

On 17 June 2021, the European Court of Justice ("ECJ") issued a ruling on joined Cases C-58/20 and C-59/20 (the "DBKAG & K decision"), stating that both the right to use software and specific administrative services may fall within the exemption provided for in that provision. For that purpose, according to the ECJ, the services must be *"specific to and essential for the management of special investment funds"* and *"intrinsically connected to the activity characteristic of a management company"*.

Following previous decisions (e.g. C-275/11 *GfBk*, C-595/13 *Fiscale Eenheid X* and C-231/19 *Blackrock*), the ECJ clarifies the scope of the exemption and outlines that the concept of "management" encompasses more than just management functions per se. According to the ECJ, it also includes certain *"administrative functions"*, such as accounting, income computations and tax compliance, provided that they are *"specific to and essential for"* and *"intrinsically connected"* to the management of Collective Investment Vehicles (CIV).

It is also interesting that both cases concern independent services that may be outsourced (managing tax-related responsibilities of CIVs and granting of the right to use software to carry out calculations for risk and performance management), which creates leeway for the discussion on whether a wider range of services provided by external advisors (such as lawyers, auditors or accountants) may also benefit from the exemption.

Although it is for the national courts/tax authorities to assess whether the criteria for the services to be within the scope of the exemption are met, this decision is likely to have far-reaching impact given that the criteria are exclusively objective (what kind of services are being provided), regardless of who is the entity providing the services.

Following ECJ case law, Portuguese Tax Authorities ("PTA") have recently ruled on whether the services provided by brokers to a management entity may fall within the exemption, whereby the brokers provide relevant data on potential investors to enable the marketing of new subscriptions for shares in CIVs it manages.

Although the ECJ confirmed that *"the fact that certain services are not listed in Annex II to the UCITS Directive does not preclude their inclusion in the category of specific services falling within activities for 'management' of a special investment fund within the meaning of article 135(1)(g) of the VAT Directive"*, for the PTA, there are formal requirements (related to the Portuguese Asset Management Regime) that must be met for the exemption to apply. In particular, the acquirer must qualify as a *"management entity of CIV"* and the services must correspond to tasks that are legally assigned to management entities.

According to the PTA, pursuant to ECJ case law, services as ongoing management of investment fund assets, accounting (including invoicing and treasury), legal or consulting services may be considered within the scope of the VAT exemption given that those are specific administrative services essential for the management of funds.

Given that PTA's position seems to go beyond that of the ECJ, it will be interesting to monitor how national courts/tax authorities will interpret the concept of *"intrinsically connected"* services, regarding services that are outsourced by, but not exclusive of, a management company.

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Serbia

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Alternative Investment Funds (AIFs) from a Serbian perspective

Serbia, as a frontier market with communist past, has had struggles in developing its local capital market: roughly 5.000 Serbian residents are investing in publicly traded shares.

But the number of people investing in crypto is much higher: around 200.000 mostly young investors with higher than average income, increased appetite for risk and open to alternative investments. Young people could provide much needed liquidity to the local market, but regulation changes are necessary:

- More domestic investment alternatives
- Making investments in local/global stock exchanges cheaper and easier: it is more efficient for a Serbian citizen to invest in crypto assets than trading on local/global stock exchanges

The improvement of the first issue is introducing alternative investment funds (AIFs).

The Law on AIFs regulates terms and conditions for entering the local investment industry with much lower barriers then before. For example, Serbia adapted its framework to the rule, which exists in many other jurisdictions, that one registered asset management company is allowed to manage several funds which do not need to have legal entity status. The Securities and Exchange Commission is the regulator approving the establishment and monitoring operations of AIFs.

Serbian AIFs can be:
- Open – investment units can be bought back by fund management
- Closed – no buy back

Investment units can be offered via:
- Private offer – only for professional (institutional investors and legal entities which meet financial thresholds defined in the Law on capital markets) and semi – professional investors (non – professional investors with minimum investment of 50.000 EUR and necessary expertise)
- Public offer – for all investors

Investment units can be purchased by both domestic and foreign investors.

Depending on the type of AIF and the type of offer, AIFs can make investments in many areas, locally or abroad, such as:

- Public securities and units in investment funds
- Bank deposits
- OTC securities
- Commodities
- Real estate
- Private equity
- Venture capital
- Any other investment presented in the AIF's prospectus (jewelry, arts, crypto etc.)

The minimum basic equity amount of the legal entity managing AIFs depends on its size: from 70.000 EUR to 300.000 EUR. AIFs can be established by both foreign and domestic individuals and legal entities.

Investing in Serbian AIFs provides tax benefits for high earning individuals which are subject to annual personal income tax. Tax payers of annual tax are individuals of annual income:

- higher than 3x average annual salary
- higher than 6x average annual salary for people younger than 40

The Such individual investing into a Serbian AIF, is granted tax credit of up to 50% of the investment made, but not higher than 50% of tax liability. Tax benefit is not granted for investing into foreign AIFs.

Individuals and legal entities selling investment units of AIFs (Serbian or foreign) are subject to 15% capital gains tax. Tax return is filed along with corporate income tax return (legal entities) or twice a year (individuals).

Individuals generating income by holding investment units in AIFs are subject to a 15% tax rate:

- Serbian AIFs prepare tax returns for its individual investors
- In case of investing into foreign AIFs, individual files tax return and can use tax credit, if he/she provides document AIF has paid any tax abroad

- Income generated by legal entities from holding investment units in Serbian AIFs are tax exempt (tax-deferred), until such income is paid as a cash distribution to its beneficial owner. In case of income from foreign AIFs, tax credit is applied, if there is a document that AIF has paid any tax abroad.

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United Kingdom 2023 UK Autumn Statement

Hansuke

In his latest Autumn Statement, the Chancellor of the Exchequer, Jeremy Hunt announced a variety of measures that will impact the financial services industry.

Pension Market

A widespread pension reform has been announced that promises to provide better outcomes for savers, to drive more consolidated pensions markets and to enable pension funds to invest in more diverse portfolios. To drive market consolidation, the government has welcomed the current trend of defined contribution pension fund consolidation and expects to see a market in which the vast majority of savers belong to schemes of £30 billion or larger by 2030.

Finally, to increase portfolio diversification, the Chancellor set out policies to reduce the authorised surplus payments charge from 35% to 25% from 6 April 2024.

International Taxation – OECD Pillar 2

The UK government pledged its commitment to the implementation of the OECD Pillar 2 through its implementation of the multinational top-up tax, domestic minimum tax, and the undertaxed profits rule. These are projected to generate an additional £12.7bn domestically over the next six years.

Capital Allowances

The UK government has announced that 'full expensing', which was originally proposed to finish Spring 2026, is to be made permanent and accordingly allow UK companies to claim 100% first-year capital allowances on qualifying plant and machinery investments. This policy is said to enhance business certainty and support long-term investment decisions, further enforcing the government's 'growth statement'.

HM Treasury and HMRC will be launching a technical consultation on wider changes to simplify the current capital allowances legislation. Although these changes are not yet specified, the draft legislation is planned for Summer 2024. Leasing assets are still set to remain excluded from full expensing.

Stamp Duty and Stamp Duty Reserve Tax

The government also announced its planned expansion of the 'growth market exemption' – a relief from stamp duty and stamp duty reserve tax, to encompass small and innovative growth markets. Additionally, the threshold for the market capitalisation condition within the exemption rose from £170m to £450m. The changes are included in the Autumn Finance Bill 2023 and were implemented on 1 January 2024.

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