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 ten 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 double tax treaty with impact on FS industry concerning Belgium and the Netherlands, the tax incentives rolled out to boost capital investments in China or the implications for beneficial ownership in recent case laws of the Polish Supreme Administrative Court:

- Belgium – Tiberghien
- China – WTS China
- Germany – WTS Germany
- Hungary – WTS Klient
- India – WTS Dhruva Advisors
- Poland – WTS SAJA
- Serbia – WTS Porezi i Finansije
- Sweden – Svalner
- The Netherlands – Atlas Tax Lawyers
- United Kingdom – Hansuke Consulting

Thank you very much for your interest.

Frankfurt, 23 October 2023

With best regards,

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For details on WTS Global Financial Services:
https://wts.com/global/services/financial-services

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

Contents

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

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New double tax treaty with impact on FS industry

On 21 June 2023, Belgium and the Netherlands signed the new double tax treaty. This treaty was a long-awaited one since the last version dated from 5 June 2001 (as amended by the protocol in 2009) (the 2001 treaty). The new treaty includes many new aspects compared to the 2001 treaty. We are summarizing some of the aspect that are relevant for the Financial Services industry.

Scope

Unlike the 2001 treaty, the scope of the new treaty is limited to income tax, and it will no longer have any relevance for wealth taxes. This is particularly bad news for Dutch residents (both individuals and legal entities) holding a securities account of minimum EUR 1,000,000.00 in Belgium or via a Belgian financial institution. Under the current treaty, they were exempted from the Belgian annual tax on securities accounts on basis of the 2001 treaty. As soon as the new treaty will enter into force, this will no longer be the case.

For the same reason, the new treaty may also affect Dutch investment funds which are registered with the Belgian financial authority. Under the 2001 treaty, Belgium has no authority to levy the annual tax on Undertakings for Collective Investments because only the residence State is allowed to levy wealth taxes. Once the new treaty will have entered into force, Dutch investment funds may be subject to the Belgian annual tax on Undertakings for Collective Investments to the extent that the fund shares or units are being held by Belgian investors. Exemption on the basis of the treaty will no longer apply.

Withholding taxes

Dividends paid to individuals are still subject to a withholding tax of up to 15% whereas dividends paid to companies holding a participation of at least 10% for a period of at least one year will be fully exempt if certain conditions are met (under the 2001 treaty, they were subject to a withholding tax of up to 5%). We expect the impact of this adjustment to be limited given that many dividend payments were already fully exempt under the Parent Subsidiary Directive.

Moreover, for qualifying pension funds the new treaty also provides a full exemption from withholding tax on dividends in the source state. The term 'qualifying pension fund' of one of the contracting states has been defined under the new treaty as a person that is resident of one of the states (1) whose activities (almost) exclusively consist in the administration of pension plans, the implementation of pension plans or the payment of pension benefits or (2) that derives income for one or more persons as mentioned under (1). Additionally, such person should, in the case of Belgium, be supervised by the Financial Services and Markets Authority (FSMA) or the national bank of Belgium or be subject to the supervision of an independent auditor recognized by the FSMA. Subject to analysis of positions to be taken by the tax administrations of the two contracting States with respect to the interpretation of the new treaty, a Belgian pension fund recognized by the Belgian FSMA under the Act of 27 October 2006 should in our opinion qualify for the 0% tax rate. In the case of the Netherlands, the person should be subject to supervision of the Authority for the Financial Markets (AFM) or the Dutch central bank (DNB).

All interest paid will be fully exempt from withholding tax (previously, interest was subject to tax up to 10%). The exemption also applies to royalties (already included in the 2001 treaty).

The Dutch tax exempt (Fiscal) Investment Institution

Under Dutch tax law, there are two favorable tax regimes for investment structures: the Exempt Investment Institution (EII) *("vrijgestelde beleggingsinstelling")* and the Fiscal Investment Institution (FII) *("fiscale beleggingsinstelling")*.

It has been clarified that certain treaty advantages do not apply to EIIs. This means that e.g. Belgium can still apply the full domestic withholding tax rate on e.g. dividends and interest paid to the EII. Furthermore, it has been clarified that the deemed income certain Belgian investors derive from EIIs under Dutch tax law should be considered a dividend for tax treaty purposes. This means that such income will be taxed by the Netherlands at the national withholding tax rate of 15%.

Under Dutch tax law, the domestic withholding tax exemption for dividends is not applicable to dividends paid to and by an FII. It has now also been clarified in the new Protocol that therefore the tax treaty exemption does not apply to dividends paid to or by an FII either.

Collective investment funds

The Protocol to the new treaty states that income and benefits of Dutch closed-end funds for mutual account *("besloten fonds voor gemene rekening")* and Belgian closed-end mutual funds *("gemeenschappelijke beleggingsfonds")* will be allocated to their participants on a pro rata basis. The managers of the funds can claim the benefits under the tax treaty on behalf of the participants if they have not done so yet. The 2001 treaty already had a more or less comparable arrangement although there are some differences. For example, the scope of the arrangement in the 2001 treaty entailed dividends and interest whereas the scope under the new treaty will be extended to also include real estate income, royalties and capital gains.

Capital gains

According to the new treaty, only the residence State is – as a general rule – competent to tax capital gains regarding movable assets such as shares. There is however a derogating rule in situations where a resident individual of one of the contracting states has migrated to the other contracting state. In such situations, the first contracting state remains competent after the migration to tax the increase in value of the shares, profit certificates, call options, usufruct on shares or profit certificates or receivables until the moment of migration (and the immigration state refrains from taxing that increase in value). In such a case, special rules apply with respect to the competence to tax dividends as well.

Principle purpose test

Article 21 of the new treaty provides that the application of the treaty benefits is subject to a principle purpose test.

Pillar 2

In the Protocol to the new treaty contains an interesting clause, providing that the Pillar Two directive on global minimum taxation prevails over the provisions of the new treaty. It is the first time that such a clause with respect to the Pillar Two directive is included in a tax treaty. It is subject to debate why this clause forms part of the new treaty as in the view of some scholars EU directives always prevail over tax treaties concluded between EU Member States. It seems that both Belgium and the Netherlands wanted to eliminate every doubt on this topic with respect to their tax treaty.

What is next?

A memorandum of understanding is still being prepared by both states after which the new treaty will be sent to the Belgian and Dutch parliaments for ratification. As a result, the old treaty still applies and the new one is expected to be applicable as from 1 January 2025 at the earliest.

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China

Tax incentives rolled out to boost capital investments

To invigorate the capital market and enhance the confidence of investors, the State Taxation Administration ("STA") has announced the extension of a series of tax incentive policies.

Booster to stock market

- Stamp Duty ("SD") on securities transactions is reduced by half from August 28, 2023 (Originally 0.1%, halved to 0.05%).
- Until December 31, 2027, individual income tax ("IIT") exemption continues to be applied to the investment made by Chinese individual on the HK-listed stocks via two special channels the Shanghai-Hong Kong Stock Connect or the Shenzhen-Hong Kong Stock Connect and investment gains from the trading of Hong Kong fund units under the Mutual Recognition of Funds program.

Booster to derivatives market

- Until December 31, 2027, IIT is temporarily exempted to the income earned by overseas individual investors from their investments in commodity options such as crude oil in China approved by the State Council for opening up to foreign investors.
- Until December 31, 2027, VAT is temporarily exempted to the bonded delivery of futures varieties approved by the State Council for opening up to the foreign investors.

To further support entrepreneurship and innovation, the STA has unveiled further tax incentives to support Venture Capital Enterprises.

- Venture capital enterprises and angel investors who have invested directly in start-up science and technology enterprises by way of equity investment for two years can offset their taxable income by 70% of the investment amount in the year in which the equity is held for two years; if there is insufficient offset in that year, it can be carried forward for offset in the following tax years. This incentive shall remain in force until December 31, 2027.

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› The tax policies for investing in the Chinese Depository Receipts ("CDRs") of innovation-oriented enterprises at the pilot stage are summarized below.

<table>
<tr><td rowspan="4">IIT incentive (from 21 September, 2023 to 31 December, 2025)</td><td colspan="3">Capital gain</td><td>Tax Exempt</td></tr>
<tr><td rowspan="3">Income from dividends and bonuses</td><td rowspan="3">Period to hold CDRs</td><td>Less than one month (including one month)</td><td>Full taxable income amount</td></tr>
<tr><td>One month up to one year (including one year)</td><td>50% to taxable income amount</td></tr>
<tr><td>More than one year</td><td>Tax Exempt</td></tr>
<tr><td rowspan="3">CIT incentive</td><td colspan="3">Corporate investors</td><td rowspan="3">Exemption of CIT on capital gain and dividends income</td></tr>
<tr><td colspan="3">Public securities investment funds</td></tr>
<tr><td colspan="3">QFIIs and RQFIIs</td></tr>
<tr><td rowspan="4">VAT incentive</td><td colspan="3">Individual investors</td><td rowspan="4">Exemption of VAT on income from sales gain</td></tr>
<tr><td colspan="3">Institutional investors</td></tr>
<tr><td colspan="3">QFIIs and RQFIIs</td></tr>
<tr><td colspan="3">Managers of publicly offered securities investment funds</td></tr>
<tr><td>SD incentive</td><td colspan="4">The transferor shall pay SD on the trading of securities at 0.5 ‰ of the actual transaction amount.</td></tr>
</table>

› A venture capital enterprise may opt for either single investment fund accounting or its annual income overall accounting, to compute the IIT payable amount of its individual partners for income sourced from the venture capital enterprise. The single investment fund accounting shall be subject to IIT computed at a tax rate of 20%. The annual income accounting shall be subject to IIT computed under the item of "operating income" at progressive tax rates from 5% to 35%.

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Germany

New tax developments regarding FS-related matters

Recently, the German Ministry of Finance (MoF) presented two new important draft pieces of tax rules in many ways relevant for the international Financial Services industry.

On the one hand, the draft bill for a Growth Opportunity Act provides for a number of tax adjustments that directly and indirectly affect the fund industry, especially important for real estate funds with German assets (interest deduction limitation). Secondly, the MOF published the draft of an application decree to the German Foreign Tax Act (AStG); it concerns the German add-on taxation regime, relevant especially for (foreign) Private Equity funds with German investors.

Draft bill of a Growth Opportunities Act

On 30 August 2023, the German Cabinet approved a draft law on the Growth Opportunities Act. The parliamentary legislative procedure is still pending. In principle, the law is to take effect from January 1, 2024.

The 287-page draft aims to expand economic opportunities, spur investment and innovation in new technologies, and bolster Germany's position as a global business hub.

With regard to the taxation of domestic and foreign investment funds in Germany under the German Investment Tax Act, there are interesting proposals:

- The draft bill proposes an amendment aimed at cross-border tax arrangements where investors invest in German real estate via a German (limited liability) corporation held by a Luxembourg fund; the intention of such arrangement is to avoid German taxation on the increase in value of German real estate. The proposed version of the law expands the definition of domestic income and subjects gains from the sale of shares in corporations with predominantly German real estate ownership to taxation. The regulation would apply to both, German and foreign corporations with predominantly German real estate, regardless of whether the corporation has its management or a registered office in Germany.

  The investment fund itself must determine and report the taxable income to the competent tax office.

- Another amendment under the Growth Opportunities Act would be the further restriction on the deductibility of interest expense, which will be particularly important for real estate funds with investments in Germany via PropCos. Among others, two important changes are proposed.

  For real estate companies, it should be noted that the exemption limit of EUR 3 million would no longer apply per "business" (PropCo) as at present, but uniformly for a group of companies. As a result, the deductible interest expense cannot be used more than once in the future for portfolios with several PropCos.

  Further, the concept of expenses covered by the interest barrier would be expanded, so that costs that are economically equivalent to interest and costs incurred in connection with the procurement of financing will now also be covered. In addition, there is also a limitation of the use of interest carry forwards.

› If an investment fund invests more than 50 percent of its NAV in real estate or real estate companies, 60 percent of the investment income is currently exempt from taxation in Germany for the investor of the German RE fund, "partial real estate exemption" (80% tax exempt in case of non-German RE funds). As a result of the draft bill, investments in real estate and real estate companies would not be included in the partial real estate exemption quota if the respective in-come is subject to a low tax burden in the location of the property due to beneficial tax regulations. The draft explicitly mentions the example of the Finnish "Oy MREC".

  The change proposed is disadvantageous for German and non-German real estate funds.

› The German tax law status of a "Special Investment Fund" imposes a restriction on active economic activity. Thus, special investment funds have been cautious about investing in – for example – the production of renewable energy and e-mobility charging stations to avoid losing their beneficial tax status. The draft suggests to increase the limit for active economic activity of such funds from 10% to initially 20% of the fund revenue, and later expand the limit further to fully utilize the potential of special investment funds in promoting de-carbonisation.

› The draft bill introduces an extension to domestic cases of the reporting obligation for cross-border tax arrangements known from the DAC 6 Directive.

Draft of decree to the German Foreign Tax Act
The draft of a decree to the German Foreign Tax Act incorporates changes brought about by the German ATAD Implementation Act and includes updates on transfer pricing, exit taxation, taxation of income from foreign intermediate companies, and foundations. It also addresses issues arising from developments in the economy, such as changes in business models and digitalization.

In the context of the Financial Services industry, the regulations on the add-on taxation of German investors of international Private Equity funds with income from controlled companies are of particularly high importance. Due to falling tax rates worldwide, the relevance of add-on taxation has increased in recent years. Taxpayers are often confronted with the issue of add-on taxation in the course of tax audits.

Compliance with the German foreign income tax reporting requirements regularly requires a high degree of cooperation on the part of foreign companies that are the target of German investment in order to avert negative tax consequences for the German investor. However, this burden on German investors and their affiliated target companies is further increased by the fact that the new German add-on taxation regime pursuant to the German ATAD Implementation Act introduced considerable legal uncertainty.

The new draft of the German Tax Authority comments on the details of the German add-on taxation on approx. 130 pages. While it is, in general, to be welcomed that the German Tax Authority is finally providing guidance on the application of the German add-on taxation regime after the implementation of the ATAD directive, the draft — for now — fails to provide conclusive answers with regard to several disputed issues.

Example: Acting in concert

With a view to especially Private Equity funds, regarding partnerships there is a rebuttable legal presumption of concerted action by the partners. This presents investors in investment vehicles structured as a partnership with the challenge of disproving their interaction. The conditions to dis-prove this presumption have been controversial since the regulation was originally enacted.

The draft mentions three examples in which a rebuttal of the legal presumption is – in principle – possible:

- if the joint purpose of the partnership can no longer be pursued;
- if there are serious differences of opinion between the partners; or
- if the joint purpose of the partnership covers the investment of capital only, the investment object is initially not concretely determined and as long as the investors do not know each other and are only entitled to information rights (so-called "blind pool").

The wording of the draft with regard to the general requirements of concerted action remains vague and open ("may speak for concerted action") so that a case-by-case consideration seems recommendable.

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Hungary

Approval of new tax package

Around mid-July the Hungarian Parliament finally approved a bill, which technically "transfers several provisions on certain financial-related taxes (e.g. the special banking tax, the rules on the securities transaction tax and the financial transaction tax) to the relevant sector-specific laws as of 1 August 2023. In the last couple of years, during the Covid-era, new amendment to these regulations were governed by government decrees, which regulations now were incorporated into the wording of the relevant tax laws with the simultaneous aim of precising some aspects of the regulations. Now it is a good opportunity to provide a brief insight on current rules of financial transaction tax (FTT).

FTT has undergone significant revisions since it was introduced in 2012. The general rate of FTT now remains 0.3% of the base on certain payment services, with a cap of HUF 10,000 (app. EUR 25) per transaction. This tax now also applies to financial service providers with a seat or branch office outside Hungary, also having Hungarian resident clients. These new taxpayers are liable to register themselves at the Hungarian tax and customs authority as of the first day of the next month following the starting date of their tax liability. These taxpayers (with certain limited exceptions) are in general subject to the same regulations as taxpayers with a seat or branch in the territory of Hungary. Due to the expanded scope of taxpayers, a new definition has been introduced on "place of residence of the client".

The regulations earlier also incorporated additional transactions: trade of securities is also subject to this law, with a rate of 0.3% of the transactional value of the securities, again, capped at HUF 10,000 per transaction.

Transactions performed by the Hungarian State Treasury (generally Hungarian government bonds, securities) as well as low-value transactions (up to HUF 20,000) of Hungarian private persons are exempted from the FTT. Similar exemption applies when non-Hungarian resident persons buy securities. Reporting this tax liability and filing obligation remains on a monthly basis.

Again, the most important point to consider from an international aspect is that non-Hungarian service providers or service providers with a branch office outside Hungary may also be subject to FTT payment and reporting in Hungary.

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India

Angel Tax implications for non-residents

Until 1 April 2023, Indian closely held companies were subject to "Angel Tax" only with respect to shares (including preference shares) issued to resident investors. Angel Tax is an anti-abuse provision wherein Indian closely held companies are subject to tax on the excess of the issue price received over the fair market value ("FMV") of the shares.

Vide Finance Act, 2023 and with effect from 1 April 2023, a significant amendment was made to the Angel Tax provisions whereby the said provisions were extended to shares issued by an Indian closely held company to a non-resident. Consequently, any investment by a non-resident in an Indian closely held company, in excess of the FMV of the shares of such company shall be taxable in the hands of the company to the extent of such excess amount.

With a view to provide certain relaxations, the Indian Central Board of Direct Taxes ("CBDT") has issued notification dated 24 May 2023 exempting the following class of investors ("Notified Investors") from the applicability of Angel Tax provisions:

› Government and Government related investors such as central banks, sovereign funds, government-controlled agencies or where direct or indirect ownership of Government is 75% or more.

› Banks or entities involved in insurance business (where it is subject to applicable regulations in the country where it is established or incorporated or is a resident).

› Any of the following entities, being a resident of specified country (21 countries have been notified which inter-alia includes Australia, Belgium, Denmark, Germany, Russia, UK, France, USA) and such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident:

  – Category I Foreign Portfolio Investors registered with Securities and Exchange Board of India;

- Endowment Funds associated with a university, hospitals or charity;
- Pension funds created or established under laws of foreign country or specified country; and
- Broad Based Pooled Investment Vehicle/ Fund where the number of investors is more than 50 and the fund is not hedge fund or a fund employing diverse/ complex strategies.

Additionally, any investment made in an eligible Indian start-up duly registered with the Department for Promotion of Industry and Internal Trade continues to enjoy an exemption from the applicability of the Angel Tax provisions.

Further, for the purposes of computing the FMV for Angel Tax provisions, the CBDT has recently notified various valuation methodologies for determining the FMV of unquoted equity shares and compulsory convertible preference shares ("CCPS") and a safe harbor of 10%.

One interesting methodology which has now been introduced is the price matching facility for both resident and NR investors. In terms of such price matching facility, the price at which unquoted equity shares or CCPS are issued by Indian closely held companies to Notified Investors/ venture capital funds/ specified funds shall be adopted as FMV for the purposes of benchmarking equity and CCPS investments by investors, subject to the condition that the consideration received from other investors at such FMV does not exceed aggregate consideration received from Notified Investors/ venture capital funds/ specified funds.

The earlier valuation rules required merchant banker DCF valuation report as on the date of issue of shares. The amended valuation rules provide flexibility by making valuation report issued up to 90 days prior to the date of issue of equity shares or CCPS acceptable for computing FMV for investments by both resident and NR investors.

Impact of the amendment

While the inclusion of the non-residents within the ambit of Angel Tax Provisions may have an impact on the foreign investment in India, however, the flexibility to non-residents in determining the FMV is a welcome step and will help various private equity investors who enter in unique arrangements with the Indian companies/ promoters for variable pricing of shares based on various external and internal parameters.

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Beneficial owner in recent case law of Supreme Administrative Court

Beneficial owner test and dividend payments

The issue of mandatory beneficial owner testing in the application of WHT exemptions on dividend payments has been a bone of contention generating disputes with Polish tax authorities since 2019.
As defined in the Polish Corporate Income Tax Act (CIT Act), the beneficial owner of a payment is an entity for which all of the following is true:

- receives the payment for its own benefit, and in particular decides independently on its use and incurs the economic risk of its total or partial loss,
- is not an intermediary, representative, trustee or any other entity required to transfer the payment to some other entity in whole or in part, and
- carries on genuine business activity in the country in which it is established, if the payment is received in connection with its business, and whether or not it carries on genuine business activity is to be determined with account taken of the nature and scale of its business in relation to the payment.

Beneficial owner status is a strict condition for royalty or interest payments in the context of the directive-based exemptions or the preferential rates arising from most of Poland's double tax treaties. In those cases, the beneficial owner status is expressly required by law.

Where the matter has become a bone of contention, though, is in the case of dividend payments for which WHT exemption is sought based on Parent-Subsidiary (PS) Directive implementation, given the specific nature of the beneficial owner definition, including the requirement that the recipient must carry on a genuine business activity in its home country (the so-called business substance test). The reason is that, in such a case, the Polish CIT Act does not expressly require the recipient to have the beneficial owner status for the directive-based exemption to apply.

But tax authorities have been steadfastly insisting that the beneficial owner status must be confirmed also where WHT exemption is sought on the basis of national regulations implementing the PS Directive.

This issue gave rise to disputes that have come before the Supreme Administrative Court ("SAC"). However, SAC's adjudicative response turns out to be split between two radically different approaches.

In the first, more restrictive approach of the SAC (see case no. III FSK 1588/20, judgment of 31 Jan 2023), the top tax court says that even though the CIT Act does not expressly require the beneficial owner test for dividend payments, the obligation should be inferred from another requirement introduced in the CIT Act, i.e. for withholding agents to **exercise due diligence when withholding the tax.** According to SAC, conduct indicative of due diligence includes, among other things, carrying out a documented review of the dividend recipient's status as to whether it is the beneficial owner of the payment.

SAC's argument is based on:

- the purposes of PS Directive, with the Polish court considering that it is a non-compliance where WHT exemption applies to dividend paid to an EU- or EEA-based company which is not its beneficial owner but is a mere intermediary transferring the payment to another company, e.g. one based in a country listed as tax haven;
- anti-avoidance regulations (CIT Act's Article 22c), which imply that dividend tax exemption provisions do not apply if use of such exemption would be contrary to the object or purpose of such provisions;
- judgments of the Court of Justice of the European Union in the Danish cases C-116/16 and 117/16.

The second, more liberal approach of the SAC (see case no. II FSK 240/21, judgment of 27 Apr 2021) is that the recipient of a dividend payment does not need to be its beneficial owner. Under this approach, SAC argues that:

- since the Polish CIT Act does not expressly require beneficial owner status as a condition for dividend payments to enjoy exemptions based on PS Directive, and imposes such a requirement solely for interest and royalties (IR Directive), then this reflects the intent of the reasonable legislature which purposely did not make the dividend tax exemption contingent on the recipient having the status of the payment's beneficial owner;
- what is required is only that the recipient must own shares in the subsidiary because the right to dividend is conditional on share ownership.

Hence, in the SAC's opinion, if the collective rational lawmaker had intended to make availability of the dividend tax exemption contingent on the recipient's status as beneficial owner of the payment, then such a condition would have been reflected in a dedicated exemption provision of the CIT Act, as it has been done in the case of the exemption applicable to interest and royalties.

Beneficial owner status in the case of payments to German companies managing contractual funds *(Sondervermögen)*

The liberal approach seems to prevail, as can be seen in two other SAC decisions (cases no. II FSK 1277/22 and II FSK 1281/22, judgments of 8 Feb 2023), both favourable for taxpayers.

Interestingly, the cases concern the right to apply WHT exemption to dividend paid by a Polish withholding agent to a German management company *(Kapitalverwaltungsgesellschaft)* managing a German contractual investment fund that operates in the *Sondervermögen* regime (separate pool of assets).

This case law is worth a close look, being part of a larger series of five SAC decisions on directive-based exemptions for the company managing a German fund:

- two of the decisions were about directive-based exemption for dividend payments,
- three were concerned with directive-based exemption for interest payments (cases no. II FSK 1278/22, II FSK 1279/22, and II FSK 1280/22).

The body of decisions analyses a collective investment scheme, seeking to establish which entity in the structure can be considered the beneficial owner of the payments.

In accordance with the underlying facts, the management company is in the business of managing the assets of investment funds, including special contractual open-ended funds.

As the facts were described, the fund managed by the company:

- is a special alternative open-ended fund (an AIF),
- is a pool of investment assets *(Investmentvermögen)* forming separate trust property *(Sondervermögen)* of the investors,
- is not a legal person or legal entity,
- cannot of itself enter into contracts, acquire rights or incur obligations,
- does not have any internal bodies (organs).

The arrangement comprising the fund and the management company is that the fund is a separate asset pool managed by the management company for the account of the fund.

According to the facts in this case Fund assets are formally owned by the company but are held separately and managed for the account of the fund. Consequently, with respect to Polish fund assets that are companies, it is the management company that is their shareholder. As the fund was set up under contract as separate trust property and has no legal personhood, all assets attributed to the fund are formally and legally owned by the management company and it is the company, not the fund, that is party to all contracts relating to fund operations, such as loan contracts or contracts of sale. However, dividend and interest income was reported in the fund's annual financial statements while the payments themselves were made into the fund's bank account.

Under the facts, SAC:

- acknowledged the management company's right to apply WHT exemption to dividend payments,
- denied the management company the right to apply WHT exemption to interest payments.

The argument for dividend was essentially that even though SAC believes the management company is not the beneficial owner of the dividend payments, WHT exemption from dividend tax applies whether or not the recipient of the dividend is its beneficial owner.

As regards interest, though, SAC favoured the approach of the tax authorities claiming that the management company cannot be considered the beneficial owner of the interest payments. SAC endorsed a broad understanding of when an entity cannot be accorded the beneficial owner status, including not only in the case of formal agents and intermediaries, but also in the case of entities that admittedly have actual benefit of the income but at the same time a very limited control over it. SAC also made a point of noting that, considering the facts, Polish law contemplates an exemption for funds as collective investment schemes, the exemption being both entity-based *(ratione personae)* and income-based *(ratione materiae)*.

In summary, as the above case law shows, while the issue of beneficial owner status in dividend payments remains controversial, SAC tends to increasingly favour the approach whereby the recipient does not have to be the beneficial owner of the dividend for the directive-based exemptions to apply.

On the other hand, the German management companies of contractual funds *(Sondervermögen)* are denied the beneficial owner status by SAC in the context of directive-based exemptions for interest payments.

Concerning the SAC decisions which relate to German fund management companies, it is interesting to note that Poland has a tax exemption for foreign investment funds. The exemption is subject to a number of conditions, but these should as a rule be met in the case of German investment funds governed by *Kapitalanlagegesetzbuch*. Thus, under the facts of all the discussed cases, a WHT exemption was generally available for the fund itself with respect to dividend and interest payments made for its account.

Interestingly, in the cases concerned with directive-based exemption for interest, counsel for the management company themselves requested SAC to allow the tax authority's appeal as the management company agreed with the authority's claim that it is the fund, not the management company, that is the beneficial owner of the interest payments. The stated reason for the request was that the management company is in receipt of a tax ruling confirming the right to exemption from tax on dividend and interest payments, albeit on a different legal basis (applicable to foreign collective investment schemes). Consequently, if SAC decided in favour of the management company, there would be two formally conflicting positions applicable to the same entity.

CJEU judgment dated 9 June 2023 concerning interest on tax overpayments declared due to incompatibility between national law and EU law

On 8 June 2023, CJEU ruled in case C-322/22, stating the incompatibility with EU law of the Polish Tax Code provisions concerning interest on WHT overpayments refunded to investment funds from third countries (countries from outside EU and EEA).

Third-county investment or pension funds seek to reclaim Polish WHT, citing the incompatibility between Polish national law and EU law found by CJEU in its judgment of 10 Apr 2014 in case C-190/12.

This tax is considered to be overpaid and interest on the overpayments is governed by Article 78(5) of the Polish Tax Code *(Ordynacja podatkowa)*, which says that such interest accrues:

- from when the overpayment arises (i.e. tax is withheld) to when the tax is refunded, on condition that the refund request is filed within 30 days from when the CJEU's judgment is published in the Official Journal of the European Union, or

- from when the overpayment arises (i.e. tax is withheld) to a date falling 30 days after publication of the CJEU's judgment in the Official Journal of the European Union, if the refund request is filed more than 30 days after such publication.

The judgment relied upon by third-country funds was handed down in 2014 so they obviously are no longer able to file their requests within 30 days from its publication in 2014.

This has spurred Polish courts to action and by and large they modified the deadline so that interest is due, but only if the refund request is filed within 30 days from when the tax was withheld (since the 30-day period after publication of the 2014 judgment already passed).

As filing an overpaid tax refund request within such a time is practically impossible, third-country funds have for all practical purposes been deprived of their right to reclaim WHT with interest.

Now CJEU has held that the above-cited Tax Code provisions and their modification by Polish courts are incompatible with Union law.

CJEU's ruling is 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.

This is a fundamental decision in terms of interest on overpayments that have arisen after CJEU's finding of incompatibility between national law and EU law, and opens a path for taxpayers to claim interest on those overpayments.

Tax exemption based on PS Directive vs. effective taxation of dividend's beneficial owner in home country

In accordance with PS Directive as implemented into Polish law, dividends are exempted from tax on condition certain statutory requirements are met.

The most important of those requirements are that the recipient:

1) is subject to income tax on all of its worldwide income, wherever derived, in Poland or an EU or EEA Member State, and
2) has directly held for an uninterrupted period of two years not less than 10 % of the share capital of the company paying the dividend, and
3) **has not enjoyed an exemption from income tax on all of its worldwide income, wherever derived.**

The Provincial Administrative Court in Lublin ("PAC") has recently rendered more than ten disturbing judgments (e.g. judgment of 05.04.2023 in case no. I SA/Lu 100/23, of

19.05.2023 in case no. I SA/Lu 87/23, of 07.06.2023 in case no. I SA/Lu 243/23) and a further series of adverse decisions of this court should be expected.

Relying on various authorities, including CJEU case no. C-448/15 (judgment of 7 March 2017), PAC applied a restrictive interpretation of the last of the above requirements. According to the Polish court, the requirement of not enjoying a tax exemption on worldwide income, wherever derived, should be **equated with the requirement of effective taxation.**

This position topples the existing construal of PS Directive provisions implemented into Polish law. This is surprising, considering that the PS Directive exemption method was expressly chosen by the Polish legislature itself for dividends paid to Polish companies.

Currently the PAC's taxpayer-unfriendly judgments apply to dividend recipients from Netherlands, Cyprus and Luxembourg.

PAC has so far denied the exemption to:

› holding companies from the Netherlands on account of them using the so-called participation exemption, which is an exemption from corporations tax on profits of Dutch companies related to shares and participation interests;

› to a Luxembourgian reserved alternative investment fund on account of it being exempt on a type-of-income basis from tax on income from holdings of securities that qualify as risk capital or from the sale, contribution, or liquidation of such securities;

› to a Cyprus-based holding company on account of it enjoying a type-of-income exemption from tax on interest and dividends under Cypriot law.

The PAC judgments are not final and definitive *(prawomocne)* yet. The matter will certainty come for review before the Supreme Administrative Court, but given the extended trial wait time in this court, its verdict will not rather be rendered soon.

Finance Ministry publishes draft guidance on WHT

The Finance Ministry ("FM") published a notice on its website on September 28, 2023 that tax consultations started with respect to a proposed guidance document on withholding tax regulations ("Draft").

As is explained in the Draft, the guidance document seeks to clarify how to interpret and apply certain provisions of income tax act, which govern the duty of withholding agents to withhold tax on non-residents' income derived in Poland. The proposed guidance relates to:

1) the beneficial owner (BO) test,
2) the issue of being subject to effective taxation in the context of PS and IR directives (whose implementation in the Polish CIT Act offers WHT exemption on dividends, interest and royalties, subject to conditions), and
3) the look-through approach (LTA).

Re 1) The beneficial owner (BO) test

Regarding two statutory conditions in the BO definition: (i) that the payment is received for recipient's own benefit, and that (ii) the recipient is not required to forward it to any other entity, the Draft says they should be verified and considered together. According to FM, these hurdles are there to ensure BOs do not include entities whose role is that of income administrators *(administrator dochodu)* with respect to the payment.

The Draft does not offer any precise test that could be used to identify an income administrator. With that said, FM maintains that when analysing the role of such a payment intermediary, regard should doubtlessly be had to both economic criteria related to the entity's function in the group, and external criteria which, when the economic test is met, can suggest that the entity's sole role is that of an income administrator. The Draft lists examples of such criteria:

› the intermediary earns a small margin on forwarding the payments;
› there is no actual income tax at the level of the intermediary with respect to the payments;
› receiving and forwarding payments is the sole business of the entity;
› payments are forwarded to a different recipient at short intervals;
› payments are regular and cyclic;
› the entity does not reinvest monies received from the payments;
› most of the entity's revenue is generated from cross-border financial payments made by affiliates;
› the company's balance sheet features high-value items that are related to foreign affiliates;
› the entity is part of an opaque multi-level structure with other intermediary companies serving as shareholders at various levels;
› the payment is forwarded to an entity which would not use preferential tax treatments under DTT or EU directives;
› there is a temporal link between incorporation of the entity and a change in tax laws that enables tax privileges in another country;
› the entity is located in a jurisdiction that has an extended network of double tax treaties or offers preferential treatment of passive income from foreign sources;
› there is a very limited withholding tax or no such tax in the entity's jurisdiction with respect to payments to non-residents;
› the entity is a resident of a country that is high on the list of direct foreign investments in Poland mainly on account of cross-border financial payments, rather than trading or manufacturing activities, and there is a disproportion between the country's GDP and the scale of outbound investments initiated from its territory.

In those circumstances, an income administrator may not be considered a beneficial owner because its right to the payment is restricted by its obligation to forward it to some other entity. In addition, the Draft makes a distinction as to the source of income administrator's obligation to forward the payment: it may arise from a formal contract (legal obligation) or from the circumstances of the entire transaction (constructive obligation).

One of the conditions included in the BO definition as per the Polish CIT Act effectively says that the recipient of a payment will not be considered its beneficial owner unless it carries on genuine business in its home country to which income from the payment is related, considering the nature and scale of the company's business at the time of receipt of the payment.

This business substance test is explained in the Draft by setting out criteria indicative of the recipient carrying on genuine business in its home country.

One of the deciding factors is whether the given entity has substance in terms of assets and personnel. The lack of a substance allowing the entity to conduct some concrete business may indicate that it does not carry on genuine business activities in its country, and hence that an artificial structure is involved which, in accordance with OECD guidelines and CJEU case law, should not be allowed to enjoy treaty benefits, such as a reduced tax rate, or directive-based exemptions. Importantly, FM believes that **the genuine business test is failed not only in the case of wholly artificial arrangements, but also in the case of arrangements that are artificial in part.**

At the same time, the Draft suggests that any assessment of whether or not genuine business is conducted should take into account specific characteristics of the given business, such as in particular:

- the way the company is managed,
- the company's accounting balance sheet,
- the structure of costs and actual expenditures,
- the number and qualifications of personnel, and
- the extent of premises and equipment that the company has at its disposal.

Re 2) The issue of being subject to effective taxation in the context of PS and IR directives

This part of the discussion refers to our article entitled *"Tax exemption based on PS directive vs. effective taxation of dividend's beneficial owner in home country".*

With respect to the requirement that the recipient may not enjoy any exemption from income tax on all of its worldwide income, wherever derived, as a condition to directive-based WHT exemptions, this requirement should, according to the Draft, be understood as a requirement of being subject to effective taxation in relation to the payment. This means the Polish FM follows the position expounded in a series of controversial judgments of a Polish tax tribunal (WSA in Lublin), which was the first to pronounce that interest or dividend payments must be subject to effective taxation on the side of the recipient for WHT exemption to apply.

Re 3) Look-through approach (LTA)

The Draft explains that LTA is not grounded in Polish tax legislation, whether the CIT Act, the PIT Act or the Tax Code, so **Polish tax authorities are generally not required to follow this approach.**

According to FM, the use of LTA is limited to situations where all of the following is the case:

› the use of an intermediary between the country of the payer and the country of the BO payee does not result in a reduction in the amount of tax withheld in the first country;
› the payment remains of the same kind throughout the chain from payer (withholding agent) to foreign intermediary to foreign BO payee; and
› the structure as a whole or the specific payment is not artificial for the purposes of anti-abuse regulations.

The tax consultations will last until October 10, 2023 and we will be actively involved.

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Serbia

Implementation of law on digital assets

Serbia is an emerging tech hub in Europe. Consequently, Serbia introduced Law on digital assets (**Law**) in 2021 to regulate and promote Web3, being one of few European countries introducing such legislation.

Local Web3 community hopes this is also a breakthrough in developing Serbian undeveloped financial markets.

The Law regulated issuing and secondary trade of digital assets (crypto currencies and digital tokens), as well as:

› Presenting new opportunities for companies in raising capital via digital tokens (via ICO)
› Initiating changes in tax regulation

With digital tokens company can solve:

› Financing problems (investment/asset tokens)
› Marketing problems: innovative way of offering goods and services to the market (utility tokens)

It is important to check if digital token has characteristics of financial instruments in accordance with the Law on capital market. If not, companies can perform ICO in accordance with the Law and reduce costs, procedures and time. Digital token has no characteristics of a financial instrument provided:

› Digital assets have no characteristics of shares and are not fungible with them.
› The total value of digital assets issued during a 12 month period does not exceed 3.000.000 EUR

Some of digital tokens' characteristics may be:

› Interest rate
› Payment in other digital assets
› Payment in goods/services, price discounts etc.

Therefore, digital tokens can be similar to bonds, but also similar to different marketing programs (e.g. loyalty cards). There are some similarities to crowdfunding, but it also provides secondary trading market.

ICO prospectus (White paper) is approved by Securities Exchange Commission.

In Serbia it is possible to get part of salary through digital assets. Tax treatment is the same as regular salary (10% tax rate).

Personal income tax on mining is 20% of market value of mined crypto.

Individuals trading with digital assets are subject to capital gains tax (15% of profit). All transactions (from digital asset to cash or from digital asset to other asset etc.), regardless of the way of acquiring assets (trade, employment, mining) are subject to capital gains tax. There are some reliefs:

› Holding assets for more than 10 years.
› Investing those funds in a domestic company.

Personal income from holding digital assets are taxed either at 15% or 20%.

Gifted or inherited assets of value higher than 850 EUR are taxable at 2.5% max.

Regarding companies, both income from holding digital assets, mining and capital gains are included in corporate tax base (15% rate). There are possible reliefs for capital gains, e.g. if funds are invested in a domestic company.

After 2 years of Law's introduction, local web3 community raised a public discussion calling for amendments of the Law, proposing changes such as:

› Regulating DeFi, DAO and NFTs
› Different issuing and capital gains tax requirements for utility and investment/asset tokens, considering their use. The idea is to make utility tokens as practical as more traditional means of trading (cash for goods/services)
› Encourage retail payments in digital assets – it is now possible only via registered exchange
› Less strict definition of tokens as securities, to encourage more ICOs regulated by Law, not by securities regulation
› Tokenizing shares in limited liability companies, so they can get equity financing without IPO.

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Sweden

Update on the new Swedish Withholding Tax Act

In April 2020, a first proposal for a new Swedish Withholding Tax Act was referred for consultation by the Swedish Ministry of Finance. The proposal suggested that the current Withholding Tax Act (Sw. Kupongskattelagen) will be replaced by a new law. The proposal was subject to heavy criticism and a revised proposal was published by the Swedish Ministry of Finance on 7 June 2022.

In the revised proposal, there have been changes e.g. in relation to the interpretation of the person entitled to the dividend. It is now suggested that when assessing who is entitled to a dividend, the starting point should be to assess who has the legal right to the dividend under applicable civil law, i.e., the same assessment that is made under the current Withholding Tax Act (rather than being based on the meaning of the term "beneficial owner" in an international context as initially proposed). The new proposal was suggested to enter into force starting July 1st, 2023, and apply on dividend payments made after December 31st of the same year.

However, in May this year, Sweden's Minister of Finance communicated that the Ministry of Finance was still reviewing the feedback received during the second consultation period. The Minister of Finance did also confirm that the work with the new Swedish Withholding Tax Act has been slowed down due to the ongoing work within the European Commission for a harmonized Withholding Tax Act system within the EU. The result after the latest consultation period has not yet been presented.

In a press release in June this year, the European Commission presented a handful of new rules said to make Withholding Tax Act procedures in the EU more efficient and secure for investors, financial intermediaries and Member State tax administrations. These include a common EU digital tax residence certificate, two fast-track procedures complementing the existing standard refund procedure as well as a standardized reporting obligation. The Commission proposed that these new rules should come into force on January 1st, 2027.

Perhaps will the work towards a new Swedish Withholding Tax Act now continue. As for now, however, the current Withholding Tax Act is applicable until further notice.

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Legislative proposals for Real Estate and Financial Services industries arising from Dutch Budget Day

On Budget Day 2023 (19 September 2023), legislative proposals were published for 2024 and onwards that could impact the real estate and the financial services industries. In this contribution, we included – on a high level – a selection of the most important developments related to Corporate Income Tax (CIT), Real Estate Transfer Tax (RETT) and Value Added Tax (VAT).

Change in classification of legal forms

If legal forms are treated differently in the Netherlands than abroad, this could result in undesirable situations such as double taxation or double deduction. To prevent these situations, as from 1 January 2025, foreign legal forms will be assessed on the basis of the legal form comparison method. In case the legal form comparison method does not provide a solution, the government proposes additional methods (fixed and symmetrical) for the purpose of qualifying foreign entities. No transitional law is proposed.

Expired tax liability open CV

As of 1 January, 2025, open limited partnerships (CVs) are in principle no longer independently taxable, but the result will be taxed at the level of the partners (tax transparency). Foreign legal forms similar to a CV will also no longer be independently taxable as a result. Transitional legislation has been announced to avoid unwanted tax consequences of this change. In addition to CIT and PIT, the transitional law also covers any RETT. This transitional law does not apply to open CVs established after the announcement of this bill.

New condition for FGR

The mutual investment funds (FGR) will only remain subject to CIT if it meets a new condition (i.e. it has to be a qualifying investment fund/fund for collective investment in securities, under the Financial Supervision Act (Wft)). Share ownership must be evidenced by negotiable certificates of participation. An unanimous consent requirement does not prevent marketability.

FGRs not meeting this condition, including family funds, will be deemed to have disposed of their assets to the unit-holders. In order to avoid acute levy and payment of tax, three transitional measures are proposed. Transition law only applies to FGRs that existed on 19 September, 2023, 3:15 p.m. and/or real estate that had already been contributed to the FGR at that time.

The new definition of the mutual fund (FGR) on 1 January, 2025, may be grounds for the Dutch tax authorities to terminate an advance tax ruling (ATR). However, an ATR often also covers other matters not affected by the new definition of the FGR.

Change in the Dutch FII-regime

Fiscal Investment Institutions (FBIs) can opt for the FBI regime under which they are subject to a CIT rate of 0% if they meet certain conditions. As from 1 January, 2025, FBIs are no longer allowed to directly invest in Dutch real estate. As a result, the profits of such an entity will be taxed at the regular CIT rate. To mitigate the tax consequences, the legislator granted a possibility to restructure in 2024 without RETT due if certain conditions are met.

Revision of RETT and VAT concurrence exemption for share transactions
In practice, real estate is regularly transferred via a share transaction. In the case of new real estate, no VAT and RETT are then due under the concurrence exemption.

It is proposed to amend this concurrence exemption in RETT as of January 1, 2025, in such a way that 4% RETT may become due. The proposed legislative amendment ensures that the concurrence exemption does not apply in certain situations when acquiring a qualifying equity interest (>1/3) in a so-called real estate legal entity.

If the underlying (possibly new) immovable property at the time of acquisition and for 2 years after the time of acquisition is used wholly or almost wholly (i.e., at least 90%) for VAT-taxed services, the concurrency exemption will apply without prejudice.

If less than 90% of the underlying (possibly new) immovable property is used for VAT-taxed services during the aforementioned period, the concurrence exemption does not apply and 4% RETT is due on the acquisition of the qualifying equity interest in an immovable property legal entity.

Announced revision of earnings stripping rule
The intention has been expressed to include the abolishment of the €1 million threshold in the earnings stripping measure for real estate entities with property leased (to third parties) as of 1 January, 2025, in the 2025 Tax Plan.

Less interest deduction for banks and insurers
Banks and insurers face a specific interest deduction limitation: the minimum capital rule. In short, interest owed is not deductible to the extent that loan capital exceeds 91% of the balance sheet total. This limit is reduced to 89.4%.

Evidence position on dividend stripping
The recipient of the dividend must be the beneficial owner to credit, reclaim or reduce dividend tax. Dividend stripping limits, or even prevents, dividend tax liability by having shareholders enter into a series of transactions. A recipient is not considered the beneficial owner if there is dividend stripping. To improve the tax authorities' evidentiary position, it has been proposed that as from 1 January 2024 a person claiming set-off, refund or reduction will now also have to state the facts or, if these are contested by the inspector, make it plausible that he or she is the beneficial owner. An efficiency margin of €1,000 of dividend tax levied on an annual basis applies here. This efficiency margin does not apply when applying the withholding exemption and dividend tax remittance reduction for fiscal investment institutions (FBIs).

With respect to the concept of "series of transactions" in dividend stripping, it has also been proposed that transactions of entities affiliated with the taxpayer or person entitled to revenue should be allocated to the taxpayer or person entitled to revenue. This will determine at group level whether there is a series of transactions.

Energy and environmental investment allowances
To encourage energy investments and investments in environmentally friendly assets, various investment tax credits are available. It has been decided that the schemes energy investment deduction (EIA), the environmental investment deduction (MIA) and the random depreciation for environmental investments will not end on 1 January, 2024

and that these schemes will be extended through 31 December, 2028. The rate of the EIA will be reduced from 45.5% to 40%.

Please note that the proposed measures, if approved in both Houses, will take effect on 1 January, 2024, unless otherwise stated. We will keep monitoring these developments and keep you posted. Should you have any questions, please feel free to reach out to our colleagues at Atlas Tax Lawyers in the Netherlands.

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United Kingdom

Stamp Duty and SDRT Changes

Hansuke

On the 14 September 2023, HM Revenue and Customs (HMRC) published draft legislation, of particular interest to UK companies listing (or who have listed) securities on non-UK exchanges, providing for the removal of the 1.5% charge to UK stamp duty and stamp duty reserve tax (SDRT) on certain issues and transfers. Stamp duty is charged on transfers of equity and certain debt securities issued by UK companies while SDRT is imposed on agreements to transfer certain securities, known as chargeable securities, to companies incorporated in the United Kingdom (or in non-UK companies where the register is maintained in the UK). Both stamp duty and SDRT are typically charged on transfers of chargeable securities at a rate of 0.5%. Where securities are issued or transferred to an issuer of depository receipts (such as American depositary receipts) or into a clearing service, then Stamp Duty and/or SDRT is chargeable at a rate of 1.5%. No additional stamp duty or SDRT is then chargeable on top of the transfers of the depository receipts or within that clearing system.

In the years 2009 and 2012, the European Court of Justice (ECJ) found that this 1.5% charge on 'the issue and capital-raising transfers of UK chargeable securities' was incompatible with the EU Capital Duties Directive, leading HMRC to confirm that the 1.5% stamp duty and SDRT charges would not be applied to such transactions. This was, however, by way of statements of practice and not through legislation. Following the UK's exit from the European Union, the non-application of the 1.5% stamp duty and SDRT charges continued through Section 4 of the European Union (Withdrawal) Act 2018. However, as the Retained EU Law (Revocation and Reform) Act 2023 made it that certain EU-derived laws would be revoked, the 1.5% stamp duty and SDRT charges were set to be reimposed on 1 January 2024, intentionally or otherwise. Sensing such a reimposition would detriment the UK's international competitiveness, this consultation was put forward.

If HMRC's new draft legislation is enacted, the 1.5% charge on Stamp Duty and SDRT will be removed with respect to the issue of UK securities to a depositary receipt system or to a clearance service operator, effective from 1 January 2024. The charge will also be removed on the transfer of UK securities into depositary receipt systems and clearance services where the transfer is made in the course of capital-raising arrangements. Arrangements are deemed 'capital-raising arrangements' when securities are issued by a company for the explicit purpose of raising new capital. As with most legislation there are areas open to interpretation. For example, the term 'new capital' isn't defined, and whilst HMRC have historically interpreted the concept of capital raising quite broadly, it is unclear whether this will continue to be the case. However, given that it has not always be entirely clear whether a given transfer or issue could be said to have been in the course of capital-raising arrangements (as is currently the case), it is a welcome development, giving greater statutory footing and clarity for businesses, especially those listing securities (or those who have listed securities) on non-UK exchanges.

As it stands, the charging provisions look set to remain and apply to the transfers of shares onto clearance or depository services where there is no raising of capital, and so care may still be needed when moving existing shares in such a manner.

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