

Legislative novelties for German taxation on investment funds

The reform of the taxation on Investment funds 2018 – Impact on the taxation on public funds

We will give you a short overview on the reform of the taxation on public funds caused by the reform of the taxation on investment funds (InvStRefG), which has been published on July 26th 2016. The new law will come into effect in January 2018 for the changes concerning investment funds. Nevertheless changes of the current status are still possible. This reform will be the next big challenge for banks and financial distributors in the next three years.

The reasons for these legislative novelties are:

- Response to dispensation of justice of the European court (EuGH)
- Current taxation is too complicated
- Prevention of backdated corrections
- Avoiding formal arrangements

Because of this reform there will be no difference between German and non-German funds anymore. Furthermore it will be necessary to distinguish between public funds and special funds, this means that there will be two systems of taxation on funds at the same time.

The changes caused by the “AIFM-Steueranpassungsgesetz” and the rules concerning the “Investitionsgesellschaften” will cease to be relevant as of January 2018. The extended interim arrangement published by the tax department on April 7th 2016 will ensure the transmission from the old to the new law.

A new system of taxation for public funds will be introduced. This is also known as modified cash flow taxation and will replace and simplify the old system. The large number of tax relevant figures that are needed for income payments, transactions and accumulations will be replaced by only a few relevant figures. A new partial exemption based on different levels and kinds of funds will be introduced for the clients.

For these clients only three kinds of distributions will be relevant from 2018 on:

The cash distribution (Cash Flow Base)

For cash distributions it is no longer necessary to make a difference between the specific kinds of distribution. Only the gross distribution will be taxable.

The sale or return of funds

The taxation of any return or sale of funds will be similar to the current system. The reduction of tax relevant figures will make calculations easier.

The new “Vorabpauschale”

The so called “Vorabpauschale” will be a complete new figure relevant for taxation, which considers the annual accumulations so that funds with cash distributions only do not have an advantage in taxation. The “Vorabpauschale” will be used by each public fund and will be calculated fictitious for one calendar year, so that the financial year of the fund will no longer be relevant for taxation. The “Vorabpauschale” has to be calculated using a so called “risk free market interest rate” which is based on par. 203, 2 Bewertungsgesetz. Then this figure has to be compared with the real earnings in the fund and finally calculated by deducting in general 30% of expenses and the cash distributions within one calendar year. In the year of buying the fund the calculation has to be split up according to the actual holding period.

For the new planned partial exemption the following rates and kind of funds will be used:

Kind of fund	Exemption private wealth	Exemption business wealth	Exemption corporate wealth
equity-based funds (at least 51% contr. of shares)	30%	60%	80%
Mixed funds (at least 25% contr. of shares)	15%	30%	40%
Property funds (at least 51% contr. of German properties)	60%	60%	60%
Property funds (at least 51% contr. of non-German properties)	80%	80%	80%

These partial exemptions will be used for all three different types of new tax bases.

Due to this reform for public funds the big quantity of tax relevant figures provided by the funds will be reduced to the following details that will be relevant from 2018 on for the final taxation:

- The cash distribution
- The “risk free market interest rate”
- The redemption price at the beginning and the end of a calendar year
- The kind of fund

A transitional arrangement for all funds and “Kapital-Investitions-gesellschaften” will be created. This arrangement contains the installation of a fictitious calendar year up to 31st of December 2017. In accordance with this issue the relating transitional arrangements for publishing tax based information from funds will be extended as well. Basically all funds and “Kapital-Investitions-gesellschaften” will be treated as sold fictitiously by 31st of December 2017 and bought fictitiously by 1st of January 2018. For public funds the interim profit and the accumulated deemed interest will be considered. The final tax base will not be taxable with the change of system but only once the fund will be sold by the client. A separate transitional arrangement for tax free capital gains in funds, which were bought before 2009 will ensure that these gains can be realized tax free until the end of 2019.

So the reform of the taxation on Investment funds 2018 will be a piece of hard work for the financial industry, which means changes regarding processes, IT-structure and maintenance. Data processing and consideration of static data as well as tax documents und distribution of electronic data have to be changed accordingly.

We emphasize that even though the law has been published, discussions about several details are still in progress. This means that modifications are still possible. Therefore we are unable to guarantee for the correctness of the mentioned details.

Please do not hesitate to contacting us for further questions.

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