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 ECJ largely confirming Austrian legislation denying WHT refund to foreign CIVs, the tax treatment of crypto assets in Indonesia, and two landmark rulings issued by the Dutch Supreme Court concerning the applicability of the dividend WHT exemption in cross-border investment structures, together with the European Commission challenging the current Dutch dividend tax reduction scheme:

- Austria – ICON
- China – WTS China
- Germany – WTS Germany
- India – Dhruva Advisors
- Indonesia – consulthink
- Luxembourg – Tiberghien Luxembourg
- Poland – WTS Saja
- Republic of Korea – Lee & Ko
- Singapore – WTS Taxise
- Spain – ARCO Abogados y Asesores Tributarios
- Taiwan – Youth International & Associates
- The Netherlands – Atlas Tax Lawyers

Thank you very much for your interest.

Frankfurt, 29 September 2025

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.

Hot Topic

Germany – Regulated investment funds: New draft bill increases certainty

For foreign and domestic investors alike, a new draft bill intends to increase attractiveness of pooled capital investment via regulated investment funds into German infrastructure and renewable energy projects but also into small businesses and start-ups.

On 22 August 2025, the German Ministry of Finance published a draft bill to strengthen Germany as an investment location ("Standortförderungsgesetz"). The aim of the new draft bill is to attract inflow of capital into strategic areas – in particular, infrastructure, renewable energy, and venture capital – while also reducing bureaucracy and aligning German rules more closely with EU capital market reforms.

Proposed investment incentives

A central element of the draft is the promotion of investments by regulated investment funds into infrastructure, renewable energy and venture capital by loosening fund regulatory restrictions. The bill aims to provide legal certainty for investment funds that they will not lose their (beneficial) legal status as a regulated investment fund because of the fund either participating in operationally active partnership structures or directly performing certain operational business activities itself such as operating solar energy plants.

In addition, the draft proposes to quadruple the roll-over relief available for the reinvestment of hidden reserves from the sale of corporate shareholdings, raising the cap from EUR 500,000 to EUR 2 million.

Tax amendments at a glance

In order to avoid unfair competition with companies subject to unlimited corporate income taxation, the bill eliminates corporate income tax exemptions for investment funds where investment funds now have the opportunities to participate in active business operations.

Furthermore, the definition of domestic income which triggers limited tax liability in Germany under the German Investment Tax Act will be amended. Income earned by funds through German business activities – especially via partnerships with domestic permanent establishments – will more consistently fall under German taxation if the fund is deemed to manage its assets in an entrepreneurial way. Entrepreneurial management is generally presumed for such partnerships unless it can be shown that income is derived purely from passive activities. The burden of proof will usually rest with the fund, which points to higher compliance requirements in practice.

Another major revision is the narrowing of the corporate income tax exemption: business income from entrepreneurial activities will no longer be exempt at fund level. At the same time, relief is provided. Income from participations in renewable energy companies, public-private partnerships, and infrastructure project vehicles will be exempt from German municipal trade tax and will not count towards the usual "de minimis" limit (a 5% threshold that allows only a small portion of business income without adverse tax consequences).

The scope of permitted investments is also expanding. Special funds (AIFs) will be able to invest without restriction in domestic and foreign funds, including private equity and venture capital partnerships. They may acquire 100% of the capital of corporations established for infrastructure or renewable energy projects. Funds will also be allowed to generate unlimited income from renewable electricity production when linked to real estate leasing. Importantly, the draft confirms that investment funds can operate facilities such as photovoltaic installations without losing their fund status. The changes provide greater legal certainty for renewable energy and infrastructure investments, compared to the current situation.

Further revisions (e.g. German Fund Status Certificate)

In addition, the draft bill introduces some administrative simplifications: the validity of the fund status certificate will be extended from three to five years for renewals, reducing the renewal burden for asset managers. The treatment of real estate company shares is also clarified: gains from entities deriving more than 50% of their value from German property will be explicitly treated as taxable German real estate income.

According to the draft bill, the new rules are set to apply from 2026 onwards.

Summary

For international asset managers, the message is clear: Germany is opening up new opportunities in infrastructure, renewables, and venture capital, while at the same time tightening the tax framework for funds with German connection. Correctly distinguishing between asset-managing and business activities will become more important than ever, and funds should expect greater scrutiny from the tax authorities.

In summary, the draft bill is designed to expand the range of investments available to regulated investment funds while clarifying and tightening the tax treatment of business activity. Whether the revisions will achieve the intended balance between flexibility and oversight will depend on the practical application of the new rules once they come into force in 2026.

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YOUR GLOBAL TAXPERTS

ECJ largely confirms Austrian legislation denying WHT refund to foreign CIVs

On 30th of April 2025, the ECJ delivered its long-awaited decision in the case of Finanzamt für Großbetriebe v Franklin (C-602/23) on Austria's rules on the taxation of CIVs (*"Collective Investment Vehicles"*) and REITs (*"Real Estate Investment Trusts"*).

- Under Austrian law, foreign domestic and investment vehicles are treated as disregarded entities, irrespective of whether they have legal personality or not.

- However, for a long time, Austrian law applied a double standard: While domestic funds where only taxed transparently under very limited circumstances (e.g. collection of public funds), foreign entities could be qualified as funds solely on the basis that the vehicle invested *"in accordance with the principles of risk diversification"*. Consequently, the fiscal authorities could pierce the corporate veil of foreign entities in a discriminatory manner. Thus, many foreign corporate taxpayers could not claim a special withholding tax refund granted to corporate taxpayers under domestic law.

- The ECJ now ruled that – in a certain case of a US trust – § 188 of the Austrian Investment Fund Act did NOT violate the freedom of capital movement, as the foreign entity was comparable to an Austrian UCITS ("Undertakings for Collective Investment in Transferable Securities") that would be taxed transparently in Austria anyways. Consequently, the ECJ confirmed the Austrian authorities in denying the withholding tax refund on Austrian portfolio dividends received by the US trust.

- However, despite the ECJ's confirmation there are still doubts as to whether the current wording of § 188 of the Austrian Investment Fund Act is compatible with the fundamental freedoms. The rule still discriminates and enables the authorities to pierce the corporate veil of a foreign entity denying WHT refunds even if it could not do so if the same entity was a resident corporate taxpayer. In the case at hand, the ECJ solely sided with the authorities, because the foreign entity would have been qualified as investment fund under Austrian laws anyways.

In the current legal situation, this question has become superfluous, as § 188 of the Austrian Investment Fund Act has been amended to the effect that foreign and domestic UCITS and AIFs are covered by the transparency fiction in the same way. However, it remains questionable whether § 188(1)(3) of the Austrian Investment Fund Act is in line with EU principles. According to this rule, any foreign undertaking that invests in accordance with the principles of risk diversification is subject to the transparency fiction if the undertaking is not subject to a tax comparable to Austrian corporation tax; this may be, for example, a foreign cash pooling company that invests in securities to finance operational activities (and can therefore be neither a UCITS nor an AIF). In this regard the tax authorities can disregard foreign entities, which is not possible for comparable domestic entities.

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VAT resumed on bonds interest income – QFII exemption uncertain after 2025

China has reinstated VAT on interest income from three major bond categories, as announced by the Ministry of Finance (MoF) and the State Taxation Administration (STA) in MOF/STA Notice No. 4, 2025. This policy ends a decade-long exemption and applies to new bond issuances on or after August 8, 2025:

1. National bonds;
2. Local government bonds; and
3. Financial bonds (applicable specifically to financial institution holders).

VAT implications overview

	Existing VAT policies	New VAT policy (Notice No. 4)
Issue date of bonds	Issued before 8 Aug. 25 (or re-issued after this date)	Newly issued after 8 Aug. 25
VAT on bond's interest income:		
1. National government bonds	VAT exempt	6%
2. Local government bonds	VAT exempt	6%
3. Financial bonds	VAT exempt	6%
Unaffected types:		
4. Corporate bonds	VAT at 6%	6% continues
5. Interbank deposit certificates	VAT exempt	Not covered; VAT exemption continues

Impacts to investors (bond holders)

The new policy does not clarify VAT rules for different investor types, creating uncertainty for non-financial enterprises, retail, and foreign investors, most expect current exemptions to continue and the overall impact to be limited. Domestic financial institutions, which hold over 80% of the bond market, are mainly affected. The overall impact could be as follows:

Holders	VAT under old/new policies
1. Financial institutions (excluding 2 and 3 below)	Old: 0% New: 6%
2. Asset managers	Old: 0% New: 3%
3. Overseas institutions	Old: 0% (until 31 Dec. 2025) New: Not affected (0% until 31 Dec. 2025)
4. Non-financial institutions	Old: 0% for national/local govt. bonds; 6% for financial bonds New: 6% for national/local govt. bonds; 6% for financial bonds
5. Individuals	Old: 0% New: 0% (not affected if VAT-able income ≤ CNY 100K/month until 31 Dec. 2027); 1% for if exceeding CNY 100K/month

Unaffected VAT incentives

It is widely expected that certain VAT incentives are expected to remain unchanged under the new policy for relevant investor groups:

- **Asset managers:** Asset management products use a simplified VAT method at a 3% rate instead of 6%. Despite VAT now applying to interest from the three bond types, asset managers are expected to continue using the 3% rate and the same filing mechanism.
- **Overseas institutions:** Qualified overseas institutional investors (including QFIIs, RQFIIs, Bond Connect) are exempt from VAT on bond interest until 31 December 2025; extension beyond this date is uncertain and pending further notice.
- **Individuals:** Retail investors are exempt from VAT on interest income if monthly income is below CNY100, 000 (approximately USD14, 000), with this policy effective until 31 December 2027; this exemption is expected to continue as individuals hold a small share of the bond market.

Summary

The reinstated VAT on bond interest increases compliance for investors. Financial institutions must separate interest from pre-August 2025 (exempt) and post-policy (taxable) bonds. Failure to separate these may trigger 6% VAT on all interest, tax clawbacks, and 0.05% daily surcharges.

This policy is a key step toward a fairer, unified tax system, aiming to reduce market distortions and promote efficient capital allocation based on economic fundamentals.

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IFSC in focus – Tax exemption for non-residents on derivative profits in IFSC

To further incentivize financial trading in India's International Financial Services Centre (IFSC), a special economic zone, the Indian tax authorities have recently granted non-resident investors tax exemptions on capital gains and ongoing income from certain derivative instruments executed with offshore banking units in the IFSC. These benefits have also been extended to Foreign Portfolio Investors (FPIs), significantly increasing the attractiveness of Indian capital market investments for international investors.

The new tax exemptions in brief

The IFSC has emerged as a major financial hub, with more than 720 corporate entities across diverse sectors now established. To encourage further growth, Indian authorities have progressively introduced tax incentives tailored to IFSC-based activities.

As part of this framework, non-resident investors were already eligible for tax exemptions on capital gains derived from financial products issued by offshore banking units in the IFSC, including:

- **Non-Deliverable Forward (NDF) contracts** – agreements where counterparties settle the difference between the agreed NDF rate and the prevailing spot rate on a notional amount.
- **Offshore Derivative Instruments (ODIs)** – securities issued overseas to foreign portfolio investors, providing indirect exposure to Indian underlying assets.
- **Over-the-Counter (OTC) derivatives** – privately negotiated derivative contracts, outside of a stock exchange.

Additionally, distributions from ODIs (dividend pass-throughs) were exempt from taxation.

Most recently, these exemptions have been extended to cover transactions by non-resident investors with FPI status relating to units issued via an offshore banking entity in an IFSC, provided the investor holds the required FPI license from India's IFSC regulator.

Potential impact on foreign investments

With these expanded exemptions, derivative transactions conducted through offshore banking units in the IFSC have become significantly more attractive to foreign investors. By ensuring that both capital gains and ongoing income streams from certain financial instruments that grant access to the Indian market remain tax-free, the reforms remove a key barrier that previously reduced the competitiveness of Indian derivative markets.

This development positions the IFSC more firmly as a regional hub for international capital flows. For foreign portfolio investors, the IFSC now offers a unique combination of regulatory recognition, product diversity, and tax efficiency. Effectively, investors gain streamlined and tax-exempt access to Indian capital markets through derivatives, strengthening India's appeal in the global financial services ecosystem.

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The tax treatment of crypto assets in Indonesia

Introduction

In the past decade, crypto assets have grown rapidly in Indonesia, transforming from a niche product into one of the country's most popular investments. Bitcoin, Ethereum, and other tokens are now viewed by many – especially younger generations – as an attractive alternative to stocks, bonds, or property. This growth has made Indonesia one of Southeast Asia's most dynamic crypto markets.

However, the expansion of crypto trading also raised challenges for policymakers. Should crypto be treated as a commodity, a financial instrument, or even a currency substitute? What taxes should apply? And how could the government protect investors while ensuring fair revenue collection? These questions led to a major evolution in Indonesia's tax framework for crypto assets.

From commodity to financial instrument

Initially, Indonesia treated crypto assets as intangible taxable goods, placing them in the same category as digital commodities. Under this system, sales of crypto were subject to Value Added Tax (VAT) ranging from 0.11% to 0.22%. Exchanges and miners were also taxed on the services they provided, such as transaction facilitation and block rewards. Oversight was carried out by BAPPEBTI, the Commodity Futures Trading Regulatory Agency.

While this approach provided basic oversight, it created uncertainty for investors who considered crypto more of an investment than a consumable product. The mismatch between policy and market practice prompted the government to introduce reforms.

Key tax changes

The new rules redefine how crypto assets are treated for tax purposes:

- **VAT exemption on sales**
  Crypto is now treated as a financial instrument, not a taxable good. As a result, crypto sales are no longer subject to VAT. This change reduces trading costs and provides clarity for investors.

- **Higher final income tax**
  The final income tax on crypto transactions has increased from 0.1% to 0.21% of the transaction value.

- **VAT on services still applies**
  VAT remains in place for service providers of crypto exchanges. The exchanges (PPMSEs) must apply VAT on commissions and fees. While the VAT rate rises from 11% to 12%, the effective VAT burden remains the same, as the VAT base is set at 11/12 of the service fees. For the miners, VAT has doubled, moving from 1.1% to 2.2%.

Shift in regulatory oversight

A major reform is the shift in oversight from BAPPEBTI to the Financial Services Authority (OJK). This transition reflects the government's recognition of crypto as part of the financial system. OJK's broader mandate strengthens investor protection, aligns with global regulatory trends, and signals that crypto is now a legitimate and professionally supervised sector.

Implications for stakeholders

For **investors,** the reforms lower costs through the VAT exemption but increase income tax. The trade-off is greater legal certainty and stronger market protection under OJK.

For **businesses** like exchanges and miners, compliance with updated VAT rules is critical. While higher VAT obligations may affect margins, the clearer framework offers more stability and growth opportunities.

For the **government,** the reforms strike a balance –raising revenue through services and income tax while removing VAT on sales to avoid discouraging investment.

In conclusion, Indonesia's new tax treatment of crypto assets marks a turning point. By exempting sales from VAT, raising income tax rates, and shifting oversight to OJK, the government has clarified that crypto is legitimate, regulated, and taxable. These reforms provide legal certainty, protect investors, and align digital assets with other financial instruments.

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More than just a tax change, this policy evolution positions crypto as a recognized part of Indonesia's financial landscape – strengthening trust, governance, and the country's role in the global digital economy.

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Proposal regarding major enhancements to carried interest regime

Carried interest taxation is a decisive factor for international asset managers and private equity professionals when selecting fund domiciles. Luxembourg is preparing a reform to reinforce its competitive edge as a global fund hub by broadening and enhancing its carried interest regime.

The proposal aims to consolidate Luxembourg's leadership in Europe by ensuring competitive structuring options and attracting the front office talent that drives investment performance. It introduces broader eligibility, unified tax treatment, and rules aligned with international market practice.

Key features of the modernized framework

Broader Eligibility: The regime would apply to a wider group of professionals providing services to investment funds. In addition to employees, partners, independent directors, and external advisors could qualify, provided they receive carried interest.

Permanent and Unified System: Contractual carried interest would be taxed as extraordinary income at a permanently reduced rate of around 11% (one quarter of the standard marginal rate). Investment-linked carry could, subject to conditions, be treated as capital gains and fully exempt if the participation is below 10% and held for more than six months.

Flexible Structures: The proposed legislation explicitly recognizes eligibility for "deal by deal" carried interest distributions, which were previously excluded under rules requiring full reimbursement of investor capital before any carry payment. This amendment reflects compensation arrangements commonly used in private equity, providing clarity and allowing managers to be compensated as investments are realized.

Overview of the proposed regime

Criteria	Proposed Regime
Who qualifies	Any individual providing services to a fund or manager, including employees, partners, independent directors, and advisors.
When carry can be paid	Distributions may be made on a "deal-by-deal" basis, without waiting for all investor capital to be repaid.
Form of entitlement	(1) Contractual right, or (2) equity participation in the fund.
Tax treatment – contractual	Taxed as extraordinary income at a permanently reduced rate of about 11%.
Tax treatment – equity-linked	Gains can be fully exempt if the carried interest participation is 10% or less and held more than six months.
Funds structured as partnerships or transparent entities	Carried interest from shares is treated as capital gains regardless of the fund's underlying income.

Additional elements to the proposal

- **Mitigating over allocation risks:** While "deal by deal" carry distributions could increase the risk of overpayment during a fund's life, established contractual mechanisms such as clawback provisions mitigate this risk in practice.
- **Safeguards against misuse:** Only genuine carried interest qualifies for this regime. Payments replicating fixed or predictable income, such as bonuses, are excluded. Luxembourg's general anti-abuse rules continue to apply to prevent avoidance.
- **Entry into force:** Subject to parliamentary approval, the regime is expected to apply from 1 January 2026, covering carried interest income realized from that date onward.

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New Circular clarifies the definition of a "collective investment vehicle" for the purposes of its carve-out from the reverse hybrid rules

These important clarifications from the Luxembourg Direct Tax Administration are very welcome, as they are highly relevant to fund structures and their tax treatment. This is because, under the reverse hybrid rules, Luxembourg tax-transparent entities can sometimes be subject to income tax. This guidance provides valuable certainty for fund managers and investors when setting up new funds and assessing the associated tax implications.

Background

The reverse hybrid rules can subject Luxembourg tax-transparent entities, partnerships such as SCS and SCSp, to income tax if certain conditions are met (e.g., when associated non-resident investors – who view a Luxembourg partnership as an opaque taxpayer – hold, alone or by acting jointly with others, a 50% or greater interest in the Luxembourg entity's voting rights, capital interests or profit entitlements, and are not taxed in their countries of residence on the income attributed to them due to a qualification mismatch).

A key exception to these rules applies to Luxembourg Collective Investment Vehicles (CIVs). A CIV is defined as an investment fund or undertaking that is widely held, holds a diversified portfolio of securities, and is subject to investor-protection regulation. Until now, the practical application of these three criteria was unclear.

What qualifies as a CIV?

The circular confirms that the following undertakings and investment funds automatically qualify:

- Undertakings for Collective Investment (UCIs)
- Specialized Investment Funds (SIFs)
- Reserved Alternative Investment Funds (RAIFs)

For other investment undertakings and vehicles to qualify, they must meet all three of the following conditions:

1. **Wide investor participation**

   The fund is marketed for distribution to multiple unrelated investors. Limited investor numbers do not automatically disqualify funds during launch phase and liquidation phase.

   Related investors include those with 50%+ control relationships or family connections.

   A presumption applies if no single individual investor ultimately holds or controls, directly or indirectly, more than 25% of the capital or voting rights.

2. Diversified securities portfolio

"Securities" is broadly defined to include:

- shares, partnership interests, and similar equity instruments
- beneficiary shares and profit-sharing interests
- bonds and other debt securities
- fund units
- deposits with credit institutions
- financial derivatives (where the underlying assets consist of securities)

Risk diversification is assessed based on the fund's investment policy and its exposure to market risk, including counterparty risk.

The circular refers to the risk-spreading requirements set out in SIF Law to assess whether a portfolio is not considered appropriately diversified.

3. Investor protection rules

Presumption of compliance for:

- CSSF-supervised funds (funds supervised by the Luxembourg regulator, the *Commission de Surveillance du Secteur Financier*);
- EU AIFMD-compliant Alternative Investment Funds managed by duly authorized AIF-Managers.

The circular's guidance only applies for income tax purposes and is not applicable for other regulatory and legal purposes.

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Finance Minister's guidance of 3 July 2025 regarding the use of beneficial owner test for WHT purposes

After several years' worth of work and the publication of two guidance proposals that came under criticism, on 9 Jul 2025 the Finance Ministry ("FM") published a guidance relating to the definition of a beneficial owner ("Guidance").

Unfortunately, despite such a significant delay and lengthy consultations with business and tax advisors, the Guidance is still far from ideal.

As defined in the law (Article 4a(29) of the 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.

In accordance with the Guidance, the first two conditions should be considered together as a requirement for the payee to have economic control over the payment. The third condition is supposed to follow up on the first two and relate to the payee's characteristics, requiring it to have human, information and/or infrastructural resources that, given the type of its business, are sufficient to enable it to exercise such control.

When interpreting the term "beneficial owner" in the Guidance, FM obsessively invokes CJEU's Danish cases, taking them out of their context. FM fails to note that CJEU's ratio in these cases refers to factual configurations that were indicative of abuse. Polish law already does have dedicated anti-abuse regulations implementing the general rule that you may not rely on Union law in a context suggesting fraud or abuse.

In terms of holdings, while FM does note that they can use shared resources, it allows such shared resources to be taken into account for beneficial owner testing purposes only where the costs of the resources are located exclusively within the jurisdiction under which the given preferential tax treatment is sought.

On the other hand, FM should be praised for confirming in the Guidance that the beneficial owner status requirement does not apply to payments that are not passive income, e.g. payments for cross-border intangible (management etc.) services.

Yet FM wrongly maintains that the beneficial owner requirement applies to dividend payments exempt under PS Directive. FM cites no legal basis for its claim, which is hardly surprising because regardless of whether the underlying law is interpreted functionally, systemically or linguistically, the outcome of the interpretation is the same – both national law and EU law impose the beneficial ownership requirement only in the case of interest and royalty payments, not dividends. Importantly, in its Danish cases under PS Directive, CJEU refused to answer precisely those questions referred to it which concerned the definition of beneficial owner under PS Directive. Interestingly, the Supreme Administrative Court (NSA), following the issuance of the Guidelines issued another decision on August 13, 2025 (case no. II FSK 1510/22), in which it confirmed that the requirement of the status of a beneficial owner is not a condition for the exemption of dividends from taxation under PS Directive.

Furthermore, the Guidance adjusts the scope of due diligence required of Polish payers when verifying a payee's beneficial owner status, depending on whether the payment is made to a related party, to an unrelated party, or by a so-called technical payer (a financial intermediary, such as a bank). In the latter two cases the standard of diligence is lower, given that such entities lack access to information necessary to verify the payee's status.

On a positive note, the Guidance:

- allows the use of look-through approach to payments of the same kind (subject to conditions),
- introduces what is called "extended-scope beneficial owner test" in cases where it is not clear at the time of payment whether the payment will be transferred to beneficial owner,
- introduces a presumption that the BO test is satisfied under PS Directive in the case of dividends that are subject to taxation within EU at least once (use of this presumption requires tracking of the hypothetical dividend chain between subsidiaries and parents).

Use of the above solutions is not an obligation of the tax authorities but the right of the relevant party (mainly the payer/withholding agent).

To discuss all the requirements behind the various options or describe all the ins and outs of the Guidance would exceed the content restrictions of this newsletter.

The legal status of Guidance is similar to that of official private tax rulings, meaning it provides assurance if adhered to. But Guidance is not binding on the taxpayers and does not directly bind tax courts.

Proposed changes to CIT Act regarding corporation tax exemptions for foreign investment funds

Work is underway to amend the CIT Act regarding tax exemptions for foreign investment funds.

The major changes involve:

1. extending the exemptions (both income-based and entity-based) onto funds from third countries,
2. varying the exemption conditions to take into account the existence of internally managed funds in other jurisdictions,
3. introducing another exemption condition allowing the exemption to be used by foreign investment funds from countries with respect to which there is a legal basis for the Polish tax administration to be able to obtain information about Polish residents' accounts with collective investment institutions,
4. extending the Polish anti-abuse regulations with respect to funds enjoying income-based exemptions (which effectively are all funds other than UCITS).

The condition mentioned under 3 above will also apply with respect to entity-based exemptions for foreign pension funds.

Re. 1
This change is made to comply with the guidelines contained in CJEU's judgment in case C-190/12 Emerging Markets and endorse the practice of Polish tax authorities and courts where exemption has been granted to third country funds comparable to domestic funds.

Re. 2
This change comes in the wake of CJEU's judgment of 27 February 2025 in case C-18/23.

The original wording of one of the conditions had been that, to qualify for the exemption, a fund must be managed by an entity authorised by the relevant financial supervision authority of its home country. This allowed Polish tax authorities to deny exemption to internally managed funds.

This provision is proposed to be changed so that the exemption will be granted to a fund managed in accordance with its domestic legal requirements by:

- an external entity authorised by the relevant financial supervision authority of its home country; or
- where the institution has not appointed an external management company, an internal executive board which is established in accordance with national law and whose professional fund management qualifications and powers are evidenced through authorisation from or registration by the relevant financial supervision authority of the institution's home country.

It seems the condition for internally managed funds is based on the facts of case C-18/23, which involved a Luxembourgian special investment fund (SIF) operating pursuant to the Luxembourg's Special Investment Funds Act of 13 Feb 2007. As such, the condition does not take into account all potential regulations applicable to funds of this kind. For example, under Article 29 of the UCITS Directive, an internally managed UCITS is required to communicate the names of investment company's directors to the competent supervision authority. There is no mention of any registration or any need to have their qualifications evidenced through an authorisation.

For those reasons, the above provisions of the proposed law are very likely to be amended.

Re. 3
Regarding the legal basis for Polish tax administration to be able to obtain information about Polish residents' accounts with collective investment institutions, this is provided by CRS-based AEOI agreements, MCAAs, and FATCA (for US).

Re. 4
This is a proposal to extend the Targeted Anti-Abuse Rule, or TAAR, in Article 22c of the CIT Act. Previously TAAR was used to deny preferences in cases indicating abuse of PS or IR Directive exemptions. Now TAAR is proposed to be used for income-based exemptions which are generally designed for foreign investment funds other than UCITS (closed-ended funds and special open-ended funds operating in accordance with rules and restrictions applicable to close-ended funds).

In accordance with TAAR, income-based exemptions cannot be used if their use is:

1) contrary, in the circumstances, to the object or purpose of the regulations, and
2) the principal purpose or one of the principal purposes of the transaction(s) or some other operation(s), and the arrangement is artificial.

By Article 22c(2) of the CIT Act, an arrangement is not artificial (is genuine) if it is appropriate to conclude in the circumstances that a person acting reasonably and for lawful purposes would apply this arrangement largely for valid commercial reasons. The reasons referred to in the first sentence do not include the intended use of an exemption that is contrary to the object or purpose of its underlying regulations.

It is currently difficult to predict how tax authorities will practically assess on a case-by-case basis whether TAAR applies in the case of any income-based exemption for foreign investment funds.

Note, however, that the lower tax court dealing with key WHT issues (Provincial Administrative Court in Lublin) currently applies TAAR with a great degree of insouciance. For example, it denies preferences where it finds the transaction artificial while omitting to make the other required statutory findings, being whether the main benefit test is met and whether use of the preferential treatment is contrary to the underlying regulations.

One can only hope that the practice of both Polish tax authorities and the Lublin tax court will change under the influence of the recent CJEU case C-228/24 (judgment of 3 April 2025).

The European court held in C-228/24 that for anti-abuse regulations to apply, all the conditions must be satisfied, including not just the non-genuineness condition but also the purposefulness condition (arrangement must be intended to bring a tax advantage that is contrary to object or purpose of the underlying regulations): *"it is not sufficient to establish that the arrangement was not put into place for valid commercial reasons reflecting economic reality (...). It is also necessary (...) for the arrangement to have been put into place with the main purpose of obtaining a tax advantage that defeats the object or purpose of that directive."*

As far as we know, the draft law is still open to changes, none of which have yet been published.

Recent judgments of Poland's top tax court on exemption for foreign investment funds

On 4 June 2025, the top Polish tax court Supreme Administrative Court (NSA) issued two important decisions regarding tax exemptions for foreign investment funds (cases no. II FSK 696/22 and no. II FSK 843/22).

The cases reached NSA on appeal from advance tax rulings under which a UK employee pension fund was denied a tax exemption on the ground that the fund made an investment in a company whose type corresponds to Polish sp. z o.o. company (limited liability company) and Polish law does not allow pension funds to invest in sp. z o.o. companies. According to the issuing authority, the scope of actual business pursued by the UK pension fund exceeds the scope of investment activities that may be pursued by Polish pension funds.

In effect, the authority ruled that the case fails one of the exemption requirements under Article 6(1)(11a)(e) of the CIT Act, being that the fund's business must "solely consist of collecting monies and investment them with the purpose of paying them out to the scheme participants when they reach pensionable age".

The UK fund applied for judicial review and the lower tax court granted its application in two judgments, confirming the fund meets the requirements under 6(1)(11a) of the CIT Act and investing in company shares etc. may not in and of itself be a reason for denying the exemption.

The lower court's verdict was upheld by NSA. Thus, at first glance, this case law is favourable for foreign pension funds.

However, even though it dismissed the Polish tax authorities' appeal, NSA made a major "revision" to the favourable position of the lower court, whose approach it considered to be "incomplete and as such incorrect".

According to NSA, the exemption under Article 6(1)(11a) of the CIT Act is of a hybrid nature (both an entity-based and an income-based exemption).

This means that the exemption is available to foreign pension funds with respect to income from activities identical to those conducted by Polish entities.

Accordingly, there may be foreign pension funds that are like Polish domestic entities and as such eligible for Article 6(1)(11a) exemption, but their Polish activities are wider than those of domestic entities.

Thus, if a foreign pension fund complies with Article 6(1)(11a) of the CIT Act, it qualifies for the exemption offered by that Article. But the exemption will not apply to the extent its Polish-source income is derived from investments otherwise prohibited to Polish pension funds.

Draft regulations to disapply the pay and refund mechanism for technical payers until 31 December 2026

On 11 August 2025, the Minister of Finance and Economy published proposals for regulations to amend the regulations disapplying the duty to withhold corporate or personal income tax. The proposed law would disapply the pay and refund mechanism for what are called "technical payers", i.e. institutions which operate securities accounts or omnibus accounts, until 31 Dec 2026.

Finance Ministry – Ideas to fund the budget deficit at the expense of the banking sector

Since June the Finance Ministry has been sending signals that it wishes to impose an extra tax on banks.

First, the Finance Minister announced in June that the cabinet are working on a new tax designed to target banks. According to the press, this was not meant to be a windfall tax but tax on statutory reserves held by banks with the National Bank of Poland. The idea attracted heavy criticism from the banking sector as interest on reserves held with NBP is part of corporation tax calculations for banks so such a levy would mean double taxation.

Then, on 21 August, the Finance Ministry posted on its website that they are drafting a legislative proposal to amend the CIT Act to increase the corporation tax rate for banks and make changes to what is called "banking tax".

The Finance Ministry wants the target CIT rate for banks to be 23% instead of the current 19%, starting from 2028. In the meantime, the rate would be 30% in 2026 and 26% in 2027.

On the other hand, the banking tax rate would be gradually lowered by 10% in 2027 and by 20% as of 2028 (comparing to this year).

Other than those laconic announcements, no draft legislation has been published yet.

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Republic of Korea

Foreign investors and multinational enterprises – Impact of key 2025 Korean tax reform proposals

On July 31, 2025, the Ministry of Economy and Finance released its proposed 2025 tax law amendments (the "Proposal(s)"). If passed during the 2025 National Assembly session, most measures will take effect from January 1, 2026, unless otherwise specified.

Key items relevant to multinational enterprises and foreign investors include:

1. **New requirement to submit applications for treaty-based reduced tax rates for non-residents**
   Currently, applications for the reduced withholding tax rates under tax treaties must be retained by the withholding agent for five years, but submission to the tax office is not required unless specifically requested by the tax office.

   Under the Proposal, withholding agents are required to submit such applications directly to the tax office by the end of February of the year following the year in which the income was paid, aligning the deadline with the submission of payment statements. If enacted, this amendment will apply to income paid on or after January 1, 2026.

2. **Increase in securities transaction tax rate**
   The securities transaction tax rate on listed stocks is proposed to be raised by 0.05% from the current 0.15% to 0.20%. The current 0.35% rate on unlisted shares will remain unchanged.

3. **Clarification of the scope of Korean-source dividend income for foreign companies**
   Debate has long existed over whether dividend-equivalent payments made to foreign companies under Total Return Swap ("TRS") contracts on Korean stocks constitute dividend income subject to withholding tax. The Tax Tribunal recently held that such payments do not constitute dividends subject to withholding tax (Tax Tribunal Decision 2021Seo2050, April 18, 2024).

   The Proposal would reverse this by including dividend-equivalent amounts from over-the-counter derivative transactions based on Korean stocks as Korean-source dividend income. Accordingly, TRS profits, where Korean stocks are the underlying asset, and paid to foreign corporations, will be treated as Korean-source dividend income and subject to Korean withholding tax.

4. Introduction of separate taxation on dividend income from high-dividend paying companies

To encourage higher dividends, the Proposal would introduce a tax incentive for listed companies that maintain or increase cash dividends and meet certain criteria. Dividends from such companies for fiscal years 2026 through 2028 will be excluded from comprehensive taxation of financial income and instead subject to separate taxation.

While foreign investors are typically not subject to comprehensive financial income taxation in Korea, this proposed change may impact them indirectly. By encouraging listed companies to increase their dividend payout ratios, the Proposal could result in higher dividend income for such investors.

5. Expansion of the exit tax scope

Currently, when a resident departs Korea permanently and becomes a non-resident, unrealized gains on domestic stocks are deemed realized and taxed as capital gains. The Proposal intends to expand the scope of this exit tax to cover foreign stocks as well.

Please note that this Proposal has drawn considerable pushback from the expatriate community in Korea, as it may adversely affect the country's ability to attract foreign talent. It remains to be seen whether the new government will reconsider or withdraw this Proposal in response to these concerns.

If enacted, this amendment will apply to individuals departing or immigrating on or after January 1, 2027.

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Conclusion

Details of the Proposals may change during legislative review. Multinational companies and foreign investors should monitor developments to assess potential impacts on Korean operations and investment structures.

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Inland Revenue Authority of Singapore: Substance at the Top, Pragmatic Take on SPVs and investment funds

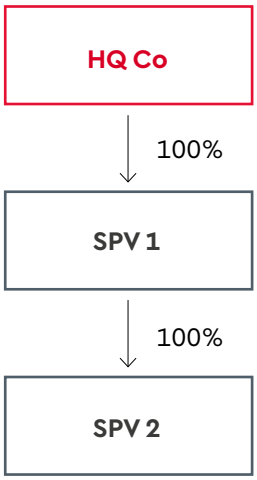
Singapore's tax authority has confirmed that economic substance can be assessed at the holding company level, even when gains are received by SPVs with no local footprint. This ruling offers certainty for investment structures and reinforces Singapore's reputation for balancing commercial reality with tax transparency.

As of 1 January 2024, Singapore started charging income tax on – broadly – gains received or deemed received in Singapore from the disposal of foreign assets by a Singapore company that is part of a multinational group ("**SG Co**"), under section 10L of Singapore's Income Tax Act ("**Section 10L**"). However, certain qualifying entities are excluded from this named provision, including SG Cos that have "adequate economic substance" ("**AES**") in Singapore. The test for AES varies depending on the nature of the SG Co – whether it is a pure equity-holding company (e.g., investment holding company) or non-pure equity-holding company (e.g., operating company).

The AES test is generally assessed in relation to the SG Co that disposes of the foreign assets. That said, there are situations where foreign assets are disposed by special purpose vehicles ("**SPVs**") – such scenarios are common for investment funds. SPVs are unlikely to be excluded from the application of Section 10L given that SPVs typically do not have any employees or office premises. In this regard, the Inland Revenue Authority of Singapore ("**IRAS**") confirmed their position on the applicable tax treatment (set out in guidelines accompanying Section 10L) in an advance ruling (AR14/2025) published 1 August 2025.

AR14/2025

To ring-fence its investments, a SG Co ("**HQ Co**") incorporated 2 SPVs ("**SPVs 1 and 2**") in Singapore as shown in the diagram below. SPV 2 held shares in a foreign investee company ("**Foreign Shares**") which it later divested.



Under Section 10L, gains received by SPV 2 from the disposal of the Foreign Shares would likely be subject to Singapore income tax; it would unlikely be excluded from the application of Section 10L given that SPVs typically do not have employees or any premises and therefore would likely not have AES.

According to AR14/2025, however, the IRAS clarified that the AES test may be satisfied at the level of HQ Co, being the ultimate holding entity, provided:

(a) all the intermediate holding entities below HQ Co are SPVs;
(b) HQ Co exercises effective control;
(c) HQ Co derives economic benefits; and
(d) HQ Co defines the core investment strategies.

This means that, if HQ Co (having met the foregoing conditions) passes the AES test, the gains received by SPV 2 from the disposal of the Foreign Shares would not be taxable in Singapore under Section 10L, notwithstanding that SPV 2 did not have the requisite AES to be excluded from Section 10L.

This ruling shows the IRAS's pragmatic approach in applying Section 10L, acknowledging the common use of SPVs in investment structures to ringfence assets and demonstrating a willingness to consider this context.

Key takeaways

Fund managers and investors can be reassured by Singapore's ongoing commitment to transparency in its tax regime. The IRAS not only understand commercial realities but also show a consistent commitment to their published guidelines – providing valuable certainty around tax treatment which is a common crucial consideration when it comes to structuring investments in the Southeast Asian region. This reliability, combined with Singapore's competitive tax landscape, forms a cornerstone of the country's appeal to fund managers and investors alike.

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CJEU to rule on WHT discrimination of investment funds resident in the U.S. investing in Spain

The upcoming judgement of the CJEU is likely to have significant implications for portfolio investments of U.S. investment funds in Spain and in further EU markets. The decision should impact mutual funds from other third (non-EU) country jurisdictions, too.

Upcoming CJEU judgement

On February 11, 2025, the Spanish Supreme Court raised a preliminary question to the Court of Justice of the European Union ("CJEU") in the context of a tax dispute involving a U.S.-resident investment fund (Regulated Investment Company "RIC") holding Spanish equity positions. The U.S. fund alleged tax discrimination regarding WHT suffered on dividends obtained in Spain compared to the taxation of a Spanish investment fund with similar characteristics. The question posed to the European court specifically focuses on whether the restriction on the free movement of capital is neutralized under the double tax agreement ("DTA") between the U.S. and Spain and under U.S. domestic law.

The application of the DTA and U.S. law allows for two options: (i) a deduction of the WHT paid in Spain from the tax payable in the USA by the RIC, or (ii) allocation of the income and transfer of the tax credit to the fund's shareholders ("pass-through"). In this case, the U.S. fund (like most RICs) chose the second option.

The Spanish Tax Agency denied the refund of the excess WHT, arguing that any potential discrimination would have been neutralized since the fund could theoretically have deducted the tax using the first option, even though it chose to transfer the tax credit to its shareholders. The National Court did not consider the neutralization proven and held that the fund should not be required to prove the neutralization of the Spanish WHT at the U.S. fund investor level (second level). However, there are two dissenting opinions supporting the Tax Agency's position, arguing that the mere availability of the deduction option under the DTA at the fund level is sufficient to consider the discrimination neutralized.

Now before the Supreme Court, the issue is whether the mere existence of the possibility to achieve first-level neutralization is sufficient, even if that option applies to all income obtained, or whether, once the RIC has opted to allocate the income and transfer the tax credit to its shareholders, it is necessary to actually prove WHT neutralization at this second level.

The Supreme Court recalls that the CJEU has rejected considering shareholder taxation when conducting the comparability test, but in this case, the analysis concerns the neutralization of potential discrimination, making it important to consider shareholder-level taxation to verify whether neutralization has occurred.

Therefore, the Supreme Court raises to the CJEU the preliminary question of whether, in light of Article 63 of the TFEU, the potential restriction on the free movement of capital arising from the Spanish WHT legislation can be considered neutralized when a non-resident entity (U.S. RIC) equivalent to an EU harmonized resident investment fund (UCITS) may opt, under the DTA and its domestic law, to be taxed under its domestic tax regime, even if the non-resident entity (U.S. RIC) chooses not to do so, and instead opts to transfer the WHT credit to its fund investors, considering that the option to be taxed under the residence state's legislation could, in principle, allow the non-resident entity (U.S. RIC) to deduct the full excess Spanish WHT borne, although the domestic taxation would apply to all income obtained by the non-resident entity (U.S. RIC).

Conclusion

Keeping in mind that the EU free movement of capital applies to third (non-EU) countries and depending on the structure of mutual funds from third country jurisdictions other than the U.S. as well as depending on the specific double tax agreement in question, the upcoming judgement of the CJEU can have significant implications for portfolio investments into the EU by many types of collective investment schemes.

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Update – Financial Services news 2025 for Foreign Institutional Investors

Securities Lending – New flexible measures for Foreign Institutional Investors (FINIs)

According to the FSC Order No. 11303487862 dated August 23, 2024, offshore foreign institutional investors are permitted to borrow securities and provide their onshore assets as collateral. In such cases, they are not subject to the restrictions on "selling securities not yet held" or "providing collateral.". Offshore FINIs may also lend the securities they hold. Where securities lending is conducted under the negotiated lending model, FINIs borrowing securities may provide either domestic or foreign collateral. If the collateral consists of domestically listed or OTC securities, the lender must entrust the collateral to a segregated account with the central securities depository.

FINIs may also pledge Taiwan-listed or OTC shares as collateral for their offshore investment activities (e.g., overseas derivatives transactions, securities lending), without the need to liquidate local shares, thereby enhancing flexibility in capital utilization.

Tax treaty benefits and refunds – Extension of application period

On April 8, 2025, Taiwan's Ministry of Finance amended Article 34 of the Enforcement Rules of the Income Tax Act, extending the statute of limitations for foreign investors to apply for treaty benefits or tax refunds from 5 years to 10 years, aligning with the time limit available to domestic taxpayers.

This amendment took effect on April 10, 2025, but does not apply retroactively. The extension only applies to cases where the 5-year period had not yet expired as of that date.

A transitional rule was also established: where more than 5 years had already elapsed between the tax payment date and the effective date of the amendment (April 10, 2025), the old 5-year rule applies. In other words, cases prior to April 10, 2020, are not eligible for the new 10-year period.

If a tax treaty signed between Taiwan and another jurisdiction already specifies a different refund application period, the treaty provision shall prevail.

For cross-border institutional investors and fund managers, this amendment provides a longer timeframe for tax planning and refund applications, reducing the risk of missed opportunities and enhancing operational flexibility.

Capital Gains (Listed Stocks and ETFs) and Income Tax

For foreign individual investors and most foreign institutional investors, gains from securities transactions remain exempt from income tax; however, the seller must bear securities transaction tax (STT):

- Stocks: 0.3%
- ETFs/beneficiary certificates: 0.1%
- Corporate bonds/financial bonds and "bond ETFs": exempt from STT until December 31, 2026
- Intraday stock trading (day-trading): STT reduced by half (0.15%), extended until December 31, 2027

These extensions remain effective through 2025, with no new changes to the tax rates themselves.

Multiple custodian banks allowed for FINIs (effective February 24, 2025)

From February 24, 2025, FINIs may appoint more than one custodian bank in Taiwan. Under this liberalization measure, a FINI may designate one primary custodian bank and up to three secondary custodian banks.

This policy aims to improve the investment efficiency of foreign investors in Taiwan's capital markets, reduce asset management costs, and further promote foreign participation in the Taiwan stock market.

Pilot establishment of Local Asset Management Zones

Starting April 2025, the FSC announced the "Operational Guidelines for Financial Institutions Applying to Enter the Pilot Local Asset Management Zone", planning the establishment of an asset management zone in Kaohsiung. This initiative provides administrative incentives (e.g., rental subsidies, administrative support) to foster financial clustering and an innovative environment.

To attract overseas investors back to Taiwan and strengthen coordination between headquarters and offshore branches, domestic banks and securities firms operating within the zone may provide both local and offshore financial products and services to high-net-worth overseas clients. Offshore branch personnel may also provide relevant services when visiting Taiwan, if accompanied by staff from the zone branch. This is intended to enhance the efficiency of wealth management businesses.

Regulatory updates for Securities Investment Trust and Consulting Enterprises (SITEs/SICEs)

Securities investment trust and advisory enterprises may now be entrusted by foreign asset management institutions to provide administrative support services. Such services must not involve banking or securities operations, nor entail New Taiwan Dollar foreign exchange activities, and prior approval from the FSC is required.

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Dutch Supreme Court issues two landmark rulings about the applicability of the dividend WHT exemption in cross-border investment structures

On 18 July 2025, the Dutch Supreme Court issued two rulings that clarify the interpretation and application of the Dutch dividend WHT (DWT) exemption implementing the Parent-Subsidiary Directive.

In essence, the Court holds that the DWT exemption does not apply in the two cases at hand, which both concern Belgian holding companies invested in Dutch private equity feeder structures, because of Dutch anti-abuse provisions. The two Supreme Court rulings signal a stricter standard for assessing substance in cross-border investment and holding structures commonly used by asset managers and private equity platforms. The DWT exemption will only apply if the intermediate company can demonstrate genuine commercial reasons and relevant own substance, and if the shareholding is functionally attributable to its business.

The two Supreme Court judgments in a nutshell

Both judgments concern Belgian holding companies investing in Dutch private equity feeder structures. In both cases, the Belgian holding companies had limited activities, few assets, and office functions that were either absent or outsourced. In the first case, the company had no real operations; in the second case, the company carried out operational activities, but these did not relate to the Dutch interest. In both cases, the ultimate beneficial owners were Belgian family members who controlled the holding structures but would not themselves have been eligible for the DWT exemption had they invested directly.

In the first case, a Belgian holding company sold a key investment and subsequently held a stake of approximately 38.7% in the Dutch feeder BV. The Dutch Supreme Court found that the holding company was essentially a conduit entity with minimal substance or economic activity, and that the structure was set up (or maintained) mainly to secure the Dutch tax advantage (i.e., the DWT exemption). The company's prior

existence did not alter this conclusion, as the relevant assessment includes subsequent developments and continuing arrangements. In other words, a structure that was initially business-motivated can later turn artificial if circumstances change and the company no longer performs real functions.

In the second case, the Belgian holding company carried on operational activities and held a broad portfolio, including some active Belgian businesses, and a 24% Dutch feeder interest. The Dutch feeder interest did not relate to the company's real business activities and therefore could not be seen as part of its genuine operations. The Court makes clear that substance at group level is not enough: the interest in the Dutch entity must be functionally attributable to the business of the holding. If this link is missing, that part of the structure can be qualified as artificial, even if the wider group carries on real activities. In addition, the Court noted that the family shareholders retained full discretion over dividend allocation, which undermined the independence of the holding.

Impact
Both judgments suggest a stricter approach when analysing whether cross-border investment structures are entitled to the DWT exemption. Critical factors are whether the intermediate company itself has decision-making power over profit allocation, whether it actively manages the dividend-paying participation, and whether there is sufficient substance (own staff, offices, governance).

Furthermore, changes in circumstances post-setup may trigger a later requalification of a structure as abusive, even if it was initially motivated by genuine business needs. Operational activities do not automatically "safeguard" the structure if the specific Dutch interest is passive and disconnected from that business.

Based on the above, building a case file for the commercial rationale behind the investment structure is recommended. Creating substance and maintaining evidence of this substance—including active engagement beyond investment holding—is also crucial. Each shareholding must be tested separately: can it be linked to the company's real business, or is it merely a portfolio investment? Lastly, monitoring and reviewing structures over time is necessary, especially after changes in investment portfolios or group strategy, as structures that were once non-artificial may become artificial if circumstances change. The rulings show that investment structures are particularly vulnerable, but operational groups must also carefully assess whether substance and activities are located at the right level.

European Commission challenges Dutch dividend tax reduction scheme: implications for investment funds

The European Commission has launched a formal infringement procedure against the Netherlands, urging a revision of the Dutch dividend tax reduction scheme for investment funds. This tax measure, known as the remittance reduction regime (in Dutch: *afdrachtsvermindering*), favours Dutch funds and excludes foreign funds, which the Commission views as discriminatory under EU free movement of capital rules.

The Dutch regime explained
Under Dutch law, eligible investment funds can offset dividend WHT paid on received dividends against tax due when distributing to their fund investors. This mechanism effectively reduces the tax burden for Dutch-resident funds.

Foreign funds are excluded: Dutch case law finds them not comparable, as they do not remit Dutch dividend WHT when distributing. This means systematic denial of the benefit, regardless of their functions or home country taxes.

Divergent views: The Commission's challenge

The Commission views the Dutch approach as a restriction on the free movement of capital (Article 63 TFEU, Article 40 EEA). Denying benefits to (comparable) foreign investment funds creates a competitive disadvantage and discourages cross-border investment. The infringement procedure began with a formal notice on 25 July 2024 and has now progressed to a reasoned opinion, reflecting the Commission's serious concerns and the lack of a satisfactory Dutch response.

Risks and opportunities

- **Foreign funds:** possible access to WHT refunds and equal treatment, though pending claims remain uncertain
- **Dutch funds & managers:** reform could level the EU playing field but reduce current advantages
- **Investors:** broader fund choice if foreign funds gain access
- **Dutch tax authorities:** potential refund claims and system adjustments.

Judicial and legislative outlook

Cases are pending before the Dutch Supreme Court on the scope of the regime for foreign funds. The Dutch Advocate General advised upholding the restrictive approach and discouraged referral to the CJEU.

The Commission's action increases pressure on the Supreme Court to consider referring questions to the CJEU. No immediate reforms have been announced, but a CJEU judgment could force significant amendments with broad impact on the investment fund sector.

Practical recommendations

- **Foreign funds:** review Dutch dividend tax withholdings, assessing refund potential, and monitor proceedings
- **Dutch funds and investors:** prepare for changes that may alter competition and compliance.

Conclusion

The Commission's challenge marks a pivotal development for cross-border portfolio investment in the Netherlands. As proceedings and possible reforms unfold, funds, asset managers, and fund investors alike should assess their positions and prepare for change. WTS Global is available to advise on the implications.

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