

# **PwC Newsletter - Asset Management**

## **Changes to the Taxation of Investment Funds in Austria**

On 30 December 2010 a new law ("Budgetbegleitgesetz 2011" – in the following "BBG 2011"), was published in the Federal Law Gazette, which provides for significant changes in the taxation of capital gains derived from the sale of securities and from derivative instruments for individuals.

Under the current regime, for individuals capital gains from the sale of securities are taxable only under certain conditions, e.g. if securities are sold within one year after acquisition or if a participation, where at least 1 % of the corporation's share capital was held in the last five years before the sale, is sold.

According to the BBG 2011 capital gains from the sale of securities will be taxable for private investors irrespective of the holding period. The applicable tax rate on realised capital gains will be 25 %. If the securities are held on Austrian deposit, the 25 % tax will be withheld by the Austrian depository bank. In case the securities are held on foreign deposit the realised capital gains have to be included into the individual's personal income tax return. According to the BBG 2011, realised capital losses can only be claimed by way of assessment. Further, expenses in connection with income from investments, which is subject to the 25 % tax rate, shall generally not be deductible.

Due to the new capital gains taxation regime for individuals the taxation of investment funds was amended significantly, too. In the following an overview on the new investment fund taxation regime is provided. The comments on the investment fund taxation provided below refer to Austrian tax residents.

### **1. Taxation of capital gains realised within an investment fund**

From an Austrian tax point of view, investment funds are still considered transparent, implicating a direct allocation of income of the fund to its investors. Therefore, income from fund certificates will further on be taxed in accordance with the transparency principle at investor level. As regards to the taxation of income generated within investment funds the BBG 2011 provides for the following:

#### **1.1 Taxation of deemed distributed income**

As before, accumulated income generated within an investment fund is taxable as deemed distributed income (in the following "DDI") once a year. The taxable DDI is subject to 25 % tax. For private investors having the fund certificates on Austrian deposit the 25 % tax is deducted by the Austrian depository bank. In case the fund certificates are held on foreign deposit the taxable DDI has to be included into the individual's personal income tax return. This applies regardless if the fund certificates are held as private asset or business asset. If fund certificates are held by corporations, the taxable DDI is subject to 25 % corporate income tax.

The taxable DDI consists of

- the ordinary income (interest income, dividend income, other ordinary income) minus the fund's expenses and
- 60 % of the realised capital gains from the sale of securities and of the income from derivative instruments (as regards to the increase of the tax base to 60 % see point 7. Transitional periods).

If fund certificates are held as business asset, 100 % of realised capital gains from the sale of securities and of the income from derivative instruments are taxable.

## **1.2 Taxation of distributions**

Distributed ordinary income and 100 % of the distributed realised capital gains are subject to 25 % tax. If the securities are held on Austrian deposit, the 25 % tax is withheld by the Austrian depository bank. In case the securities are held on foreign deposit the distribution has to be included into the individual's personal income tax return. If fund certificates are held by corporations, the taxable distribution is subject to 25 % corporate income tax.

## **1.3 Extension of loss carry forwards utilisation**

Under the new regime, realised capital losses (after netting with realised capital gains) can now also be credited against the ordinary income (dividends, interest and other income minus expenses). If capital losses exceed the ordinary income, the exceeding amount can be carried forward at share class level.

In the following financial years, these carry forwards have to be offset in a first step against realised capital gains and in a second step against the ordinary income.

## **1.4 Equalisation**

Currently only equalisation on interest income and corresponding expenses but not on dividends is considered as taxable income in Austria. This unequal treatment could lead to implausible annual tax figures in case of large increases or decreases of outstanding shares especially for equity and mixed funds.

Under the new fund taxation regime also equalisation on dividend income will be part of the taxable income.

## **2. Sale of fund certificates**

In case individuals sell their fund certificates, the difference between the sales price and the purchase price less already taxed DDI is subject to 25 % tax irrespective of the holding period. If the fund certificates are held on Austrian deposit, the 25 % tax shall be withheld by the Austrian depository bank. It has to be considered that the sales (preliminary) charge must generally not be considered as incidental acquisition cost.

In order to avoid a double taxation of the realised capital gain the fund certificate's acquisition costs have to be increased by the annually taxed DDI.

## **3. Proof of taxable income**

The tax on distributions and on the DDI has to be calculated and reported to the Oesterreichische Kontrollbank (OeKB) by an Austrian tax representative. The Austrian tax representative will be liable for the reported figures. This leads to a reduction of risk for the fund administrator. According to the BBG 2011 Austrian chartered accountants or persons with comparable qualifications shall be authorized as tax representative only.

Currently the Austrian tax representative of a foreign fund files an electronic tax return with the Austrian Ministry of Finance on an annual basis. Now this filing should be made directly to OeKB by the Austrian tax representative. This OeKB reporting will be more detailed as the current OeKB brighter than white reporting procedure. The Ministry of Finance is expected to

publish an ordinance within the next weeks, which provides guidance on the required information, on the reporting format as well as on the reporting deadlines.

Investment funds, for which the annual DDI is not reported to the OeKB on an annual basis by an Austrian tax representative, are subject to a very unfavourable lump-sum taxation. The DDI must be estimated according to Sec. 184 of the Austrian Fiscal Code. According to this estimate (i.e. a lump-sum taxation) 90 % of the increase of the NAV, but at least 10 % of the NAV at year-end are subject to taxation (even in years of losses).

The BBG 2011 sets out that the Austrian depository bank is obliged to withhold Austrian 25 % tax on the DDI calculated according to the lump-sum method (according to the current tax regime the DDI calculated according to the lump-sum method has to be included into the individual's personal income tax return).

Investors still have the possibility to avoid the lump-sum taxation by calculating the taxable income by themselves (or by having it calculated by an Austrian tax advisor). In case the Austrian depository bank has already withheld Austrian 25 % withholding tax on the DDI calculated according to the lump-sum method, the Austrian depository bank is generally obliged to correct the withholding tax deduction based on the calculated figures provided by the investor.

#### **4. Abolition of daily KEST reporting for Austrian funds and brighter than white funds**

Currently, Austrian investment funds and brighter-than-white funds have to report the Austrian 25 % withholding tax on the accrued net interest income on a daily basis to the OeKB. The daily reported figures serve the following purpose:

- If individuals purchase fund certificates, the investor receives a 25 % tax credit on the net interest income accrued from the beginning of the fund's financial year (based on daily reporting). This tax credit shall compensate the tax deduction on the DDI for the entire fund's financial year in which the shares were purchased.
- If individuals sell fund certificates, the Austrian depository bank deducts 25 % withholding tax on the net interest income accrued from the beginning of the fund's financial year.

The BBG 2011 sets out that – for individuals selling fund certificates – the difference between the sales price and the purchase price less already taxed DDI shall be taxable. This means that daily reporting will no longer be necessary in the event of a sale. Therefore, the daily reporting shall be abolished on 1 October 2011. In the future, only the DDI figures (which shall remain taxable on an annual basis) and the distribution figures are to be reported to the OeKB.

The differentiation between “white” and “brighter than white” funds shall therefore be abolished and there will only be two categories of foreign investment funds (instead of currently three categories):

- Investment funds, which have a tax representative, who calculates the 25 % withholding tax on distributions and DDI and reports the tax figures to the OeKB and
- investment funds, which do not have a tax representative and which are therefore subject to the lump-sum taxation as outlined above under 3.

#### **5. Safeguard Tax**

According to the current regime, individuals have to include the DDI of non-reporting funds (i.e. foreign “white” and “black” investment funds) into their personal income tax return. In order to ensure that individuals actually assess the fund's income, non-reporting funds are subject to a safeguard tax to the amount of 1.5 % p.a. of the net asset value at year-end, if

the fund certificates are not disclosed to the tax office. The safeguard tax is deducted by the Austrian depository bank and is treated as a prepayment of income tax.

As according to the new investment fund taxation regime, the income from fund certificates is always subject to a withholding tax deducted by the depository bank (as far as the fund certificates are held on Austrian deposit), the safeguard tax will be abolished.

## **6. EU withholding tax**

Currently foreign investment funds which are in-scope according to the EU Savings Directive ("EUSD") have to report the EU-withholding tax on a daily, periodical and annual basis to the OeKB.

As mentioned above daily 25 % withholding tax reporting on accrued net interest income will no longer be necessary and is expected to become obsolete after 30 September 2011. According to the wording of the BBG 2011 the daily reporting of the EU withholding tax shall also be abolished on 1 October 2011. However, as EUSD interest income accrued from the beginning of the fund's financial year until the sales day is generally still taxable it is currently unclear, if the daily EU withholding tax reporting shall actually be omitted.

## **7. Transitional periods**

### **7.1 Taxation of the realised capital gains from the sale of fund certificates**

The taxation of the realised capital gains from the sale of fund certificates according to the new regime shall be applicable to fund certificates bought after 31 December 2010. The new taxation regime itself will come into force on 1 October 2011. The daily reporting of the 25 % withholding tax on the net interest income will be abolished on 1 October 2011.

### **7.2 Tax base increase to 60 %**

Under the current regime, 20 % of the realised capital gains from equities and derivatives linked to equities are taxable on an annual basis. According to the new law, starting 2011 the tax base of realised gains will continuously increase to 60 % depending on the financial year of the fund (also applies to fund certificates purchased before 1 January 2011):

- For funds financial years starting before 1 July 2011, all realised capital gains from equities and derivatives linked to equities will still be taxable at 20 %.
- For funds financial years starting after 30 June 2011, this rate will increase to 30 %.
- For fund financial years starting in 2012 all realised capital gains (from bonds, equities and derivatives) will be taxable at 40 %.
- For fund financial years starting in 2013 all realised capital gains will be taxable at 50 %.
- For fund financial years starting in 2014 all realised capital gains will be taxable at 60 %.

## **Disclaimer**

The above comments have to be read as a general overview on the taxation of investment funds in Austria according to the BBG 2011. The information provided cannot substitute an examination of the tax treatment in the individual case. This general overview is based on the laws, regulations, and published/communicated administrative and judicial interpretations in force as of 19 January 2011. The correctness of this tax information can be affected by subsequent changes in the law or changes in the application of the law. PwC assumes no obligation to update or modify this overview to reflect any developments that may impact the comments from and after the date of this overview.

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