



## Upcoming Mutual Fund Rulings 2018 (Draft)

The upcoming Mutual Fund Rulings 2018 (InvFR 2018) is available in the draft opinion. The deadline for the submission of comments from interest groups has already passed on March, 2<sup>nd</sup> 2018. The final rulings shall be published within the next months.

**General.** The InvFR 2018 reflect the current legal situation and present it from the point of view of the various Austrian investors. The current legal situation as well as previous legal situations are presented in several examples. This can give private investors as well as corporate investors an insight into the taxation of their mutual and real estate fund investment. Other chapters are relevant for management companies, tax representatives and tax advisers.

Currently, it has not been fixed when the InvFR 2018 will be published and come into force. It is also not clear whether there should be a transitional period in order to be able to respond to the cut-off dates of the various funds' business years.

**Structure.** The current draft of the Rulings include the following chapters:

1. Introduction
  2. Types of mutual funds and real estate funds
  3. Taxation of income from mutual funds and profits from sale of units in a mutual fund
  4. Taxation of income from real estate funds and profits from sale of units in a real estate fund
  5. Tax reporting to Austrian Kontrollbank (OeKB)
  6. Determination of the taxable amount based on the calculation module
  7. Special topics
- Appendix: mutual funds and EU-withholding tax (note: abolished since 1 January 2017)

**Open issues.** Several questions have occurred in the appraisal process. It remains to be seen whether there will be appropriate clarifications in the final InvFR 2018. The following issues shall be highlighted in particular:

- Statements regarding the differentiation of mutual funds/AIF and certificates are included in the InvFR 2018. However, in these comments do not lead to more legal certainty in the qualification of the financial instruments concerned.
- There is a lack of guidance on the calculation of the deemed distribution income (DDI) of funds of funds, as opposed to currently stated in the existing InvFR 2008. Particularly “de minimis” rules for the simplified calculation of the DDI of target funds would be appreciated.
- Shares in real estate companies, REITS and other investments in real estate held by funds of at least 50% shall qualify as real estate funds: simplification rules would be important for the calculation of the DDI resulting from those investments at the level of the fund. Simplification rules are currently only available for investment of less than 50% in the above-mentioned real estate securities.
- More detailed information on the cross-border tax qualification of mutual and real estate funds would be appreciated.

**Conclusion.** The final Rulings are expected to be published in the upcoming months. In particular, clarifications are expected for the calculation of DDI and distributions of reporting funds as well as for financial instruments whose tax qualification is not yet clear.

We keep you posted and inform you as soon as the final Rulings are published.