

Fund Tax Reporting News

German fund tax regime—Retroactive corrections of equity gain figures published under the investment fund tax regime applicable until 31 December 2017

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The German Ministry of Finance (BMF) recently issued an official communication regarding retroactive corrections to equity gain figures (Aktiengewinn) published under the investment fund tax regime applicable until 31 December 2017.

According to this communication, German institutional investors must ensure the equity gain figures used in their tax declarations have been correctly determined with respect to so-called “tying transactions” (Kopplungsgeschäfte).

In this context, tying transactions are arrangements intentionally put in place to leverage the asymmetric tax treatment of positive income on shares in the equity gain on the one hand, and losses on financial derivatives on the other. If both were not jointly considered in the equity gain calculation, the transaction can be considered as a tax planning scheme under the BMF communication.

The BMF communication follows a court decision in Germany, where the investment strategy as described in the fund’s prospectus included conceptual arrangements in the aforementioned sense. Nevertheless, the BMF’s communication states that, even if the fund’s prospectus did not explicitly mention this kind of arrangement, it would have been mandatory to consider such arrangements in the equity gain calculation if they had occurred.

German institutional investors should now notify and provide updated figures to the competent German tax office if they used equity gain figures determined under the old investment fund tax regime where the aforementioned arrangements were not correctly reflected in their tax declarations.

Under the current German investment fund tax regime, the transparent taxation regime rules that are optionally available for special investment funds (only) include a specific provision (sec. 39 para. 3 GITA) requiring organizations to identify and offset such transactions if they are part of a conceptual arrangement.

Please do not hesitate to contact us if you have any questions or need assistance.

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