

In this issue:

**Austria – Draft Ruling on Tax Reporting for Funds issued by Austrian Tax Authority**

## Operational Tax News. Austria Update

22 September 2014



### Deloitte Austria

**Robert Pejhovsky**  
Partner  
[rpejhovsky@deloitte.at](mailto:rpejhovsky@deloitte.at)  
+ 431 537 004 700

**Nora Engel-Kazemi**  
Partner  
[nengel@deloitte.at](mailto:nengel@deloitte.at)  
+ 431 537 005 420

### Deloitte Luxembourg

**Pascal Noël**  
Partner  
[pnoel@deloitte.lu](mailto:pnoel@deloitte.lu)  
+ 352 451 452 571

**Markus Jung**  
Director  
[mjung@deloitte.lu](mailto:mjung@deloitte.lu)  
+ 352 451 454 327

**Mathias Wasemann**  
Director  
[mwasemann@deloitte.lu](mailto:mwasemann@deloitte.lu)  
+ 352 451 454 177

Please contact **Christelle Piovano** [cpiovano@deloitte.lu](mailto:cpiovano@deloitte.lu) should you wish to be removed from this mailing list or if you would like to have any of your colleagues added to the mailing list.

[Link to previous Operational Tax News](#)

[Link to Operational Tax webpage](#)

### New tax reporting requirements for funds in the hands of foreign Non-European investors in Austria

#### Background

As of 1 January 2015, a withholding tax of 25% will apply on Austrian interest income paid by Austrian paying agents to individuals or corporations, resident in a Non-European country, who are not subject to the regulations of the European Savings Directive as applied in Austria.

The new withholding tax will be applicable on distributions of investments funds and/or capital proceeds realised by the disposal of funds units/shares if funds are invested in Austrian interest bearing instruments. Corresponding, new tax reporting requirements (daily, annual and ad-hoc in case of distributions) will also enter into force for funds, which are in scope of the new withholding tax regime.

The Austrian Ministry of Finance (AMF) and the Austrian Kontrollbank (OeKB) have agreed on a guidance for the registration process, which is expected to be published officially in the next tax-reporting ruling for funds in the near future.

#### Guidance on registration process

The following proceedings have been agreed between the BMF and the OeKB:

- A registration of funds with the OeKB is required to be included on a separate listing showing the relevant tax status (in scope / out of scope) under the new withholding tax regime;
- The public will have access to the listing on the website of the OeKB to identify funds that are in (J) or out of scope (N) of the new regime;
- An initial registration is required until 14 November 2014 to ensure that a fund is included in the listing as from 1 January 2015. Investment funds who miss that deadline need to file a request for being included in the listing of the OeKB at least one month before the fund intends to be listed after 1 January 2015.

In case of reporting funds the tax representatives will have to inform the OeKB about the in/out of scope status of a fund. In case of non-reporting funds, however, the management company of a fund will do so.

Please note, that the listing is a standalone and has nothing to do with the tax status of a fund under the ordinary Austrian investment fund tax-reporting regime.

**To allow a registration in time, funds are required to inform their tax representatives about their in/out of scope status until 31 October 2014.**

### **The in/out of scope status**

Whether a fund is in or out of scope of the new withholding tax regime depends on the investments it has taken as well its distribution policy which means that

- Distributing funds are out of the scope of the new withholding tax regime if they invest less than 15% of their assets in Austrian interest bearing instruments furthermore are
- Capitalisation funds will be out of scope of the new regime if less than 25% of their assets consist of Austrian interest bearing instruments.

In turn, it could be ruled that any equity fund and any investment fund with an investment in Austrian interest bearing instruments of less than 15% should be out of scope of the new withholding tax regime.

As it is the case under the European Saving Funds Regime, as applied in Austria, the asset test can be performed based on the investment restrictions of a fund or on its effective asset investments.

### **Consequences of being in or out of scope**

For funds being listed as “out of scope” a withholding tax of 25% will neither be applied on distributions or capital proceeds realised by the disposal/redemption of fund units/shares.

Funds that are “in scope” of the regime have to provide dedicated daily, annual or ad-hoc tax figures to avoid a withholding of the new tax on a lump-sum basis.

Any distributions of funds, which are not considered within the listing of the OeKB will be subject to the 25% withholding tax on a lump-sum basis. The same applies to capital proceeds generated by the disposal/redemption of fund units/share of such funds.

### **Impact for Luxembourg funds**

The new Austrian foreigner withholding tax regime does not distinguish between local, meaning Austrian funds and foreign funds. Thus, Luxembourg funds whose units/share are distributed in Austria might be in scope of the new regime by assumption if they do not declare their in/out of scope status.

For funds who have invested more than 25% of their assets in Austrian interest bearing instruments the decision needs to be taken whether relevant tax figures should be made available or not.

### **Further developments**

The new foreigner withholding tax regime seems to be subject to controversial discussions in Austria so that further changes of the regime should not be excluded. It can further not be ruled out that the new regime is seen as being in breach with the European principle of Free Movement of Capital.

We will keep you updated in case of any new developments.

If you have any queries regarding the above, please do not hesitate to contact us.

[Home](#) | [Security](#) | [Legal](#) | [Privacy](#)

Deloitte General Services  
560, rue de Neudorf  
L-2220 Luxembourg

© 2014 Deloitte General Services

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/luxembourg/about](http://www.deloitte.com/luxembourg/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

 **Deloitte RSS feeds**  
**[Subscribe](#) / [Unsubscribe](#)**

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and are hereby notified that any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited. Recipients should be aware that replies to e-mail messages may go through the servers of the Luxembourg member firm of Deloitte Touche Tohmatsu Limited and its affiliates and may be subject to monitoring and inspection in accordance with the firm's internal policies.