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German Investment Tax Act – Delayed publication of tax bases and allocation of business expenses

Operational Tax News Germany Update



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German Investment Tax Act - Delayed publication of tax bases and allocation of non-direct expenses - Clarifications have been issued by the German Ministry of Finance

Delayed publication of tax bases

On 17 December 2013, the German Federal Ministry of Finance ("BMF") issued a letter regarding the consequences of a delayed publication of tax bases in the electronic version of the Federal Gazette. In general, according to the provisions of the German Investment Tax Act ("GITA"), the collective investment scheme publishes its tax bases within four months of the closing of the business year (divergent rules in case of distributions). This period may not be extended and, if exceeded, the regulations of the unfavorable lump-sum taxation will apply.

However the letter now being published by the BMF states that exceeding the deadline by a maximum of ten days may be accepted by ways of an administrative decision taken either by the competent local or the Federal Tax Office. Following this it is to be expected that publications not meeting this 10 day deadline may only be accepted in very exceptional cases where certain requirements as set out in the German General Tax Act ("*Abgabenordnung*") can be met.

The new guidelines published in this letter shall apply to all open cases as from its announcement in the Federal Tax Gazette and replaces the now outdated BMF circular, dated 4 December 2007.

Allocation of non-direct expenses

Following a request of several fund associations, the BMF proposed for transitional rules regarding the new allocation of non-direct expenses in section 3 para. 3 GITA, which in general shall apply as from business years commencing after 31 December 2013. Due to the time consuming implementation, the German Financial Administration may grant a transitional period of 3 months, meaning that collective investment schemes could be entitled to apply those new regulations for business years beginning after the 31 March 2014.

We will keep you updated in case of any further developments in this area.

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

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