

Operational Tax News

Update new German InvTA 2018

29 December 2017

On 21 December the German Ministry of Finance (BMF) has issued a short circular that again deals with some questions regarding the partial exemptions and the new asset ratio, and gives further information in respect to the last interim profit as per 31 December 2017. We have summarized the points that we think are most relevant for you:

1. Determination of equity asset ratio (sec 2 paras 6 and 7 InvTA 2018)

- **Equity Asset Ratio for Fund of Funds,**

For a period from 1 January until 31 December 2018, German authorities will not complain if a fund of fund will fall below the equity asset ratio as displayed within the investment restrictions.

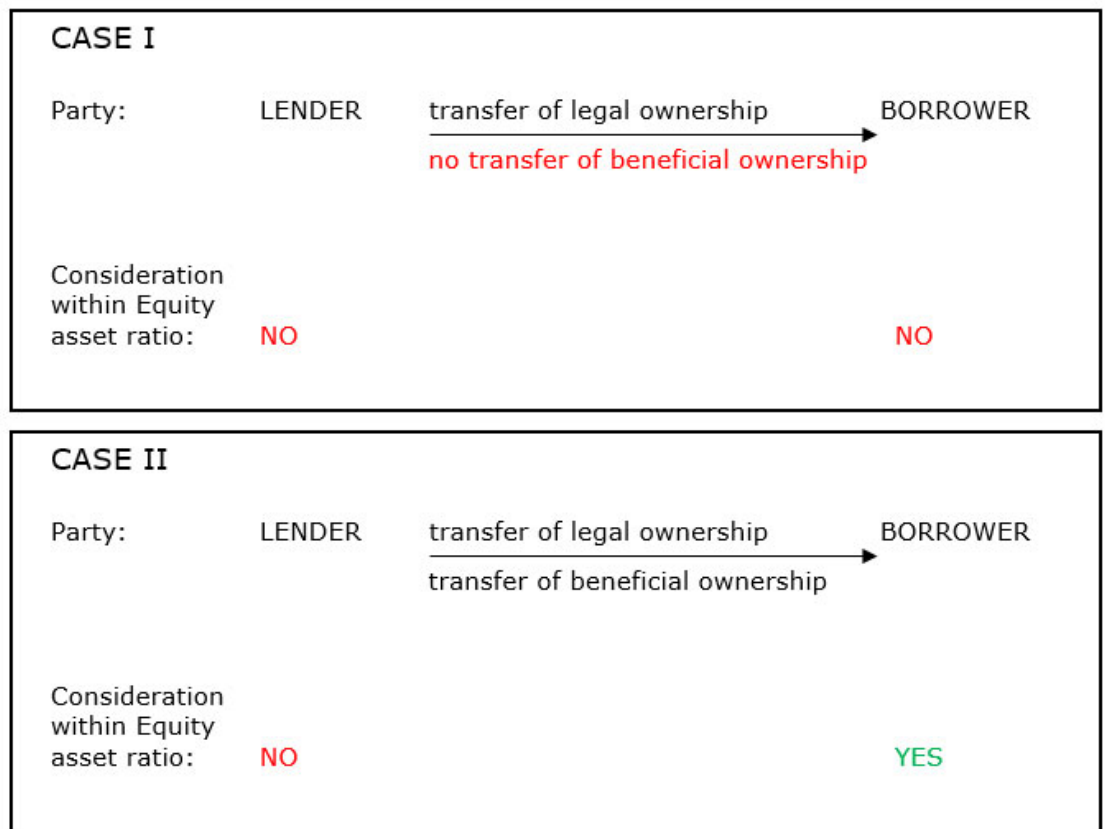
➤ *this gives more flexibility for the fund of fund to establish its own equity ratio in a proper way for the first year.*

- **Classifications of equity participations in securities lending for the equity asset ratio**

For the determination of the equity asset ratio, only the equity participations for which the investment fund remains the legal owner as well the beneficial owner can be considered. If an investment fund as a **lender** transfers the legal ownership via securities lending transactions, the equity participations concerned are generally not to be considered within the equity asset ratio, even if a retransfer-clause exists for such transactions.

An investment fund as the **borrower** of the securities is only allowed to consider the securities within its equity asset ratio, if, besides the legal ownership, also the economic ownership is transferred. According to the circular for this assessment, a case-by-case analysis is necessary and no general statement can be made.

Overview:



- *During a securities lending transaction, the legal ownership will be transferred from the lender to the borrower, and with this constellation, the lender could not consider the lent equity participations within his equity asset ratio calculation (Case I and II).*
- *With regard to the borrower, it needs to be analyzed whether the beneficial ownership has been transferred as well. The transfer of the beneficial ownership to the borrower could be confirmed if the borrower receives the income from the equity participation and is not obliged to give back exactly the same securities but only the same type, quantity, and quality. In such a constellation, at minimum the borrower could consider the equity participations he has borrowed within his equity asset ratio calculation (Case II).*
- *If the beneficial ownership has not been transferred from the lender to the borrower, this leads to the uncomfortable constellation that neither the lender nor the borrower could use the equity participations in securities lending within their equity asset ratio calculation (Case I).*

2. Interim profit as per 31 December 2017 (sec 56 para 4 sent. 1 InvTA 2018)

- Contrary to the circular issued 8 November 2017 by the German Ministry of Finance, in which (as well as to the draft version of August 2017) it has been stated that the interim profit as per 31 December 2017 would be zero, the new circular letter states that it is possible to have a residual interim profit as per 31 December 2017 consisting of the unrealized portion from so-called "DDI Bonds."

We will keep you posted in case of further clarifications.

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