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Finnish Administrative Court decision on German non-UCITS fund holding investments in real estate in Finland

Operational Tax News.

German non-UCITS fund exempt from Finnish tax on real estate income

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Facts

A German fund, established as an open-ended, non-UCITS fund (Spezial-Sondervermögen) held investments in real estate companies in Europe, including Finland.

Finnish income tax was assessed on the rental income obtained by the fund.

As the fund did not pay income tax in Germany, the Finnish tax could not be credited in Germany.

The fund appealed the tax assessment to the Finnish Administrative Court ("the Court").

The Court held that the Spezial-Sondervermögen is comparable to a Finnish real estate investment fund as defined in Finnish law, with the result that the German investment fund is entitled to receive all Finnish-source income exempt from Finnish income tax.

Impact for Luxembourg

This Court decision enables comparable fund structures to repatriate income arising from real estate in Finland without paying Finnish income tax. All types of income, including rental income, dividends and capital gains arising from real estate on real estate companies, can be received tax-exempt. The decision also opens up refund opportunities for all Luxembourg contractual, open-ended non-UCITS funds for their investments in Finland. These would include, for example, dividends from portfolio investments in listed Finnish shares.

The reclaim period is five years after the tax assessment year or the year the tax was withheld.

For more details, please refer to the [alert](#) from Deloitte Finland.

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