Austrian Asset and Wealth Management News Tax and Regulatory Reporting

pwc

Issue 13, April 2016

Editorial

Dear Clients,

The Austrian Ministry of Finance published a Fund Reporting Ordinance 2015 (FMV 2015), which will enter into force on 6 June 2016 and provides specifications for the reporting and the publication of the taxable income of domestic and foreign investment funds. The current regime generally prescribes for the publication of up to nine different figures to be reported for foreign investment funds while a much more comprehensive publication for domestic investment funds is possible. Under the new reporting regime the same level of detail for both domestic and foreign funds can be reported.

The aim of this newsletter is to provide you with an overview on the FMV 2015 and to present in detail the upcoming changes which are important for you.

Show WWW.
Thomas Steinbauer

The Fund Reporting Ordinance 2015

Background

From an Austrian tax perspective, investment funds are considered transparent, implicating a direct allocation of the fund's income to its investors. Austrian investors are therefore subject to annual taxation regardless as to whether the income of the fund is distributed or accumulated. The fund's income is taxable when it is distributed to the investors. Those portions of income which are not distributed by the fund are taxable as deemed distributed income ("DDI") once a year. Accumulated income, referred to as DDI, is therefore taxable once a year. The fund's taxable income generally consists of interest income and dividend income less expenses as well as realised capital gains/losses.

Austrian tax law distinguishes between black funds and reporting funds:

- Reporting funds: Investment funds which have a tax representative who calculates the withholding tax on distributions and DDI and reports the tax figures to the Oesterreichische Kontrollbank ("OeKB") and
- **Black funds:** Investment funds which do not have a tax representative and which are therefore subject to lump-sum taxation.

An Austrian tax representative has to report the DDI on an annual basis within seven months after the fund's financial year end to the OeKB. Further on, the taxable parts of distributions can be reported to the OeKB until one day before the pay date at the latest. The withholding tax on the DDI and on distributions is directly withheld by the Austrian depository bank (based on the reported figures) as soon as it is reported to the OeKB.

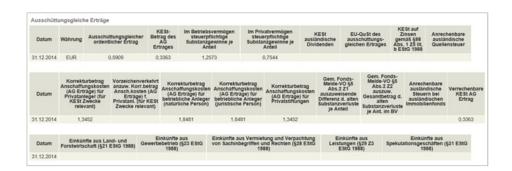
In this issue

- The Fund Reporting Ordinance 2015
- Changes in the settlement procedure for the deregistration and reactivation of share classes with the OeKB

Publication of the tax figures under the Fund Reporting Ordinance 2012

The current regime generally provides for the publication of up to nine different figures to be reported for foreign funds while for domestic funds much more comprehensive reporting is possible.

Example of the publication of tax figures for foreign funds under the current regime



Example of the publication of tax figures for domestic funds under the current regime

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Scope of the Fund Reporting Ordinance 2015 and corresponding Austrian law

The Fund Reporting Ordinance 2015 will be applicable to all Austrian and foreign investment vehicles, which qualify as investment funds for Austrian tax purposes according to sections 186 and 188 Investment Funds Act as well as sections 40 and 42 Real Estate Investment Funds Act. The Fund Reporting Ordinance 2015 is therefore applicable to:

- Austrian and foreign UCITS funds
- Austrian and foreign Alternative Investment Funds within the meaning of the Alternative Investment Fund Managers Directive (exemptions apply to specific corporate AIFs in real estate)
- other foreign investment vehicles which invest according to the principles of risk spreading and which are not subject to a corporate income tax comparable to the Austrian corporate income tax

Harmonisation of the calculation and publication of Austrian tax figures

The Austrian Ministry of Finance intends to use the Fund Reporting Ordinance 2015 harmonise the calculation and publication process of Austrian tax figures for both domestic and foreign funds.

In the past Austrian tax representatives calculated and reported the taxable income of investment funds whereas under the FMV 2015 only the different income components of domestic and foreign investment fund will be reported to the OeKB. The OeKB will process the different income components and will calculate the taxable income in accordance with the legal requirements issued by the Austrian Ministry of Finance.

In the course of the publication of Austrian tax figures foreign asset managers will have the opportunity under the FMV 2015 to report as detailed tax information for foreign funds as Austrian Investment Management Companies are able to report for domestic funds under the current regime. This new level of detail in the course of the publica-

tion of tax information for foreign investment funds will not be mandatory, however it is expected that fully detailed reporting will be industry standard.

This step will allow foreign asset managers to profit from full transparency. Full transparency allows Austrian investors to tax the fund's income more efficiently (e.g. dividend income and corresponding WHT on country level, tax free dividend income for corporations/private foundations).

Due to the limited level of detail in the course of the publication of tax information for foreign funds under the current reporting regime it is not possible for corporations or private foundations to utilise all tax benefits provided by law (e.g. tax free portions of dividend income).

By harmonising the extent of such publication, the Austrian Ministry of Finance eliminates a slight market disadvantage which foreign funds had in the past.

The detailed tax information for domestic and foreign investment funds will be published on the website of the OeKB and will be comparable

to the publication of tax figures for domestic funds under the current regime.

In particular it will be possible to report a breakdown of dividend and interest income on country level and to report details in connection with foreign withholding tax.

Entry into force of the harmonised reporting regime

The new Fund Reporting Ordinance 2015 enters into force, after a postponement of two months, on 6 June 2016. This postponement comes through the response of the Austrian Ministry of Finance to the request of the Austrian Asset Management Industry (Austrian and foreign fund association, Austrian banks and Austrian tax representatives) to have more time for the implementation of the new regime. The new fund reporting regime will be applicable for reportings carried out by Austrian tax representatives to the OeKB from 6 June 2016 onwards, irrespective of the reported financial year end of the fund.

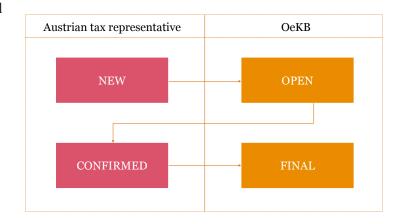
Reporting process

From 6 June 2016 onwards, the reporting process will change to an interactive reporting and confirmation process between the OeKB and the Austrian tax representatives. Under the new regime reporting is carried out in several steps.

The taxable income components will be tagged with the status 'NEW' by the Austrian tax representative and sent to the OeKB, where they will be processed. Provided that the format of the reported income components to the OeKB is formally correct, the OeKB responds to the filing with the status 'OPEN'. By tagging the calcu-

lated figures with 'CONFIRMED' the Austrian tax representative verifies the figures as final and the OeKB confirms back that the tax reporting was carried out successfully by sending a "FINAL" confirmation. The tax figures will then be published on the website of the OeKB.

Reporting process with OEKB



Correction/Update of the reported figures

Under the current reporting regime, tax figures which have already been reported to the OeKB can only be corrected until the final reporting deadline, i.e. seven months after the fund's financial year end. If a correction of the tax figures is carried out after the reporting deadline, the depository bank only carries out a corresponding correction of the initial Austrian WHT deduction upon investor request.

The new regime provides for the possibility to carry out a correction of the initially reported figures until 15 December of the calendar year in which the initial reporting was carried out. Up to this point in time depository banks are obligated to correct the initial Austrian WHT deduction. Corrections/updates after 15 December will not be automatically processed by the bank, but will only be carried out upon investor's request.

Reporting deadlines

The reporting deadlines remain unchanged. The currently applicable deadlines outlined below will therefore also apply as from 6 June 2016 onwards:

- Annual reporting seven months after the financial year end of the fund
- Distribution reporting one day before the pay date

Distribution reporting under the new Austrian reporting regime

The new Fund Reporting Ordinance 2015 which enters into force on 6 June 2016 is also applicable to distribution reportings. As in the past, the tax reporting for distributions is not mandatory. Nevertheless, if no reporting is done to the OeKB up to one day before the pay date at the latest, Austrian depository banks deduct 27.5% WHT on the whole distribution amount. If distribution reporting is available, only the taxable portions of the distribution will be subject to taxation at investor level.

As for annual tax reporting, the new reporting regime also provides for the distribution reporting the possibility to report a breakdown of dividend income on country level and to report details in connection with foreign withholding tax. Once again, this detailed breakdown is not mandatory.

Various options for the distribution reporting can be considered based on the currently available information. The optimal treatment depends on the investor type as well as on the portfolio of the relevant investment funds. With this in mind, we are ready to offer the preparation of tailor made distribution reporting together with you based on the structure of your funds and your Austrian investors. Generally, the following three alternatives in respect of the distribution reporting are available:

Your tailored distribution reporting

Detail of distribution reporting		
No distribution reporting	High level distribution reporting without country split	Detailed distribution reporting with country split
Alternative should be considered if		
The fund has institutional investors only	The fund invests in bonds and comparable investments only or if the fund has individual investors only	The fund is an equity or mixed fund and not only institutional investors holding fund units
Impact on Austrian investors		
+ Country split can be published at year end on OeKB website	+ Reduced risk of negative WHT at year-end- Correct WHT deduction on the distribution	+ Reduced risk of negative WHT at year end Correct WHT deduction on the distribution Country split is available for distributions and at year end on OeKB website
 Total distribution is subject to 27.5% WHT for individual investors Possibility of negative WHT at year end -> necessity to prepare tax return* 	 No country split can be published at year end on OeKB website (country split can be provided to investors upon request) 	,
Costs and complexity		
No additional costs and complexity as no distribution reporting is done	Costs will depend on the exact structure – standard costs approx. EUR 300 per distribution reporting	Costs will depend on the exact structure – standard costs will be the same as for the annual DDI reporting
	Reporting has to be done one day before pay date; raw data has to be available three working days before pay date at the latest	Reporting has to be done one day before pay date. Raw data, including details on dividends and WHT, has to be available three working days before pay date at the latest

^{*} The WHT on the DDI will be accordingly lower, as the too high taxable distribution amount can be deducted in the course of the calculation of the annual DDI figures. In case the WHT on the generated annual income is lower than the too high WHT on the distribution, this will lead to a negative WHT in the course of the calculation of the annual DDI figures.

Tax reporting for funds with financial year end 31 December 2015

Austrian tax figures for funds with financial year end 31 December 2015 will be reported under the current reporting regime. As reporting under the current regime is the most secure opportunity and market practice we will file the Austrian tax figures for the financial year end 31 December 2015 for all our clients by the end of May 2016 at the very latest.

EUSD reporting

The new regime does not provide for changes to EUSD reporting. Austria will continue to apply the EU withholding tax deduction system until the end of 2016. For reporting funds this means that the currently applicable daily, periodical and annual reporting of EUSD figures will stay in place unchanged at least until 31 December 2016.

Update of the core data

The OeKB requires a minor update of existing core data for all share classes currently registered as reporting funds, with this update being due between 15 April and 13 May 2016.

The update relates to whether an already registered share class is

- an investment fund according to the Austrian Investment Fund Act
- a real estate fund according to the Real Estate Investment Fund Act
- an AIF or
- an AIF in real estate.

Furthermore the current status of the share class (active, merged, dormant, etc) in the OeKB database has to be checked/confirmed.

PwC as your Austrian tax representative will assist you in connection with completion of the core data update and can complete the core data update for you.



Overview on changes between FMV 2012 and FMV 2015

The following table provides an overview on the changes between the old reporting regime under FMV 2012 and the new reporting regime under FMV 2015.

	FMV 2012	FMV 2015
Delivery of tax data to the OeKB	The Austrian tax representative calculates the Austrian WHT and the correction amount of the acquisition costs on distributions and the on the accumulated income (deemed to be distributed once a year) and reports these Austrian tax figures to the OeKB.	The Austrian tax representative reports the "raw data" on different income portions of distributions and DDI to the OeKB. The calculation of the tax base (income tax treatment) is done by the OeKB according to specifications issued by the Austrian Ministry of Finance.
Publication of the Austrian tax figures by the OeKB	The OeKB publishes the taxable funds' income, the KESt and the correction amounts of the acquisition costs for domestic and foreign funds. Additionally for domestic funds, a detailed tax page on the funds' income is attached to the audited annual report.	The OeKB publishes the income tax treatment of domestic and foreign funds, which contains the Austrian tax figures that are relevant for the KESt deduction and detailed information on the funds' income (inter alia dividend and interest income on a country basis).
When the income of a fund is deemed to be distributed	The DDI is generally deemed to be distributed four months after a fund's financial year end. In practice the deposit bank deducts the KESt on the DDI at the point in time of the annual reporting of the DDI by the Austrian tax representative. For the deduction of the KESt, the number of shares at the time of the annual reporting is relevant as opposed to the number of shares four months after the fund's financial year end.	The DDI is deemed to be distributed at the time of the publication of the income tax treatment on the OeKB website. If the DDI is not published within seven months after a fund's financial year end, the fund loses its reporting fund status and lump sum taxation applies.
Deadline for the distribution reporting	The distribution reporting has to be carried out by one day before payment date at the latest.	The distribution reporting has to be carried out by one day before payment date at the latest.
Deadline for the annual reporting of the DDI	For foreign funds the annual reporting of the DDI has to be carried out within seven months after the financial year end.	For foreign funds the annual reporting of the DDI has to be carried out within seven months after the financial year end.

	FMV 2012	FMV 2015
Corrections of distribution reporting	A correction of distribution reporting can be considered within the annual reporting of the DDI only.	A correction of distribution reporting can be considered within the annual reporting of the DDI only.
Corrections of annual reporting of the DDI	If a correction of annual reporting of the DDI is performed within the regular reporting deadline, the depository bank is obligated to process this correction. If a correction of annual reporting of the DDI is performed after the regular reporting deadline, this correction is published as a self-certification and the investor has to liaise with the depository bank directly.	If annual reporting is corrected by 15 December of the calendar year in which the annual reporting was performed, the deposit bank is obligated to process this correction. If a correction of annual reporting is performed after 15 December, this correction will be published as a self-certification and the investor has to liaise with the depository bank directly.
Self-certification	Corrections of annual reportings as well as initial annual reportings after the regular reporting deadline are published as self-certifications.	Corrections of annual or distribution reportings after 15 December of the calendar year in which the annual or distribution reportings were performed and reportings after the regular reporting deadline are published as self-certifications.
Inception expiration	The FMV 2012 will expire on 5 June 2016 and is applicable for annual and distribution reportings until 3 June 2016 – irrespective of a fund's financial year's end.	The FMV 2015 will come into force on 6 June 2016 and is applicable for annual as well as distribution reportings from that date on.



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Changes in the settlement procedure for the deregistration and reactivation of share classes with the OeKB

1. Deregistration of share classes with the OeKB

The Austrian Ministry of Finance has recently declared that deregistration of share classes prior to the end of the legal reporting deadline (seven months after financial year-end) is no longer possible.

By filing a 'declaration of intent', the investment management company or the Austrian tax representative irrevocably declares that Austrian annual tax figures will be reported for the fund and therefore inve-

stors will be taxed based on the tax figures reported to the OeKB and not according to lump sum taxation by the depository bank at the end of the year.

Latest discussions with the OeKB have also revealed that the deregistration of share classes is no longer possible. However, a share class can be removed from the OeKB's "list of reporting funds" by not complying with the DDI reporting obligations

(i.e. a share class will lose the reporting fund status if no DDI figures are reported to the OeKB within seven months after the fund's financial year-end).

In course of the annual DDI calculation we will contact you in order to clarify whether the reporting fund status for specific share classes is not required anymore.

Status of a share class with the OeKB – Current fund reporting regime

In the past, registered share classes with the OeKB had one of the following statuses with the OeKB:

Active

The deemed distributed income (DDI) has to be calculated and reported to the OeKB on an annual basis; there is no lump sum taxation as at 31 December.

Dormant

The annual DDI does not have to be calculated and reported to the OeKB; there is no lump sum taxation as at 31 December. A reactivation of the share class was possible at any time.

Closed or Merged

In the case of closed or merged share classes, the last DDI reporting is carried out as at closure/merger date of the respective share class. A reactivation of the share class was possible at any time.

Status of a share class with the OeKB – NEW Fund Reporting Regime

The new fund reporting regime, which comes into force on 6 June 2016, only provides for two statuses of share classes:

Active

The deemed distributed income (DDI) has to be calculated and reported by the Austrian tax representative to the OeKB on an annual basis; there is no lump sum taxation as at 31 December.

Closed

This status includes all share classes which were liquidated/closed or merged or were set as dormant.

Important: If the OeKB is notified that a share class is dormant, the respective share class will be set as "closed".

OeKB – New process for the reactivation of closed share classes

Going forward, the procedure as described below applies for the reactivation of share classes with the OeKB:

If a share class is set as "closed" in the OeKB's database, this share class remains on the "list of reporting funds" for another seven months from the closure date. If the DDI reporting is carried out within this seven months, the respective share class remains on the "list of reporting funds" for another year.

Example:

Financial year-end: 31.12.2015 Closure date of a share class: 15.10.2015 Reporting deadline for closed share class: 15.05.2016

- If the annual DDI reporting for the started financial year ending on 15.10.2015 is carried out within seven months from the closure date of the share class (until 15.05.2016), the respective share class remains on the "list of reporting funds" for another year (until 15.05.2017).
- If the annual DDI reporting is not carried out within seven months from the closure date of the share class, the share class will only be listed on the "list of reporting funds" until 15.05.2016.
- ▶ As long as the share class is listed on the "list of reporting funds" a new registration of the share class as an active reporting share class is possible at any time.
- ▶ If the share class is no longer on the "list of reporting funds", a reactivation / new registration of the share class as "reporting funds" is only possible with the fund's next annual tax reporting.



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Who we are and how our Asset and Wealth Management team can assist you

We are the Austrian market leader with regards to the tax representation of foreign funds in Austria. Thus, our clients are benefiting from our extensive experience with the calculation of the annual DDI and distribution figures as well as the reporting process itself.

This includes also support with the implementation, analysis and testing of technical tax and regulatory reporting requirements for funds and fund management companies.

We use high-end technical infrastructure for data processing and have a dedicated team of eight senior staff and about sixteen junior level staff to support you with your business challenges.

Our Asset and Wealth Management Team

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Copyright and Publisher: PwC Österreich GmbH Wirtschaftsprüfungsgesellschaft, Erdbergstraße 200, 1030 Vienna, Austria Editor: Thomas Steinbauer, thomas.steinbauer@at.pwc.com

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