Austrian Asset Management News
Tax and Regulatory Reporting

Issue 9, March 2015

Editorial

Dear Clients,

This week, the Austrian Ministry of Finance released a draft ordinance for industry review regulating the new reporting process.

This draft envisages that the new process should be applicable for all reporting to be done as from 1 January 2016 onwards. As we have already informed you, the granularity of information to be reported will increase significantly. Further, the draft filing process foresees a double confirmation to be provided by OeKB to the tax representative once the initial filing has been done.

Surprisingly, the current seven month deadline is to be shortened to four months. Implementing this new confirmation process within such a short timeframe will be a major challenge for all parties involved, therefore we still expect future amendments to be made.

We have been invited to provide our comments on the draft ordinance by 15 April 2015. We expect that the final ordinance will be released before summer. We will keep you updated on any developments.

All the best,

Steinbauer

Thomas Steinbauer

Tax reporting for Alternative Investment Funds (AIF)

Additional codes to be reported to OeKB by the Austrian tax representative from 2015 onwards

Introduction

This article sets out to inform you about new tax reporting requirements (i.e. tax figures to be reported to OeKB) for AIFs. Please note that no immediate action is required on your part, as the calculation and reporting of these figures is taken care of by your tax representative in Austria.

Recap: The qualification as investment fund for tax purposes under AIFMG

Besides various regulatory obligations for AIFMs and AIFs, the transposition of the AIFMD into Austrian law (AIFMG) also resulted in amendments being made to the sections in the Investment Fund Act (InvFG) and the Real Estate Investment Fund Act (ImmoInvFG) regulating the qualification of Austrian and foreign investment undertakings as investment funds for tax purposes.

In this issue

Under the old rules, investment funds for tax purposes were deemed to be:

- Portfolios of assets established in accordance with the provisions of the InvFG or of the ImmoInvFG, jointly owned by the unit holders and managed by an Austrian investment management company;
- Foreign investment undertakings investing directly or indirectly based on risk spreading (six or more investments), regardless of legal form. However, even if the criterion of risk spreading were to be fulfilled, a foreign investment undertaking would not qualify as a foreign investment fund if the influence on the entrepreneurial activities of the underlying company went beyond a “purely capital safeguard character”. A capital participation of at least 25% in the underlying companies was a strong argument against a “purely capital safeguard character”, and therefore also against the qualification as a foreign investment fund.

Under the new rules (for fund’s financial year-ends after 21 July 2013), the following are to be qualified as an investment fund for tax purposes:

- Portfolios of assets established in accordance with the provisions of the InvFG or of the ImmoInvFG, jointly owned by the unit holders and managed by an Austrian investment management company;
- Foreign investment undertakings qualified as an Undertaking for Collective Investment in Transferable Securities (“UCITS”) within the meaning of Directive 85/611/EEC;
- Austrian and foreign AIFs within the meaning of the AIFMG except for Austrian “AIFs in real estate” having the legal form of an Austrian corporation and for foreign “AIFs in real estate” which are comparable to an Austrian corporation;
- Other foreign investment undertakings investing directly or indirectly based on risk spreading and which are not subject to a tax comparable to Austrian corporate income tax.

As a result of these rules for the definition of an investment fund, investment vehicles which were not considered investment funds before 21 July 2013 could now fall under the fund taxation rules in Austria (e.g. commodity certificates, etc.).

Additional reporting requirements for the Austrian tax representative from 2015 onwards

An AIF can have different kinds of income (e.g. income from commercial operations), which are currently not covered by the common taxation of the deemed distributed income of a fund (i.e. dividend income, interest income, capital gains from security transactions). Therefore, the Austrian tax authorities introduced additional tax reporting codes, to be reported by the tax representative of AIFs. Moreover, for individual investors the Austrian withholding tax on these taxable income portions is not deducted by the depository bank automatically (in contrast to the annual DDI), but rather must be assessed in the investor’s personal income tax return (no final taxation).

The additional reported codes comprise the following:

- Income from agriculture and forestry pursuant to Art. 21 Austrian Income Tax Act (Code: ELUF)
- Income from commercial operations pursuant to Art. 23 Austrian Income Tax Act (Code: EGB)
- Income from renting and leasing pursuant to Art. 28 Austrian Income Tax Act (Code: EVV)
- Other income pursuant to Art. 29 (3) Austrian Income Tax Act (Code: SEL)
- Speculative income pursuant to Art. 31 Austrian Income Tax Act (Code: SPK)

If you have any questions regarding the additional tax reporting requirements for AIFs or if you intend to introduce a new AIF to the Austrian market and would like to discuss our tax reporting services in detail, please feel free to contact any of the members of our team.

We will keep you informed about any further developments.

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In a nutshell: *Tax advantages and selling proposition of having a fund registered as a reporting fund in Austria*

In connection with the distribution of fund units, management companies or distributors may be faced with the issue of whether they have a fund registered as a reporting fund in Austria or not. The following article outlines the most important advantages for private investors from a tax perspective and for management companies seeking to gain selling proposition for their fund units.

Tax advantages for Austrian private investors

Two categories of investment funds

Austrian tax law distinguishes between black funds and reporting funds.

Black funds

Foreign investment funds that do not have Austrian tax transparency status and are not tax represented.

Reporting funds

Funds which are registered with the OeKB (Oesterreichische Kontrollbank) and which have appointed an Austrian tax representative who calculates the tax figures on the deemed distributed income (DDI) and on distributions and reports these figures to the OeKB (www.profitweb.at).

The applicable tax rate for private investors on income from investment funds is generally 25%. The tax is directly withheld by the Austrian depository bank based on the figures reported by the Austrian tax representative for reporting funds or according to a lump-sum calculation for black funds.

Those deductions lead to final taxation for Austrian private investors. The final taxation effect for private investors holding fund units on an Austrian bank deposit means that private investors do not have additional efforts and costs when assessing their income by filing a personal income tax return. If the fund units are held on a non-Austrian deposit, investors have to include the income from investment funds in their personal income tax return.

Investors in black funds are able to get a refund of the Austrian withholding tax deducted by the Austrian depository bank (based on a detailed calculation of the tax figures that has to be provided by an Austrian certified tax adviser) or can in some cases reclaim it by assessing the income from investment funds in their personal income tax return.

In any case, this would certainly mean further time, effort and expenses for the investors. Besides this, it is generally not common for private investors to file a personal income tax return, especially in the case of employed persons only having small amounts of capital investments.

Taxation of distributions

Black funds

Lump-sum tax deduction:

The tax base for the 25% tax is the total distributed amount.

Reporting funds

Taxation based on reported distribution figures:

The tax base only consists of the taxable parts of a distribution (distributed net investment income and distributed realised capital gains).

The Austrian tax representative can consider the repayment of assets to investors, can deduct losses carried forward and can net realised capital losses against distributed ordinary income.

Annual taxation of deemed distributed income (DDI)

Black funds

Lump-sum tax deduction:

The tax base for the 25% tax deduction on 31 December each year is calculated as follows:

90% of the increase of the NAV over the calendar year, but at least 10% of the NAV at calendar year-end is subject to taxation (even in years in which losses are incurred).

Reporting funds

Taxation based on reported DDI figures:

The tax base only consists of the taxable parts of the accumulated income (net investment income and 60% of realised capital gains).

Furthermore, the Austrian tax representative can deduct losses carried forward and can net realised capital losses against ordinary income.

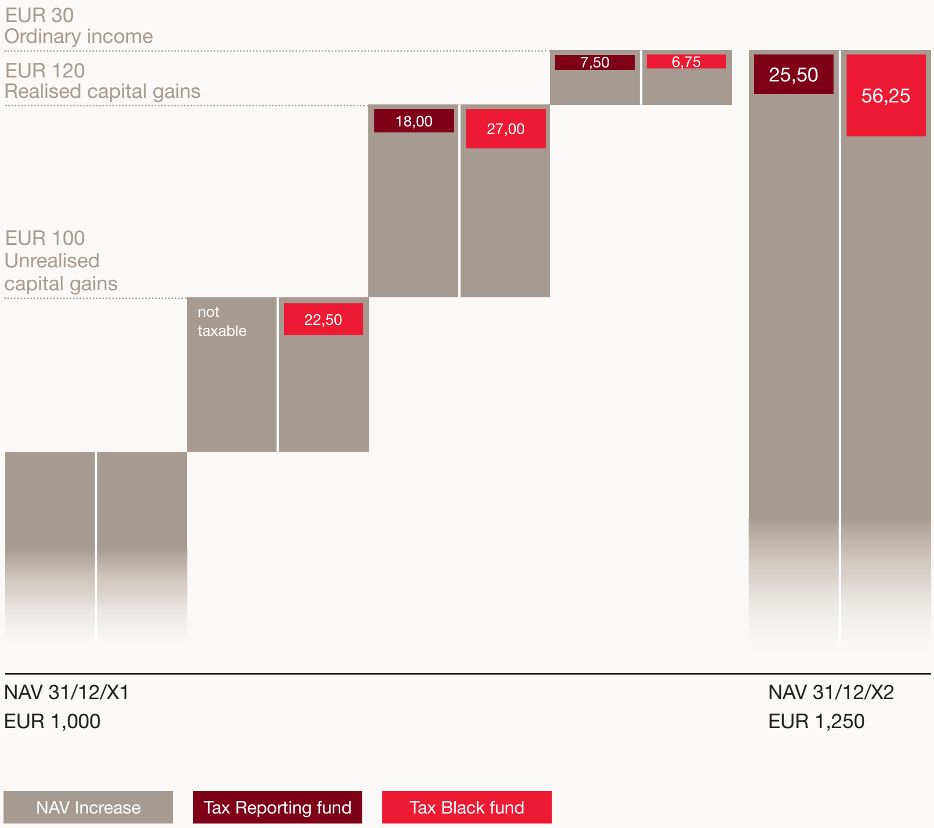
Unrealised capital gains and losses are not taxable.

Example: Comparison of taxation of an accumulating fund

NAV 31/12/X1: EUR 1,000
Ordinary income: EUR 30
Realised capital gains: EUR 120
Unrealised capital gains: EUR 100
NAV 31/12/X2: EUR 1,250

Austrian reporting fund:
- Ordinary income 30 x 25% = 7.50
- Realised capital gains 60% of 120 x 25% = 18
- TOTAL TAX: EUR 25.50

Black fund:
- 10% of end NAV = 125
- 90% of NAV increase = 225
- TOTAL TAX: 225 x 25% = EUR 56.25



The comparison should directly contrast the significant differences in the taxation of black funds and reporting funds for Austrian private investors. Whilst the whole NAV increase of black funds as shown in the example is taxable based on the applicable lump-sum method, investing in a reporting fund means that private investors have the guarantee that only the taxable parts of the income from their capital investments are actually taxed. This leads to a much lower tax burden for private investors investing in reporting funds as especially unrealised capital gains are not taxable in Austria. In addition, in course of the calculation of the annually taxable DDI figures the Austrian tax representative can offset expenses and realised capital losses with positive ordinary income and realised capital gains within the same financial year and can deduct losses carried forward in sequent years.

Encourage business confidence and gather a selling proposition in Austria

Austrian private investors are generally keen on investing in reporting funds because of the efficient taxation.

Furthermore, as the tax status of a fund is publicly available on the OeKB website (www.profitweb.at), it is easily accessible for all (potential) Austrian investors, both private and institutional. Thus, fulfilling all obligations of a reporting fund may enhance the reputation and reliability of a fund.

We also noted that it is not only private investors who are attracted to making an investment in reporting funds; the reporting fund status may also be an essential selection criterion for investments of Austrian fund of funds, pension funds and (life) insurance companies.

In other words, the Austrian reporting fund status may also encourage business confidence and is a fundamental factor when it comes to effectively marketing funds and gathering a selling proposition in Austria.
For further questions and support please feel free to contact any of the members of our team.

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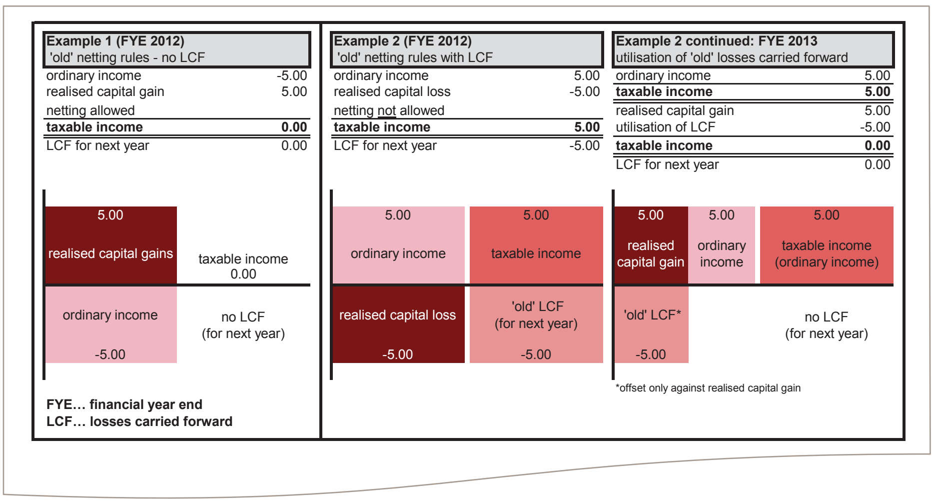
Update on utilisation of losses carried forward

Due to changes of the netting rules for funds with financial years beginning after 31 December 2012 and therefore changes in the utilisation of losses carried forward, it will for the first time be possible to offset 'new losses carried forward' when calculating Austrian DDI figures for funds with financial years ending 31 December 2014.

Please note: The following update gives a brief comparison of losses carried forward calculated under the old and the new method. The calculation procedure is only relevant for the Austrian tax representative, which means that no further action is required on your part.

Retrospection of netting rules before 2013 and losses carried forward

For funds' financial years beginning before 2013, negative ordinary income could be offset against realised capital gains, however realised capital losses could not be offset against a positive ordinary income (such as dividends or interest). Furthermore, only realised capital losses could be carried forward and offset against realised capital gains of future funds' financial years.



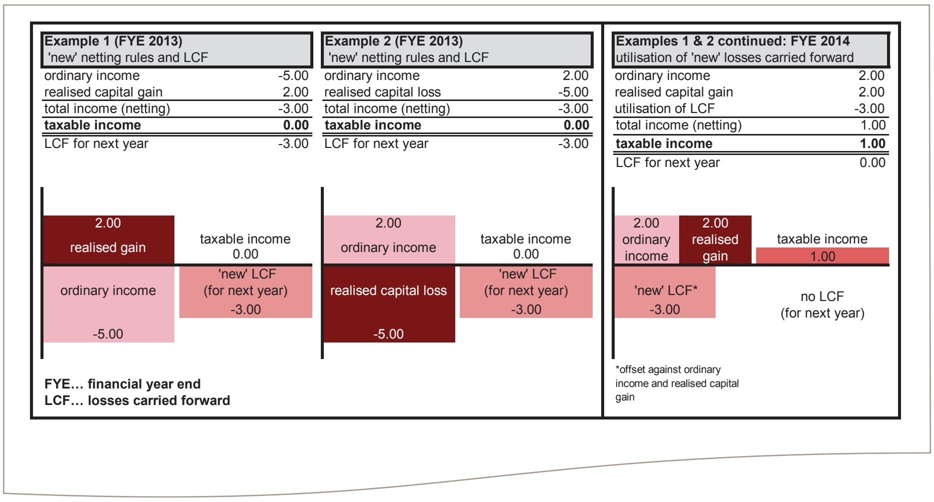
New netting rules from 2013 and utilisation of ‘new’ losses carried forward

Starting as from 1 January 2013, it will not only be negative ordinary income that can be offset against realised capital gains, as realised capital losses will also be able to be offset against positive ordinary income.

The rules on the loss carried forward were also adapted in course of the changing of the netting rules. As a result, in the case of funds where the financial years begin as from 1 January 2013, besides realised capital losses, a negative ordinary income – which cannot be netted with capital gains in the same financial year – can also be carried forward and offset against capital gains and ordinary income generated in future financial years (‘new’ loss carried forward).

A loss carried forward from financial years beginning before 2013 (‘old’ loss carried forward) is still offsettable against realised capital gains only. It is necessary to consider that for private investors only 25% of an ‘old’ loss carried forward can be credited with capital gains from funds’ financial years beginning as from 1 January 2013.

In the course of calculating the DDI for funds’ financial years beginning as from 1 January 2014, a ‘new’ loss carried forward will be considered the first time. This may have an impact (lower tax burden) for Austrian investors.



Finally, the new netting rules and losses carried forward rules can also be applied when calculating the tax on distributions. A separate reporting of the withholding tax on distributions may have a positive impact for Austrian investors.

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Who we are and how our Asset 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 seven senior staff and about nine junior level staff to support you with your business challenges.

Our Asset Management Team

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