WTS Global Financial Services Infoletter

Editorial

Tax developments affecting the international Financial Services industry

Dear Madam/Sir,

We hope you may find interesting the latest version of the WTS Global Financial Services Newsletter presenting taxation related news from seven countries with a focus on the international Financial Services industry[1].

The following participants in the WTS Global network are contributing with a diverse range of FS tax topics, e.g. relevant recent case law regarding investment funds and Belgian subscription tax under the Belgium-Luxembourg DTT, an important CJEU's decision on Luxembourg's internally managed investment funds, and the tax measures for Financial Services included in the Singapore Budget 2025:

- Belgium – Tiberghien Lawyers
- Finland – Castrén & Snellman
- Germany – WTS Germany
- Poland – WTS SAJA
- Singapore – WTS Taxise
- Spain – ARCO Abogados y Asesores Tributarios
- The Netherlands – Atlas Tax Lawyers

Thank you very much for your interest.

Frankfurt, 29 April 2025

With best regards,

Robert Welzel	Steffen Gnutzmann
(Tel. +49 69 1338 456 80)	(Tel. +49 40 3208 666 13)

For details on WTS Global Financial Services please click here.

1 The editors would very much like to thank their WTS colleague Sergi Meseguer for his valuable support.

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Please find the complete list of contact details at the end of the newsletter.

Hot Topic

Pension Funds, Taxation and the Free Movement of Capital of the EU

Pension funds are playing an increasingly important role worldwide in supplementing, or even replacing, state pension schemes.

An interesting article from specialized literature analyses the income taxation of foreign pension funds in the context of the free movement of capital under Article 63 of the Treaty on the Functioning of the European Union (TFEU), also related to WHT on dividend income, and summarizes the findings from many EU jurisdictions.

The article ruling applies not only to taxpayers resident in an EU or EEA jurisdiction, but also to those resident in a third jurisdiction outside of the EU.

According to the case law of the European Court of Justice (ECJ), unfavorable tax (WHT) treatment of foreign pension funds compared to such domestic funds may violate the free movement of capital. The author evaluates several relevant ECJ rulings, in particular the cases of Fidelity Funds (Denmark), College Pension Plan of British Columbia (Germany) and Keva (Sweden), and related decisions of national courts in the EU (e.g. from France and Italy).

In Germany, for example, domestic pension funds are (de jure or de facto) exempt from corporation tax and (partially) from WHT on German dividends, but this exemption does not apply to foreign pension funds. The article states that a de jure or de facto tax exemption for domestic funds must also apply to such foreign funds in order to fulfil the requirements of the free movement of capital.

The author criticizes the fact that German law and certain court cases do not meet these requirements, especially in the context of a comparability analysis, thus discriminating against foreign taxpayers. The author supports the approach of the ECJ to place substance over form in its proceedings, such as a current case in the Netherlands, and to strengthen the rights of foreign pension funds and the Capital Markets Union of the EU.

The author: **Michael Stoeber, European Taxation, December 2024, p. 545 ff.** – Professor Dr. Michael Stoeber holds the Chair of the Department of Civil Law, German and International Business, Commercial and Tax Law and Civil Procedural Law; and is the Director of the Institute of Business and Tax Law at Christian Albrecht University in Kiel.

Link to the article: [Income Taxation of Foreign Pension Funds in Light of the Free Movement of Capital | IBFD.]()

If you wish to discuss these topics, please contact:
WTS Germany

Steffen Gnutzmann
steffen.gnutzmann@wts.de

Robert Welzel
robert.welzel@wts.de

wts global

Belgium

Tiberghien
Advocaten / Avocats / Lawyers

Recent case law regarding investment funds and Belgian subscription tax under the Belgium-Luxembourg DTT

Recent case law in Belgium is important for Luxembourg undertakings for collective investment (hereafter "UCIs") that publicly distribute shares or units in Belgium – and hence have been subject to Belgian subscription tax.

Following the established case law of the Dutch-speaking Courts of Appeal, Belgium cannot levy the subscription tax under the Belgium-Luxembourg double tax treaty (hereafter "DTT"). Luxembourg UCIs could therefore file a request for refund of the subscription tax. The caselaw is also relevant for any Luxembourg resident who has been subject to the Belgian annual tax on securities accounts.

The question of whether Belgium is allowed to levy the annual tax on collective investment undertakings (hereafter "subscription tax") on behalf of foreign undertakings for UCIs, and more specifically Luxembourg SICAVs, under the respective DTT has already caused much controversy.

Supreme Court

Both a Dutch speaking and a French speaking Chamber of the Belgian Supreme Court also addressed this question and thereby overruled two judgments of the Brussels Court (one in Duch and one in French) – albeit each based on different, contradictory reasoning. In its first judgment (French-speaking Chamber), the Supreme Court ruled that the subscription tax is not a "tax on capital". In its second judgment (Dutch-speaking Chamber), the Supreme Court ruled that the subscription tax is a "tax on capital" but is not included in the exhaustive list in article 2, §3 of the Belgium-Luxembourg DTT, nor is it identical or substantially similar to these taxes (art. 2, §4 of the DTT). As a result, the subscription tax does not fall within the scope of the DTT with Luxembourg. In the same decision, the Supreme Court held that the subscription tax does qualify as "a tax on capital" under the DTT with the Netherlands (2001) where the list of taxes article 2, §3 is not exhaustive. According to the Supreme Court, Belgium may therefore levy the subscription tax on Luxembourg SICAVs but not on Dutch UCIs. This latter judgment was partially referred to the Ghent Court of Appeal for a ruling on the merits.

Ghent Court of Appeal

The Ghent Court ruled that the subscription tax qualifies as a "tax on capital" under the autonomous, general definition of article 2, §2 of the DTT.

The Ghent Court of Appeal hence ruled that Luxembourg SICAVs are entitled to invoke the DTT to claim exemption from the Belgian subscription tax as only Luxembourg is allowed to subject its residents to a "tax on capital" under the DTT.

Case law remains divided

However, the Court of Appeal in Liège – to which the judgment of the French-speaking Chamber of the Supreme Court was referred – ruled against the taxpayer. Consequently, the language in which a procedure concerning the subscription tax is initiated can have a crucial impact on the outcome.

Conclusion

Given the positive case law of the Dutch-speaking Courts of Appeal, we recommend filing a request for refund of the subscription tax in order to safeguard the ability to claim refund of the tax.

It should, however, be noted that the administration has filed an appeal with the Supreme Court against the Ghent decision and other Brussels decisions on the same issue. It remains to be seen how the Supreme Court will rule on these appeals and whether this will put an end to the saga.

The discussion on treaty protection is not only relevant for the Belgian subscription tax but can also be extended to other taxes, such as the annual tax on securities accounts payable by non-residents on their Belgian securities accounts.

If you wish to discuss these topics, please contact:
Tiberghien

Christophe Coudron
christophe.coudron@tiberghien.com

Anouk Van der Mast
anouk.vandermast@tiberghien.com

Finland

CASTRÉN & SNELLMAN

Supreme Administrative Court seeks CJEU ruling on VAT exemption on post-sale loan management services

The ruling is anticipated to significantly impact Finnish and EU financial institutions regarding their VAT obligations on outsourced loan management services. As banks and lenders increasingly outsource loan management while engaging in loan securitization, understanding associated VAT obligations is crucial. The ruling could reshape VAT compliance for outsourced financial services, influence loan servicing agreements, and affect the operational costs for entities involved.

The Supreme Administrative Court (SAC) has sought a preliminary ruling from the Court of Justice of the European Union (CJEU) on the interpretation of VAT exemptions under the Council Directive 2006/112/EC on the common system of value added tax (VAT Directive). Specifically, whether loan and collateral management services provided by a lender—after selling the loans but continuing to manage them—are exempt from VAT under Article 135(1)(b), (c), and (d) of the VAT Directive.

A Oy, a Finnish company, granted loans which it later sold to another Finnish company, B Oy. Despite selling the loans, A Oy continued managing and providing collateral management services relating to the loans on behalf of B Oy. To clarify the VAT treatment of these services, A Oy requested an advance ruling from the Finnish Central Tax Board. The Tax Recipients' Legal Services Unit appealed the ruling in so far as the ruling held that the loan and collateral management services relating to the loans sold constitute credit management by the lender which is an exempt financial service.

The main question referred to the CJEU is whether the loan and collateral management services provided by A Oy in relation to loans granted by it and later sold to another company can be regarded as exempt credit management by a creditor within the meaning of Article 135(1)(b) of the VAT Directive. If that is not the case, the question is whether the services provided by the company are exempt as other processing of credit guarantees or other security within the meaning of point (c) of that Article where the management services provided by the company relate to loans secured by a bond issued by another financial institution. If not, the question is whether the services provided by the company should be exempted as financial services within the meaning of paragraph (d) of that Article.

The SAC acknowledges that the loan and collateral management services relating to the loans sold by A Oy to B Oy must be regarded as services provided for consideration within the scope of the VAT Directive. However, the SAC recognizes ambiguity in interpreting the tax exemption provisions.

The CJEU's interpretation will be pivotal in determining the VAT treatment of loan management services when loans are sold but managed by the original lender. An affirmation of the VAT exemption could have far-reaching consequences, influencing how financial institutions structure loan servicing agreements and calculate VAT obligations.

The CJEU ruling request highlights the complexities in applying VAT exemptions to modern financial practices, such as loan securitization and outsourcing of loan management. The CJEU's clarification is eagerly anticipated, providing essential guidance for financial institutions navigating EU VAT compliance. Entities engaged in similar arrangements should closely monitor the outcome to adjust their VAT strategies.

If you wish to discuss these topics, please contact:
Castrén & Snellman Attorneys Ltd.

Mikko Alakare
mikko.alakare@castren.fi

Anette Laitinen
anette.laitinen@castren.fi

Supreme Administrative Court considered the right of financial operators to a VAT refund to be broader than the express wording of the national VAT Act

The Supreme Administrative Court's (SAC) case SAC 2025:20 concerns a Finnish company which sold, inter alia, credit intermediation services to financial institutions, such as Norwegian branches of Swedish banks or Norwegian banks which may have a branch in Sweden. The SAC's ruling has a major direct impact on financial operators established in Finland and possible more general impact on questions concerning the application and interpretation of the VAT Directive.

The question before the SAC was precisely whether VAT on purchases could be refunded to a company in so far as the purchases related to the sale of credit brokerage services where the recipient of the services was either a branch outside the Community or a company established outside the Community with a fixed establishment in a Member State.

Under Section 131(1)(2) of the Finnish VAT Act, a trader is entitled to a refund of VAT if the purchaser is a trader who does not have a place of business or a fixed establishment in the Community or if the sale relates directly to goods intended for export outside the Community". Under the corresponding Article 169(c) of the Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax (the VAT Directive), the taxable person shall be entitled to deduct the VAT –, *"where the customer is established outside the Community or where those transactions relate directly to goods to be exported out of the Community"*. The wording of the provision in the Finnish VAT Act is therefore much narrower than the corresponding article of the Directive.

The SAC held that, despite its express wording, the provision of the VAT Act had to be interpreted in such a way that it corresponded to the interpretation of the corresponding provision of the VAT Directive. According to the SAC, the VAT Directive had thus to be interpreted as meaning that a taxable person has a right to refund if it sells a financial service to a purchaser who has place of business outside the Community. According to the SAC, it is irrelevant that such a purchaser may have a fixed establishment in the Community.

Even though the SAC's ruling substantially extends the scope of the provision of the Finnish VAT Act on the right to refund in relation to the express wording of said provision, the conclusions of the SAC are, in our view, logical and what we expected based on our own interpretation. The SAC's ruling is relevant also because directives are not in general directly applicable law in the Member States. The ruling provides therefore grounds to critically assess the wording of the domestic VAT regulation in the light of the interpretation and purpose of the VAT Directive also in the future.

Mikko Alakare
mikko.alakare@castren.fi

Noora Ahonen
noora.ahonen@castren.fi

If you wish to discuss these topics, please contact:
Castrén & Snellman Attorneys Ltd.

Poland

Important CJEU's decision on Luxembourg's internally managed investment funds

On 27 February 2025, CJEU ruled in case C 18/23, the decision being of extreme importance for Polish WHT exemption for foreign internally managed investment funds.

The Polish WHT exemption for foreign investment funds is subject to several conditions designed by reference to characteristics that are specific to Polish investment funds. CJEU's judgment is specifically concerned with the requirement that the foreign fund must be managed by an entity that conducts its business pursuant to an authorisation from the competent financial market supervisory authorities of the country where the entity has its registered office. This requirement ties in with the Polish investment fund and AIF management legislation which strictly forbids setting up internally managed funds (whether UCITS or AIF).

The above requirement leads to an issue because, under the applicable Luxembourg law, i.e. *Gesetz über Spezialfonds / Loi relative aux fonds d'investissement spécialisés* of 13 February 2007, specialised alternative investment funds may be managed internally. While the particular dispute before CJEU concerned an alternative investment fund, Luxembourg law (specifically, *Gesetz vom 17. Dezember über Organismen für gemeinsame Anlagen)* allows for internally managed fund structures also in the case of UCITS operating as SICAVs.

The same option is allowed under UCITS Directive.

The Polish tax authorities and lower-level administrative courts denied the exemption to internally managed foreign investment funds, arguing that internally managed investment funds cannot be considered comparable to Polish investment funds. They claim that the internal management of a fund is not "as such" authorized by competent financial supervision authorities. Consequently, since such a fund is managed by an entity that is not authorized by financial supervision authorities, the fund is not comparable to Polish investment funds.

But that approach was not the only one, as seen in a series of favourable Supreme Administrative Court ("SAC") verdicts contesting the above interpretation, for example SAC judgments in cases II FSK 699/19 (judgment of 2 December 2021), II FSK 2965/18 (judgment of 1 December 2021), II FSK 2663/18 (judgment of 29 January 2021) and II FSK 1866/18 (judgment of 18 November 2020).

Despite that favourable line of authority, the Regional Administrative Court in Gliwice made an order on 28 November 2022 in case number I SA/Gl 942/22 to issue a reference for a preliminary ruling to the Court of Justice of the European Union in the case of a Luxembourg-based company that operates as a specialist investment fund (SIF-SICAV). The Polish court sought a resolution under Community law to the issue of whether the national law governing the applicability of exemption only to externally managed foreign funds is compatible with Article 63 TFEU.

Notwithstanding Advocate General Juliane Kokott's contrary opinion dated 11 July 2024, TSUE held that because Polish law only permits externally managed funds, Polish tax regulations are contrary to the principle of free movement of capital to the extent they provide that:

- only funds managed externally by an entity authorised by the competent financial market supervisory authorities may enjoy the corporation tax exemption in respect of income from investments made by such a fund; and
- such an exemption is not available to internally managed funds constituted in accordance with the legislation of another Member State.

The ratio and reasoning behind CJEU's ruling are as follows:

- A differentiation based on objective criteria may be a de facto violation of the principle of free movement of capital where it imposes a condition that is so specific to the national market that it will always be satisfied by domestic funds and only foreign funds are at risk of being unable to satisfy it.
- The comparability of a cross-border situation with an internal situation must be examined having regard to the aim pursued by the national provisions at issue as well as to the purpose and content of those provisions. In the case at hand:
  - The purpose of the provisions at issue is to grant tax exemption with respect to the income of undertakings which carry out specific activities subject to the supervision of the competent financial market supervisory authorities;

- Polish government asserted that the objective of requiring external management is to limit investment risk;

- According to CJEU, for the purpose of assessing whether the level of investment risk according to fund management form reflects an objective difference to justify the different tax treatment of internally vs. externally managed funds, it is necessary to determine the objective of the subject exemption;

- Next, assuming that the Polish exemption is intended to avoid double taxation of investment income and to treat investments carried out through a fund in the same way as direct investments for tax purposes, the court held that, in the context of the purpose of the applicable tax regulation, the fact that a fund is managed internally does not necessarily place it in a different situation to that of an externally managed one.

The judgment is doubtlessly favourable for internally managed investment funds.

What is more, the case offers more universal guidelines that can prove helpful in other configurations where a legal regulation relies on what prima facie appears to be objective criteria.

Accordingly, it is worth having a closer look to see if a given national law perhaps violates the principle of free movement of capital indirectly. This will require considering the purpose of the tax regulation in issue and engaging in functional construal of the framework provisions on the setting up and operation of investment funds, whether in the country of source or the country of establishment.

For example, for a long time Poland was the forum of a dispute on whether national tax exemptions are available to foreign funds without legal personhood, given that all national funds are legal persons. This dispute was resolved in favour of the funds.

Also, in case C-342/20, CJEU challenged Finnish regulations granting preferential tax treatment solely to contractual funds and denying it to foreign fiscally transparent statute-based AIFs where only Finnish funds could be constituted solely in accordance with contract law, holding that this is a restriction of the free movement of capital.

In cases C-478/19 and C-479/19, CJEU held that free movement of capital was restricted by Italian law which granted preferential tax treatment solely to close-ended real estate funds even though in other jurisdictions, e.g. in Germany, real estate funds are open-ended.

In the case with which this newsletter is concerned, the referring court is yet to reach its verdict. However, given the ratio behind CJEU's judgment, it is unlikely for the Polish court to make any decision other than to reverse the unfavourable ruling of the Polish tax authority.

If you wish to discuss these topics, please contact:
Doradztwo Podatkowe WTS&SAJA Sp. z o.o.

Magdalena Kostowska
magdalena.kostowska@wtssaja.pl

Bartosz Anulewicz
bartosz.anulewicz@wtssaja.pl

Singapore

Budget 2025: Tax measures for Financial Services

Budget 2025 introduces several tax measures aimed at enhancing the financial services sector, with a focus on domestic investment activity. These include a corporate income tax ("**CIT**") rebate for new listings on Singapore exchanges, new concessionary tax rate ("**CTR**") tiers for fund managers and insurance schemes, and CIT exemptions for qualifying income earned by fund managers. The Budget also extends existing incentives for Insurance Business Development ("**IBD**") and SGX-listed Real Estate Investment Trusts ("**S-REITs**") until 2030.

Relevant tax measures

Budget 2025 introduced tax measures to encourage domestic listings and investments and support the growth of insurance companies, Registered Business Trusts ("**RBTs**"), S-REITs, and other segments of the financial ecosystem.

› CIT rebate for new listings on Singapore exchanges:

Listing (with share issuance)	**Market capitalisation of tax resident qualifying companies and RBTs**	
	< S$1 billion	**≥ S$1 billion**
Primary	20% (max. S$3 million/YA)	20% (max. S$6 million/YA)
Secondary	10% (max. S$3 million/YA)	10% (max. S$6 million/YA)

› New CTR tiers:

- For newly-listed fund managers in Singapore under the FSI-Fund Management scheme – a new 5% tier (in addition to the existing 10% tier) for qualifying income
- For the FSI-Standard Tier, FSI-Trustee Company, and FSI-Headquarter Services schemes – an additional CTR tier of 15% (in addition to the existing 10% and 13.5%)
- For the IBD, IBD-Captive Insurance, and IBD-Insurance Broking Business schemes – a new 15% tier (highest being 10% previously)

› CIT exemption for qualifying income earned by fund managers arising from Singapore-equity-focused funds.

› Venture Capital Fund Incentive and Venture Capital Fund Management Incentive to lapse after 31 December 2025.

› Extensions of the following incentives until 31 December 2030:

- IBD and IBD-Captive Insurance schemes;
- Income tax concessions for S-REITs (exemption on qualifying foreign-sourced income and 10% withholding tax ("**WHT**") on distributions);

   - Income tax concessions for SGX-listed Real Estate Investment Trust Exchange-Traded Funds ("**S-REIT ETFs**") (tax transparency treatment and 10% WHT on distributions); and
   - GST remission for S-REITs and Singapore-listed RBTs in the infrastructure business, ship leasing, and aircraft leasing sectors.
- Scope of specified income received by a S-REIT trustee from 1 July 2025 onwards that is eligible for tax transparency treatment expanded to include all co-location and co-working income and refinement of foreign-sourced income treatment for S-REITs.

Takeaways
Budget 2025 has good news for both new entrants to Singapore's financial markets seeking to maximize returns by leveraging on our pro-business environment as well as existing players in the market. It solidifies Singapore's position as a premier financial hub, rivaling New York and Hong Kong. Amid global economic unpredictability and volatility, Singapore stands out as a reliable safe harbor for businesses to use as a springboard into the rest of the Asia Pacific region.

Link to the full summary of Budget 2025: https://taxiseasia.com/singapore-budget-2025-onward-together-for-a-better-tomorrow

If you wish to discuss these topics, please contact:
Taxise Asia LLC (WTS Taxise)

Eugene Lim
eugene.lim@TaxiseAsia.com

Yeo Mei
mei.yeo@TaxiseAsia.com

Minh Tri Nguyen
minhtri.nguyen@TaxiseAsia.com

Spain

ARCO
ABOGADOS Y ASESORES TRIBUTARIOS

WHT on dividends – CJEU ruling dated 19 December 2024

The CJEU judgement of 19 December 2024 (Case C-601/23) has important implications for foreign companies investing in Spain that incur losses in their country of residence and that cannot recover the WHT on the income derived from their investments in Spain, unlike Spanish companies in the same situation. Furthermore, although the case refers to the receiving of dividends, other types of income (e.g. interest or royalties) suffering WHT (at source) could be affected by the CJEU's criteria.

The CJEU recently issued a ruling on whether the different taxation in Bizkaia (a historical territory of the Basque Country with fiscal sovereignty independent from the Spanish State) with regard to dividends distributed by companies domiciled there to companies resident in Spanish territory and to non-resident companies, in a situation of losses, constitutes discriminatory treatment contrary to the Principle of Free Movement of Capital in Article 63 of the TFEU.

The judgement has important implications for foreign companies investing in Spain that incur losses in their country of residence and that cannot recover the withholding tax on the income derived from their investments in Spain, unlike Spanish companies in the same situation. Furthermore, although the case analyzed refers to the receiving of dividends, other types of income (interest or royalties) with withholding tax at source could be affected by the CJEU's criteria.

Credit Suisse Securities (Europe), a company resident in the UK, received dividends from a company based in Bizkaia in fiscal year 2017, subject to an initial withholding of 19%, reduced to 10% under the DTA. In that year, it recorded losses, meaning that the withholding could not be recovered in its country of residence. According to the DTA, the tax credit is only recognized in the event of the existence of taxable profits. Thus, the initial withholding became the definitive taxation.

Consequently, it requested a refund of the withholding tax from the Bizkaia tax authorities, alleging discrimination in the taxation of a company resident in Spanish territory. It argued that, despite being subject to the same initial 19% withholding tax, since this was a payment on account of corporate income tax, if the company had incurred losses in that financial year and had no positive tax liability, the withholding tax would have been fully refunded.

In response to the preliminary question raised by the court, the CJEU notes the different tax treatment and, ratifying its previous case law (in particular, the judgement of 22/11/2018, Case C-575/17, Sofina and others), concludes that the difference in tax treatment may discourage non-resident companies from investing in Bizkaia (and by extension, in Spain), which entails a restriction on the free movement of capital.

Conversely, analyzing its consolidated case law, the CJEU concluded that such a restriction was not justified (Art. 65 TFEU), as the situations in question were objectively comparable since the State had decided to tax this type of income for both residents and non-residents, and nor was it justified by overriding reasons of public interest.

It understood that tax collection efficiency was not an admissible claim and recalled the need for the non-resident company to provide evidence of its loss-making situation to benefit from the refund of withholding tax, as well as highlighting the importance of mutual assistance mechanisms in this regard. It also rejected the argument about the need to preserve the balanced distribution of taxing powers between states and the prevention of the risk of double taxation of losses. Finally, it rejected the claim that the controversial tax regulation guaranteed the maintenance of the coherence of the tax system, as argued by the tax authorities, since resident companies in a loss-making situation obtain a refund of the withholding tax at source and do not have an additional tax levied to compensate for this tax advantage.

For this reason, the CJEU understood that the Bizkaia Non-Resident Income Tax regulations contain unjustified discriminatory taxation between resident and non-resident companies, which restricts the Free Movement of Capital. Under these circumstances and given that the IRNR regulations at the state level are similar to the regional ones, the Spanish State should modify the current tax regulations to establish a mechanism for the refund of withholdings that cannot be recovered by foreign investors.

This would be to eliminate any vestige of discrimination in the taxation of dividends (and other income subject to withholding at source, such as interest or royalties) between residents and non-residents, ensuring respect for the free movement of capital.

Concha García
conchagarcia@
arcoabogados.es

If you wish to discuss these topics, please contact:
ARCO Abogados y Asesores Tributarios

The Netherlands

Atlas
Tax lawyers / Fiscalisten

Key changes for foreign investors due to Dutch Fund Decree 2025

Effective 1 January 2025, the Netherlands has overhauled the tax-classification rules for foreign entities by introducing new laws and decrees. These revisions markedly affect both Dutch and foreign investment funds. The new Fund Decree *(Fondsenbesluit)* redefines the conditions for a fund to qualify as a tax-opaque fund for mutual account *(fonds voor gemene rekening;* "FGR") and introduces the concept of a 'transparent fund'.

These changes have notable implications for foreign investors and cross-border fund structures, so a thorough reassessment of the fiscal sustainability of each structure is recommended. It is important to verify the impact on existing structures, as many entities have switched from opaque to transparent as of 1 January 2025—potentially triggering several tax consequences. Equally important, when setting up new vehicles, sponsors should ensure that the envisaged structure functions from a tax perspective, taking the new classification rules into account.

Redefinition of FGR

Redefinition of FGR Under the new decree, a fund is treated as an FGR—and therefore as a separate taxpayer—only if it satisfies **all** the following conditions:

1. **Collective Investment:** The fund must be established for collective investment purposes (i.e. pooling capital from multiple investors).

2. **Investment Strategy:** It should pursue a standard portfolio investment strategy, not engaging in entrepreneurial activities.

3. **Regulatory Qualification:** The fund must qualify as an investment fund or a fund for collective investment in transferable securities (UCITS) under the Dutch Financial Supervision Act *(Wet op het financieel toezicht or Wft).*

4. **Transferability of Interests:** Participations are embodied in transferable units. The former requirement for unanimous consent to transfer units—previously decisive for tax transparency—has been abolished. Units are deemed tradeable unless they can be redeemed only by the fund itself (or are effectively routed through the fund under specific secondary-trading restrictions).

Each of these elements must be verified when determining entity classification.

Introduction of Transparent Fund

Funds that fail to meet all FGR criteria may be classified as 'transparent funds'. These vehicles are tax transparent: the fund itself is not subject to corporate income tax; instead, investors are taxed directly on their pro-rata share of income. This class is particularly relevant for redemption-only funds, whose units are non-transferable, and for non-regulated funds without legal personality.

If a fund qualifies as neither an FGR nor a transparent fund, the Netherlands will generally adopt the tax classification of the fund's country of incorporation—opaque or transparent, as applicable. However, a non-comparable fund incorporated in the Netherlands is always treated as opaque by the Dutch Tax Administration.

Implications for Foreign Investors

Foreign investors and fund managers should carefully assess their fund structures in light of the new decree:

- **Tax Classification:** Funds previously considered opaque may now be reclassified as transparent, altering their tax obligations in the Netherlands.
- **Regulatory Alignment:** Funds must ensure they meet the specific criteria outlined in the decree to maintain their desired tax status.
- **Cross-Border Considerations:** Foreign funds with structures not directly comparable to Dutch entities may face challenges in classification, necessitating a thorough review to determine their tax treatment under the new rules. Especially foreign fund vehicles with legal personality require additional attention.

In conclusion, foreign investors should revisit their Dutch fund holdings. Many sponsors are adopting redemption-only terms to preserve fiscal transparency.

If you wish to discuss these topics, please contact:
Atlas Tax Lawyers

Arthur Smeijer
as@atlas.tax

Roemer Schimmel-penningh
rs@atlas.tax

Scato Trip
st@atlas.tax

wts global

Contact

Hot topic
Steffen Gnutzmann
steffen.gnutzmann@wts.de
T +49 40 3208 666 13
Robert Welzel
robert.welzel@wts.de
T +49 69 133845680
WTS Germany
Brüsseler Straße 1–3
60327 Frankfurt am Main
https://wts.com/global/services/financial-services

Belgium
Christophe Coudron
christophe.coudron@tiberghien.com
Anouk Van der Mast
anouk.vandermast@tiberghien.com
Tiberghien
Havenlaan 86C B.419
1000 Brussel
www.tiberghien.com/en

Finland
Mikko Alakare
mikko.alakare@castren.fi
T +358 20 7765 290
Anette Laitinen
anette.laitinen@castren.fi
T +358 20 7765 373
Noora Ahonen
noora.ahonen@castren.fi
T +358 20 7765 019
Castrén & Snellman Attorneys Ltd.
P.O. Box 233
Eteläesplanadi 14
FI-00131 Helsinki
www.castren.fi

Poland
Magdalena Kostowska
magdalena.kostowska@wtssaja.pl
Bartosz Anulewicz
bartosz.anulewicz@wtssaja.pl
T +48 661 770 702
Doradztwo Podatkowe
WTS&SAJA Sp. z o.o.
Bałtyk Building, 13th floor
ul. Roosevelta 22
60-829 Poznań
https://wtssaja.pl

Singapore
Eugene Lim
eugene.lim@taxiseAsia.com
T +65 8962 8202
Yeo Mei
mei.yeo@taxiseAsia.com
T +65 8962 8085
Minh Tri Nguyen
minhtri.nguyen@taxiseAsia.com
Taxise Asia LLC
61 Robinson Road
068893 Singapore
https://taxiseAsia.com

Spain
Concha García
conchagarcia@arcoabogados.es
T +34 915 222 063
ARCO Abogados y Asesores Tributarios
Marqués de la Ensenada, 2, 1º
28004 Madrid
www.arcoabogados.es

The Netherlands
Arthur Smeijer
as@atlas.tax
T +31 6 1045 4265
Roemer Schimmelpenningh
rs@atlas.tax
T +31 6 3380 4538
Scato Trip
st@atlas.tax
T +31 6 3449 3428
Atlas Tax Lawyers
Weteringschans 24
1017 SG, Amsterdam
www.atlas.tax

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Imprint
WTS Global
P.O. Box 19201 | 3001 BE Rotterdam
Netherlands
T +31 (10) 217 91 71 | F +31 (10) 217 91 70
wts.com | info@wts.de

Publisher
WTS GmbH
Frankfurt Office
Brüsseler Straße 1 – 3
60327 Frankfurt/Main
Germany

› Robert.Welzel@wts.de	T +49 69 1338 45680
› Steffen.Gnutzmann@wts.de	T +49 40 3208 66613
› Christiane.Schoenbach@wts.de	T +49 69 1338 45670
› Katrin.Classen@wts.de	T +49 69 1338 45672
› Christian.Bischler@wts.de	T +49 69 1338 45620
› Guido.Dahm@wts.de	T +49 69 1338 45610
› Stefan.Zwiesele@wts.de	T +49 69 1338 45630