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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 nine 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. a recent CJEU judgment concerning foreign insurance companies and Dutch WHT on dividends, the first WHT refund granted to foreign investment fund in Germany, and some relevant updates to Singapore's tax incentive schemes for funds:

- Czech Republic – WTS Alfery
- France – FIDAL
- Germany – WTS Germany
- Norway – SANDS Advokatfirma
- Poland – WTS SAJA
- Serbia – WTS Porezi i Finansije
- Singapore – WTS Taxise
- The Netherlands – Atlas Tax Lawyers
- United Kingdom – FTI Consulting

Thank you very much for your interest.

Frankfurt, 14 January 2025

With best regards,

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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.

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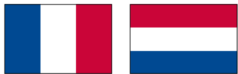
Hot Topic

(France & The Netherlands)



Foreign insurance companies and Dutch WHT on dividends – recent CJEU judgement C-782/22

Introduction

On 7 November 2024, the European Court of Justice (**CJEU**) issued a judgment (XX, C-782/22) regarding the levy of dividend withholding tax (**DWT**) on foreign insurance companies in light of the European free movement of capital.

The CJEU ruled that the different treatment in the Netherlands of resident and non-resident companies constitutes an unjustified restriction of the free movement of capital if there exists a direct link between dividends received and an increase in obligations to clients. In case the national court decides that there is indeed an unjustified restriction, this could allow non-Dutch residents to claim refunds of Dutch DWT.

The judgment

XX is a UK-based life insurance company whose primary clients are institutional pension insurance companies and employers. XX's business model involves investing premiums paid and issuing 'units' linked to these investments. When the clients are entitled to payments, they receive the fair market value at that time of the units issued to them.

As part of its activities, XX receives dividends from Dutch investments which are subject to 15% Dutch DWT on a gross basis. If XX were established in the Netherlands, it could offset the DWT against its Dutch corporate income tax (**CIT**) due. If the CIT due were lower than the DWT already paid, XX could claim a refund for the excess DWT. Based on XX's business model, the effective CIT on the dividends in the Netherlands would have been zero, as the dividend income corresponds to an increase in the obligations to its clients based on the issued units. Therefore, the DWT would have been fully refunded if XX were a Dutch tax resident. Since XX is a tax resident of the United Kingdom, this refund is not possible.

XX appealed to the CJEU that this treatment violates the European free movement of capital. The CJEU honors the appeal in case there is a direct link between the dividend income and the increase in obligations to its clients (see below).

Firstly, the CJEU cited its earlier case (*College Pension Plan of British Columbia*, C-641/17) by mentioning that foreign pension funds, that use incoming dividends to contribute to the provision of the pensions, are comparable to domestic pension funds that use the same system. While XX is not a pension fund, the CJEU observed that its business model and the resulting financial obligations to its clients are both equivalent and comparable to those of such a pension fund.

Secondly, the CJEU ruled in another case (*Miljoen*, C-17/14) that, when comparing the tax burden on dividends between residents and non-residents, only expenses that are directly linked to the actual payment must be taken into account. It is up to the national court to decide whether such a direct link exists.

Dutch Tax perspective

From a Dutch perspective, this judgment of the CJEU offers a valuable clarification on the tax treatment of Dutch non-resident companies operating in the financial services sector. We do expect the national court to confirm that the difference in treatment in

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this case is unjustified. If so, this decision could allow non-Dutch entities, whether based in the EU or outside of it, with business models where dividend income corresponds with financial obligations to clients, to claim refunds of Dutch DWT.

If you think this might apply in your situation, we recommend filing a refund request with the Dutch Tax Authorities. This request has to be filed within three years after the end of the financial year in which the dividend has been declared. Feel free to contact us for any assistance or questions.

French Tax pespective

From a French perspective, this decision comes as no surprise.

The French Supreme Court has already ruled on this point in a judgment issued on 11 May, 2021 concerning a UK life insurance company offering unit-linked policies (CE 5/11/2021 n°438135, UBS Asset Management Life Ltd), similarly to XX in the Dutch case above. French law was even amended in 2022 and now explicitly provides for the possibility for a non-resident to claim a refund of the WHT assessed on the gross income to take account of the acquisition and conservation charges directly linked to the dividends and which would have been deductible if the beneficiary had been located in France.

The question that arises now, is whether this case law applies only to unit-linked policies, or whether it may be extended to other scenarios involving life insurance?

One might think so. This is actually already the position in France: the French Court of appeal of Versailles, in a case defended by FIDAL, has already ruled last year on the situation of contracts that are not unit-linked policies but are based on the yield of "contractual funds" (see the #28/2023 of March 2023 WTS Infoletter ; CAA of Versailles, 2/09/2023, 20VE01438, Bipiemme Vita S.p.A). In this case, an Italian life insurance company which offered 'gestione separata' policies obtained reimbursement of most of the WHT it had borne on French-source dividends, the court having ruled that there was a discrimination between this company and a French company having the same kind of commitment with its policyholders.

We are currently assisting several European insurance companies in the same situation. As a reminder, the deadline for claiming French-source dividends having suffered WHT in year N runs until December 31, N+2.

For more information on the services WTS Global offers regarding EU WHT reclaims we refer to: [EU WHT reclaims | WTS Global.]()

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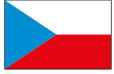

News on crypto-assets and employee shares

New rules for taxation of crypto-assets from 2025

European Regulation 2023/1114 on markets in crypto-assets (MiCA or the Markets in Crypto-assets Regulation) represents a major breakthrough in the regulation of the cryptocurrency market by the European Union. The regulation was approved in 2023 and aims to create a regulated framework for the provision and offering of services related to selected crypto-assets and investor protection in EU Member States.

At the end of 2024, the Czech Republic started the implementation process of the EU regulation into its legal system. In this context, it also adopted tax provisions related to crypto-assets for the first time in its history.

The taxation of crypto-assets was not previously specifically regulated in the Czech Republic, so income from the sale of crypto-assets was always taxed regardless of the investor, the period crypto-assets were held for and the amount of income from their sale.

An amendment to the Income Taxes Act provides two options for the exemption of income from the sale of crypto-assets for natural persons, non-entrepreneurs, and thus puts crypto-assets on the same level as securities in this respect. However, the exemption only applies to crypto-assets not included in business assets. If crypto-assets are used in the course of business, income from their sale remains subject to standard taxation without any possibility of exemption.

Small investors will appreciate the introduction of a value limit of CZK 100 th (approx. EUR 3,900) of gross revenue from the sale of crypto-assets per year. Provided an investor does not exceed this annual limit, income from the sale of crypto-assets will be exempt from income tax.

In addition, capital gains from the sale of crypto-assets held by an investor for more than three years are exempt. The exemption applies to total gross income from the sale of crypto-assets up to CZK 40 m. We would like to point out that the exemption threshold of CZK 40 m (EUR 1,568 th) is common for gains from the sale of securities and crypto-assets from 2025.

Another important change is that exchanging crypto-assets (for example, during a protocol update) does not interrupt the running of the exemption time test.

The regulation of crypto-assets has been long awaited in the Czech Republic, because crypto-assets are very popular. The new legislation has brought significant changes to their taxation, in particular flexibility and greater tax relief for long-term investors. At the same time, stricter regulation for high-income investors and cryptocurrency trading activity has been maintained.

The legislative process for the amendment has not yet been fully completed, but the provisions should be effective for 2025.

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Change to time of taxation of employee shares

There were several changes to the taxation of employee shares in the Czech Republic in 2024.

Income from an employee stock option plan has always been treated as employment income in the Czech Republic. The law specifies exactly when this income is to be taxed, and the payment of social security and health insurance contributions is linked to taxation.

It is the moment of taxation that changed in 2024; it shifted to the future, as the legislation introduced the principle of "no tax before cash". Therefore, taxes were to be paid on shares received in 2024 and thereafter in most cases only when an employee monetized his/her shares and had the means to pay the respective tax amount. However, in practice, this principle brought major problems of registration and, in particular, interpretation, especially for employees who changed their tax domicile.

At the same time, a legislative oversight led to a situation where the deferral of taxation did not apply in the first half of 2024 to health and social insurance. This meant that income from a stock plan was not taxed for an employee, but insurance premiums nevertheless had to be paid. The payment of tax and insurance premiums was only unified on 1 July 2024.

An amendment currently being prepared brings back the original taxation rules, i.e. tax and insurance premiums should be paid again at the moment shares are received. The old rules can be applied retrospectively for 2024 and part of 2025, if an employer wishes to do so. In such a case, there will be no penalty for the additional tax and insurance premiums.

The principle of deferred taxation and payment of insurance premiums will remain in the Act, but only as a voluntary option for an employer. The employer will have to inform its tax administrator of the choice of scheme, for the first time by the end of the second month following the amendment's entry into force.

The amendment was originally planned to take effect on 1 January 2025, but due to the lengthy legislative process the effective date has been moved to 1 May 2025. We expect the passage of the amendment to the Act to go smoothly, as it will significantly clarify employers' payment duties.

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Germany

First WHT refund granted to foreign investment fund in Germany

In December 2024, the first foreign investment fund received the payment of a tax refund under the principle of non-discrimination enshrined in Article 63 TFEU, following the landmark rulings of the German Federal Fiscal Court (BFH) on 13 March 2024 (I R 1/20 and I R 2/20).

This initial refund is likely the first of many, with the German Ministry of Finance estimating the total reimbursement volume at **EUR 7.5 billion.**

The BFH decisions affirmed that the German withholding tax (WHT) levied on dividends paid to foreign investment funds between 2004 and 2017 violated EU law due to its discriminatory nature compared to domestic funds, which benefited from a 0% WHT rate. WTS previously reported on these pivotal rulings in the WTS Global Financial Services Infoletter #33, published on 17 September 2024.

However, securing timely WHT refunds requires applicants to navigate complex procedural, operational and documentation challenges. For instance, funds must establish comparability with domestic funds and provide evidence of economic ownership of the German dividend-bearing shares.

A further challenge lies in retrieving tax vouchers for earlier application years, as organizing such documents may be difficult, especially for early years.

Foreign corporate investment funds that submitted both, double tax treaty (DTT) related WHT reduction claims (reduction from 26,375% to usually 15%) and EU-law-based claims for a 0% WHT rate may have a distinct advantage in providing evidence of the WHT suffered, compared to investment funds in contractual legal form. In such cases, the original tax vouchers are typically already on file with the Federal Central Tax Office (BZSt) as part of the original DTT-based refund application. Instead of re-submitting these certificates in the context of the recent EU-law-based claims, funds may provide a copy of the original BZSt decision on the DTT application or, at a minimum, reference the original BZSt decision case number to satisfy the documentation requirement.

Given the opportunity, WTS recommends that investment funds and asset managers proactively organize their documentation and prepare for potential follow-up questions from the BZSt.

For further guidance on managing claims or to discuss tailored solutions, please contact our team at WTS Germany. Our experts are not only well-prepared to support the tax-legal aspects of outstanding German legacy reclaim applications before the German tax administration or before German tax courts, but also – through dedicated software solutions – to handle the operational challenges of supporting the reclaim procedure of a multitude of funds until a final payment is received.

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Norway

New decision on refund of withholding tax for US RIC

In November 2024, a new decision from the Norwegian Tax Appeals Board (SKNS1-2024-97) was published regarding the refund of withholding tax for a Regulated Investment Company ("RIC") resident in the United States. The decision implies that more shareholders may be entitled to a refund of withholding tax.

Norwegian limited liability companies distributing dividends to shareholders resident abroad are, as a general rule, required to withhold 25% withholding tax.

An important limitation on withholding tax is that dividends distributed to corporate shareholders established and conducting substantial economic activity in an EEA country fall under the participation exemption method and are therefore not subject to withholding tax. Further, the withholding tax may be reduced under the tax treaty with the country where the shareholder is resident. In such cases, a refund of the withholding tax can be claimed.

According to article 20 of the tax treaty between Norway and the United States, a company will not be entitled to the tax benefits provided by certain articles of the treaty, including the reduction of withholding tax on dividends, if the tax imposed on the corporation is substantially less than the tax generally imposed on corporate profits due to special measures. Norwegian tax authorities have previously concluded that this is the case for RICs, and therefore, they have not granted a refund of withholding tax.

However, recently the Tax Appeals Board unanimously concluded that RICs are not subject to special measures that result in a substantially lower tax being imposed by the United States, meaning that Article 20 does not apply. Hence, the withholding tax rate was reduced from 25% to 15% under the tax treaty.

The decision will influence future practice and implies that more shareholders may be entitled to a refund of withholding tax. In addition, one can apply for a refund or file a complaint for previous years. It should be noted that the Ministry of Finance may file a lawsuit against the Norwegian Tax Appeals Board and challenge the decision within six months from the decision.

For most countries, the deadline to apply for a refund of withholding tax is five years. The deadline is calculated from the end of the income year when the dividend was paid.

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Directive-based WHT exemptions for dividends, interest and royalties

This matter is important for international industry groups where payments from Polish subsidiaries to holding companies should be subject to directive-based WHT exemptions. It is particularly interesting in the case of passive income streams from Poland to recipients in the Netherlands and in Luxembourg.

Since 2019 businesses as well as the advisory profession have been in discussion with Polish Finance Ministry about amended regulations on WHT treatment of passive income.

In November 2024, Finance Ministry published two **public tax rulings** on the application of certain Corporate Income Tax Act (CITA) provisions implementing PS and IR Directives.

The rulings are concerned with the following statutory WHT exemption conditions for dividends vs. interest and royalties:

Dividends	Interest and royalties
The exemption under Article 22(4)(2) and 22(4)(4) CITA, saying that WHT exemption applies to a dividend payment where, among other things:	The exemption under Article 21(3)(2) and 21(3c) CITA, saying that WHT exemption applies to an interest or royalty payment where, among other things:
– Article 22(4)(2): the dividend income is received by a company subject to income tax on all of its world-wide income in an EU or EEA Member State; and	– Article 21(3)(2): the interest or royalty income is received by a company subject to income tax on all of its world-wide income in an EU or EEA Member State; and
– Article 22(4)(4): the recipient company does not enjoy an exemption from income tax on its entire world-wide income.	– Article 21(3c): the recipient company does not enjoy an exemption from income tax on its entire world-wide income.

As can be seen, the two regulations **sound identical.**

The ruling on dividends

In accordance with the ruling on **dividends** (15 Nov 2024, ref. DD9.8202.1.2024):

› the condition that the recipient must be *"subject to income tax on all of its world-wide income"* in an EU or EEA Member State should be understood to mean that, for the exemption to apply, the company receiving Polish dividend should be a tax resident of an EU or EEA country; and

› the condition that the recipient *"does not enjoy an exemption from income tax on its entire world-wide income"* should be understood by reference to CJEU's case

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C-448/15 *Belgische Staat v. Wereldhave Belgium Comm. VA et. al.* (judgment of 8 Mar 2017) as designed to preclude situations involving the possibility that, despite being subject to corporation tax, the company is not actually liable to pay that tax.

The Finance Minister held that a dividend recipient from another EU or EEA country will not violate the requirement of "not enjoying an exemption from income tax on its entire world-wide income" where it is the dividend itself, rather than the recipient as an entity, that is exempt from tax based on national tax legislation implementing the PS Directive.

As such, according to Polish Finance Minister, the second exemption condition in essence means that the recipient should not enjoy income tax exemptions that are personal in nature (ratione personae exemptions, such as entity exemptions, type-of-entity exemptions or similar).

The ruling on interest and royalties

In accordance with the ruling on **interest and royalties** (20 Nov 2024, ref. DD9.8202.2.2024):

- the condition that the recipient must be *"subject to income tax on all of its world-wide income"* in an EU or EEA Member State should be understood to mean that, for the exemption to apply, the company receiving a Polish interest or royalty payment should be a tax resident of an EU or EEA country; and

- the condition that the recipient "does not enjoy an exemption from income tax on its entire world-wide income" should be understood by reference to the recitals and purposes of the IR Directive and the ratio decidendi of CJEU's judgment in joined cases C-115/16, C-118/16, C-119/16 and C-299/16, i.e. in such a way that the recipient of such interest or royalties must not enjoy in the country of its tax residence:

  - an exemption from income tax, **whether** on its entire world-wide income **or** on any category of its income; or
  - any special tax treatment of income received in respect of such interest or royalties.

Here, in contrast, the Finance Minister held that the second exemption condition depends on whether there is effective taxation of the interest or royalty payment in the recipient's country of residence, which means that the WHT exemption does not apply if the recipient enjoys any income tax exemption, whether available to it as an entity *(ratione personae)* or due to the nature of the income received *(ratione materiae).*

However, in both cases use of the exemption will not be precluded by the individual circumstances of the taxpayer, i.e. the fact that it has loss carry-forwards to deduct, unless the situation warrants the application of TAAR with respect to directive-based exemptions.

The rulings, including especially the one on interest and royalties, give a clear signal from the Polish Finance Ministry on how to interpret directive-based exemptions through the lens of CJEU's Danish cases.

Without delving into the details of the rulings, we will make two points:

› Both regulations are the same so interpreting them differently is quite peculiar to say the least, considering that tax law is underpinned by the primacy of linguistic construal.

› The Danish cases were concluded in 2019 while the regulations in question have been in force since about 2011.

What is more, the Finance Ministry seems to have omitted to note that while, also in 2011, the European Commission proposed to change Recital 3 of IR Directive by adding an effective taxation requirement *("It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State and that the benefits of the Directive should only be applicable when the income derived from the payment is effectively subject to tax in the Member State of the receiving company or…")*, **that change has not been enacted so far.**

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Serbia

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Does Serbia's tax policy foster foreign investment or create barriers? Local taxation rules for portfolio investors

Are Serbia's tax rules discouraging foreign portfolio investments? Could double tax treaties (DTTs) with EU countries provide adequate protection for EU investors? Why does Serbia's tax system seem to favor domestic over foreign investors, or even Serbian companies investing in the EU over EU companies investing in Serbia?

The taxation framework for portfolio investors in Serbia reflects the country's developing capital market. Most business is concentrated in direct investments through traditional LLCs dominated by majority shareholders, influencing tax policies that do not differentiate between majority and minority shareholders (portfolio investors).

Under Serbian tax regulations, dividend payments to non-residents are subject to 15% or 20% WHT (for individuals and legal entities, respectively), regardless of the investor's stake. This treats portfolio investors and majority shareholders equally, lacking tailored solutions for portfolio investors. Meanwhile, dividends received by domestic shareholders are exempt from corporate income tax, creating a more favorable environment for local investors.

Additionally, non-residents legal entities pay 20% capital gains tax (CGT) for sale of securities or investment fund units, while residents are taxed at 15% CGT. Moreover, entities established under local investment fund regulations are exempt from this tax, but foreign investment funds are excluded from this exemption.

Serbia has DTTs with all EU countries except Portugal. These treaties aim to reduce WHT rates and/or exempt capital gains from taxation, however this does not ensure complete non-discrimination for non-resident investors. Most DTTs include non-discrimination clauses under MLI principles, but their application to portfolio investors is unclear. The lack of arbitration clauses and limited information exchange mechanisms further complicates enforcement.

Do Serbia's DTTs adequately protect EU investors from discrimination? This is key to aligning Serbia's tax framework with international standards.

The EU principle of Free Movement of Capital prohibits discriminatory treatment between domestic and foreign investors. Paradoxically, Serbian companies investing in the EU often enjoy more favorable tax treatment than EU companies investing in Serbia.

Serbia's tax policies appear to create disparities that may contravene these principles. Aligning tax policies with anti-discrimination standards is crucial to ensuring equitable treatment for all investors.

Ensuring fair treatment for cross-border investments requires collaboration between tax experts and legal professionals. Serbia's current system demands tailored solutions to navigate ambiguities in legislation and practice.

By revising tax policies and aligning with global standards, Serbia can attract diverse portfolio investments and strengthen its international market position. Expert guidance is essential for investors seeking clarity and optimization in this evolving landscape.

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Singapore

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Updates to Singapore's tax incentive schemes for funds

Executive summary

Singapore continues to refine its tax incentive schemes for both offshore and onshore funds managed by Singapore-based fund managers – revisions in this update include, among others, a new definition and new thresholds for asset under management ("**AUM**"), removal of the newly-incorporated fund requirement, a new option for closed-end funds, and a new application process. The updates also introduce a streamlined application process for the incentives.

These tax incentives remain useful tools in wealth management for high-net worth individuals and their families, notably for funds managed by Singapore-based single-family offices ("**SFOs**"), although SFO-managed funds are subject to more stringent conditions.

Introduction

The Monetary Authority of Singapore ("**MAS**") recently updated Singapore's tax incentive schemes for funds managed by Singapore-based fund managers under Sections 13O, 13U and 13D of the Income Tax Act 1947 ("**ITA**"), effective 1 January 2025.

At the same time, a new Section 13OA of the ITA was introduced to extend the Section 13O scheme to Limited Partner ("**LP**") funds as Section 13O is only available for Singapore companies.

Background to tax incentive schemes

Generally, Singapore levies income tax on income accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of certain gains and profits. Singapore's current headline corporate income tax rate is 17%.

The Section 13O/OA, 13U and 13D tax incentives provide a tax exemption to fund vehicles managed by Singapore-based fund managers when specified conditions are met. Qualifying funds enjoying these tax incentives are exempt from Singapore income tax on all "**specified income**" derived by the fund in respect of "**designated investments**". In practice, this covers a broad scope of income derived from a wide range of investments (with limited exceptions).

Incentivised funds also enjoy withholding tax exemption and Goods and Services Tax remission.

An application to the MAS is required to enjoy the Section 13O/OA and Section 13U tax incentives. No application is required to enjoy the Section 13D tax incentive.

Section 13O/U tax incentive changes

Revised quantitative criteria for new and existing funds (other than SFO funds)
The Section 13O tax incentive applies to Singapore-incorporated companies managed by a Singapore fund manager. The Section 13U tax incentive applies to both offshore and Singapore-based funds and covers a wider range of fund structures (including master-feeder funds, master-SPV structures, etc.).

Funds seeking to enjoy the Section 13O/U tax incentives will now need to:

› Have minimum assets under management ("**AUM**") in designated investments at the end of every financial year:
  – S$5 million for Section 13O (previously none); and
  – S$50 million for Section 13U (previously this only has to be met at the point of application);
› Be managed by a Singapore fund manager employing at least 2 investment professionals ("**IPs**") (previously, funds under Section 13O were not subject to this requirement); and
› Meet tiered annual local business spending ("**LBS**") requirements (ranging from S$200,000 to S$500,000 LBS depending on AUM) (previously fixed at S$200,000).

There are grace periods available for incentives commencing between 1 January 2025 and FY ending 2026, as well as grace periods for incentives commencing prior to 1 January 2025.

SFO-managed funds are subject to more stringent quantitative conditions and remain unchanged.

Other revisions
Other revisions include:
› removal of the condition that a fund must be a newly set-up company for Section 13O funds;
› removal of the requirement that the Section 13O/U fund vehicle may only serve the investment strategy that has been approved by MAS; and
› waiver of the 30/50 rule for investors of Section 13O funds which are trusts and unit trusts incentivised under the Section 13D scheme with effect from YA 2025.

The 30/50 rule prevents certain non-qualifying investors (e.g., Singapore companies) from investing in greater than a prescribed number of issued securities of a Section 13O fund (30% or 50% depending on the number of investors in the fund), either alone or together with their associates. This prevents non-qualifying investors from being a large investor in/effectively controlling a Section 13O fund.

The MAS has clarified the 30/50 rule will not apply to trusts and unit trusts incentivised under Section 13D, effective from YA 2025.

Section 13D tax incentive changes
The Section 13D tax incentive applies to prescribed persons (that are non-resident individuals, companies or trust entities – i.e., offshore fund vehicles) managed by a Singapore fund manager.

The Singapore fund manager of a Section 13D fund now needs to employ at least one IP in each FY with effect from the FY ending in 2027 (inclusive).

New Section 13OA tax incentive for LP funds
The new Section 13OA will extend the Section 13O scheme to funds constituted as Singapore-registered LPs. All the Section 13O conditions mentioned above apply equally to Section 13OA funds at the level of the LP (i.e., no look-through) and the general partner of the Section 13OA fund will be held responsible for meeting the incentive conditions.

New options for closed-end funds
The MAS has introduced closed-end funds (funds with fixed lifespans and designated fund-raising and redemption periods) as an option for non-SFO Section 13O, 13OA and 13U applicants. For closed-end funds, certain quantitative conditions will be waived in the years during the fund's divestment phase. The tax incentive will be revoked at the end of a fund's divestment phase or the day immediately after its 20th incentive year, whichever is earlier.

New application process
From 2 January 2025, all new applications must be made through the new MAS Tax Scheme portal. This new single-step application process simplifies the application process and is expected to shorten processing times.

This streamlines the application process, especially for SFO-managed funds. Previously, SFO-managed funds were required to follow a lengthy application process (including submission of information and documents over several stages to the MAS via email and online portal).

Concluding thoughts
The recent tax incentive updates reflect Singapore's ongoing commitment to the requirements of the OECD Forum on Harmful Tax Practices and the EU Code of Conduct Group by ensuring that tax incentives are only provided to funds that have anchored sufficient economic substance in Singapore, while still promoting Singapore as a regional financial hub by taking into account the practical considerations faced by funds that are / wish to avail themselves of the tax incentives available, as seen with the removal of investment strategy change restrictions, the introduction of the new Section 13OA scheme, and the closed-end fund option.

Singapore-based fund managers with existing non-SFO Section 13O/U funds may wish to revisit their investment strategies in light of the revised minimum AUM and tiered LBS requirements and consider how these requirements can be met within the grace period. Prospective non-SFO Section 13O/OA/U applicants could consider opting into a "closed-end fund" treatment, if applicable.

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United Kingdom HMRC's transfer pricing guidelines for compliance (GfC)

Introduction

In the tax year 2023/24, HMRC raised £9.3 billion in corporation tax from the UK financial services industry and transfer pricing (TP) transactions and adjustments will have made a sizeable contribution to this. Within the UK tax legislation there are certain exemptions for businesses within the financial services industry but in the main this does not extend to UK TP legislation.

In the last couple of years, there have been updates to the UK TP legislation and requirements, and it is clear from reported tax revenues that TP is a key area of focus for HMRC in tax audits.

Following on from this, HMRC recently released TP GfC to focus on ensuring businesses adopt proactive, robust, evidence-based approaches to setting and documenting intercompany transactions.

For tax professionals, these guidelines serve as both a roadmap and a warning: a clear framework for compliance to provide tax-payers with more guidance but with increased scrutiny and potential risks for those who fall short. There are recurring scoping and quality themes throughout, geared around raising standards of compliance. The themes reflect observed HMRC day-to-day practices that have been evident for some time.

In the UK there is already a requirement for businesses to retain a file of supporting information and an ability to demonstrate, with underlying evidence, the level of care taken to calculate the arm's length return at the time of filing the tax return. In turn, this evidence is highly relevant to penalty determination. Consequently, in a tax audit the benefit of good documentation is that it will result in a 'more focused and less protracted enquiry process reducing compliance costs'. A vital point in this context is the localisation of multi-territory analysis. What emerges from this is that it can't be a "one size fits all". A full consideration of the UK position must be undertaken.

Managing compliance risks

A key change is that HMRC is focused on understanding who the UK risk lead is in a group, and how seriously they are considering TP. The guidelines contain a number of recommendations relating to the UK risk lead, including strongly recommending that the UK risk lead asks those setting the group TP policies to flag to them the high-risk indicators.

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Common compliance risks

HMRC's message here is to increase the rigour and depth of the analysis and to perform it contemporaneously. It is clear that HMRC are not happy with the standard of analysis and documentation that they are currently seeing. The guidelines provide plenty of thoughts on the format, content, and style of documentation, mostly through the lens of functional and comparability analysis.

Roll forward analyses are also a target for HMRC, as they are perceiving that there is a lack of care when rolling forward pre-existing materials. This could lead to a potential for tax-geared penalties.

What does this mean for Financial Services?

In contrast to their historic approach, HMRC are increasingly challenging UK taxpayers across the financial services industry as they streamline their tax audits to those with a greater chance of yielding higher tax receipts. This has been successful where for example TP models for fund structures have not been updated, and consequently incorrect TP amounts have been booked for several historic years. Equally HMRC are also focused on understanding the implementation of transfer pricing policies, especially where there is a high level of financial complexity and consequently bigger risk of errors.

On a positive note, more recently, we have seen a much sharper focus on TP from private equity portfolio businesses keen to update their policies and documentation particularly immediately before or after a transaction.

Key takeaways

This guidance brings three main messages into focus:

1. To apply a UK lens to TP transactions
2. Contemporaneous analysis to be performed
3. Greater depth and evidence to support the policies and the documentation

In conclusion this 100-page guidance produced from HMRC is very helpful in providing taxpayers with some certainty regarding TP compliance. However, it may also indicate that taxpayers can expect to have more engagement with HMRC on TP going into 2025 and beyond.

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