Austrian Asset Management News
Tax and Regulatory Reporting

Issue 8, November 2014

Editorial

Dear Clients,

This year, the Austrian Ministry of Finance came up with the idea to tax non EU residents receiving interest payments from Austrian source at an Austrian deposit. What was initially just planned to be applicable for cash deposits and Austrian bonds had to be applied also to tax transparent investment funds. Consequently, the fund industry had to go through a process confirming whether the funds were in or out of scope regarding the Austrian foreigner tax. Finally, we can confirm that from our client base, 0.016% of the funds were in scope.

Let's hope that 2015 will not bring any comparable administrative exercises.

All the best

Thomas Steinbauer

Update on the settlement procedure in the case of liquidations

Latest discussions with the Austrian Ministry of Finance and Austrian banks on the settlement procedure in the case of liquidations have not yet achieved a significantly new outcome. Thus, for the time being the current practice (preparation of "distribution" reporting on the liquidation amount) is to apply.

Nevertheless, Austrian banks have indicated that they will correct any over withholding with regards to liquidations in the same calendar year if they are approached by investors and in case that a tax representative provides them with a calculation of the Austrian tax on the distribution.

As a reminder, we have summarised this important issue in the background and reporting responsibilities sections below.

Background to distribution reporting in the case of liquidations

As announced earlier, in the case of a transfer of a liquidation amount to the investor, Austrian banks currently deduct 25% WHT from the total liquidation amount as – according to their interpretation of the Austrian investment fund legislation – any payment by the fund has to be processed as a distribution.

In this issue

This view is correct as long as no fund units are transferred in the course of a transaction. But if the number of fund units changes in connection with a payment (e.g. sale or liquidation), the amount transferred cannot be treated as a distribution but has to be treated as tax free sales/liquidation proceeds, which trigger different tax consequences.

The settlement system of some Austrian banks does not distinguish between a distribution payment and the payment of liquidation proceeds. This means that Austrian tax representatives further on have to prepare "distribution" reporting on the liquidation amount so that the liquidation is proceed correctly by the banks.

Reporting deadlines & your responsibilities

Distribution reporting on the liquidation amount has to be carried out by the Austrian tax representative, at the very latest one day before the pay date of the total liquidation amount. Nevertheless, Austrian banks also accept liquidation proceeds reporting one or two days after the payment.

To guarantee that 25% WHT is not levied on the total liquidation amount of an investor with an Austrian deposit, please inform us as soon as possible about any planned liquidations so that we can prepare "distribution" reporting for the respective share classes in time.

Please note: If all fund units are redeemed before liquidation or in case of a fund merger, no reporting is necessary.

We will keep you informed about any further developments.

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Annual OeKB registration deadline – 15 November 2014 / 15 December 2014

In order to avoid lump-sum taxation on deposits of Austrian private investors at calendar year end, it is important to check whether your records of share classes in which Austrian investors are invested are in line with the reporting fund status in Austria.

Are you affected?

In either of the following two cases **no action** is required on your part:

- Your range of share classes subject to Austrian tax reporting has remained unchanged since the last annual tax reporting.
- You have already set up a process which ensures that all required share classes are registered with the Oesterreichische Kontrollbank ("OeKB") or you have agreed on a separate registration process with us.

On the other hand, action is required if new or existing non-reporting share classes were distributed to Austrian private investors during this calendar year.

Legal registration deadlines

The following share classes are to be registered with OeKB by **15 November 2014** at the latest:

- Share classes which have been registered for public distribution with the Austrian Financial Market Authority (FMA) before 15 November 2014 or
- Share classes which are not registered with the Austrian FMA for public distribution, but have been sold on a private placement basis in Austria before 15 November 2014.

All other share classes should be registered by 15 December 2014 at the very latest.

Please note: The registration with OeKB and therefore the Austrian tax transparency status of share classes for the calendar year 2014 will not be possible after these deadlines. As a consequence, lump-sum taxation applies as at 31 December 2014 for Austrian private investors who hold such shares on an Austrian deposit.

Further steps
Please compare whether your records of share classes in which Austrian investors are invested are in line with the Austrian tax transparency status. If the registration of additional share classes as reporting funds is required, please get in touch with your main contact at PwC Austria.

If any share classes are no longer required to be registered as reporting funds, please contact us as well. We will take care of the de-registrations for you.

Please note: If a declaration of intent is sent to OeKB, it is also mandatory to report the annual Austrian tax figures within the legal deadline (seven months after financial year end) to maintain the reporting fund status.

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Practical details on the extension of the limited tax liability on interest income

As we have already informed you per email, the Austrian Ministry of Finance issued the final update of the Fund Reporting Ordinance on 9 September 2014, providing for OeKB reporting in connection with the Austrian withholding tax on interest income ("foreigner WHT"), which will come into force as from 1 January 2015. The Austrian banks have also reached an agreement on the practical details with respect to the implementation of foreigner WHT reporting and the corresponding asset test for investment funds.

When is an investment fund within the scope of foreigner WHT?
Asset test
An investment fund is subject to foreigner WHT only, if the fund units are held on Austrian deposit and if the investment in Austrian debt securities amounts to

- more than 15% of the fund's total net assets in the case of distributing funds or
- more than 25% of the fund's total net assets in the case of accumulating funds.

The Tax Amendment Act 2014 does not provide for any special requirements for the asset test, but rather refers to existing provisions in connection with EU-WHT. Hence, an asset test should be carried out according to the domicile of the fund ("home country rule"), at least once a year and OeKB has to be notified of any changes in the reporting status of the fund.

No further reporting obligations are required if the fund does not exceed the threshold requirements. An enquiry among our clients has shown that foreign investment funds are generally outside the scope of foreigner WHT.

What to do if the fund is within the scope of foreigner WHT?
Reporting obligations to OeKB
In case an investment fund holds more than 15%/25% in Austrian debt securities as described above, a reporting system similar to EU-WHT reporting should be set up in order to avoid lump sum taxation of

non-EU residents investing in these funds, which are held at an Austrian deposit. The new reporting codes are as follows:

- **Daily reporting code: “TA”**
- **Periodical reporting code: “TD”** (i.e. distribution)
- **Annual reporting code: “AKE”**

The Austrian fund industry has agreed that the daily reporting of foreigner WHT can be based on the daily EU-WHT figure (Q or TIS) and no separate calculation process has to be set up by the fund administrator. Since EU-WHT encompasses the total taxable interest income paid to a beneficiary non-resident in Austria, the figure can easily be adapted to show the Austrian taxable income and be reported under the TA code.

Example:
20% of the total net assets of a distributing fund are invested in Austrian debt securities. The fund’s TIS (total taxable interest income per share in connection with EU-WHT) amounts to 0.10, Q (EU-WHT on total interest income) = 0.035 (0.10 x 35%). EU-WHT tax rate = 35%.
Foreigner WHT tax rate = 25%.

Under the TA code, the WHT on Austrian interest income is then as follows: TIS x 20% x 25% = 0.005

The Austrian banks, however, cannot automatically translate EU-WHT into foreigner WHT figures, which means that the reporting obligation remains with the fund administrator. Periodical and annual reporting will be based on the more detailed information the tax representatives receive in the course of the annual DDI.

Please note: As daily and annual reporting are not connected, it is possible to stop reporting the daily figures without losing the overall reporting status.

Further developments

The OeKB will update the status of investment funds regarding the Austrian tax on interest income by the end of 2014, and the new reporting regime will start on 1 January 2015. We will keep you informed about any further developments.

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EU withholding tax – 2017 is not the end…

According to recent news reports, Austria has negotiated an exemption clause with respect to the change to the information exchange system with the other EU Member States. Thus, Austria will not abolish the EU withholding tax deduction system by 1 January 2017 as originally foreseen in the Directive, though it will switch to the information exchange system one year later.

The reason for this exemption clause is that Austrian banks require an extended preparation period to set up required documentation and information processes in their systems. Because of the strong Austrian banking secrecy, investor information essential for the information exchange is currently documented in different places and has to be collected and brought in an appropriate format before the implementation.

There is no corresponding legislative draft at the moment, but we will keep you updated as soon as the Austrian Ministry of Finance issues any official information.

What this means for you

As a result of the postponement, we understand that the reporting of the daily, periodic and annual EU withholding tax to OeKB will be necessary for in-scope reporting funds at least until the end of 2017.

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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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