Austrian Asset Management News
Tax and Regulatory Reporting

Issue 1, February 2013

Editorial

During our recent client feedback process we received the feedback that both the content and the intervals of our newsletters are greatly appreciated. While these things will not change, I am pleased to present you the Austrian Asset Management Newsletter on Tax and Regulatory Reporting in the new layout.

We will be happy to provide you on a quaterly basis with the most recent developments and selected best practice solutions in this very specialised field of work.

I hope you like it!

Thomas Steinbauer

Experience with the registration of investment funds as reporting funds with OeKB

In order to avoid lump sum taxation for foreign investment funds in Austria, share classes of a foreign investment fund have to be registered with Oesterreichische Kontrollbank (OeKB) as reporting funds. Since April 2012, a new process has been in place for this registration.

Points to be considered

Initial registration as a reporting fund has to be carried out on the level of the fund itself or on the level of the fund management company (in case of contractual fund structures). Following this, additional share classes can be registered by reporting basic data (e.g. ISIN code, share class name, etc.) to OeKB.

While initial registration requires the sending of a formal registration form by post and therefore some lead time, the basic data is sent to OeKB by email, together with a declaration of intent. According to our experience, OeKB then sets up ISINs as reporting share classes within a few hours.

With the new reporting regime, OeKB only accepts share class registrations from the tax representative of the fund or from the fund/fund management company itself,

In this issue

Since April 2012

Since April 2012, a new process has been in place for the registration of foreign investment funds

i.e. not from the fund administrator or other third parties anymore. In order to ensure that the entire annual deemed distribution income (DDI) for all reporting share classes within the legal reporting period is reported, we recommend that basic data registration is carried out by or via the Austrian tax representative. This automatically keeps the tax representative informed about the scope of share classes to be included in annual DDI reporting.

Registration of share classes not yet launched

Several tax reporting regimes allow an application of the preferable tax reporting status even before a share class is launched. This is not the case in Austria, which has caused some irritation to our clients over recent months and requires additional planning in your distribution strategy.
In case of a registration of share classes which have already been initiated, but not yet launched (dormant share classes), OeKB does not apply the reporting status immediately but only upon the effective launch of the share class or accreditation by the Austrian Financial Market Authority (FMA). However, dormant share classes may be registered as temporary reporting funds, which change their status to a reporting fund as soon as they are accredited or launched in Austria. As these temporary reporting funds cannot be found on the OeKB website (www.profitweb.at), there is no evidence that they have already been registered with OeKB.
In practice, there are Austrian investors who are only willing to purchase share classes which already have reporting status, but at the same time share classes are not granted reporting status for dormant share classes.

In our experience, a possible solution for this dilemma is an early application for accreditation by the FMA. Once accredited, dormant share classes may be registered as reporting funds even if they have not been effectively launched. As reporting fund status means full tax transparency, dormant share classes gain attractiveness for Austrian investors.

Deregistration vs. loss of reporting status

Over the last few weeks we have repeatedly encountered the issue of how to proceed with former reporting share classes which no longer require reporting fund status (e.g. because there are no Austrian investors in the share class). One way of ending the reporting fund status is the non-delivery of annual DDI figures within the reporting deadline; as a result, the affected share class loses its reporting status seven months after the financial year-end.

An additional (and often problematic) effect of such non-delivery of annual data is that the affected share class may not regain the reporting status until the next annual reporting to OeKB. For instance, a share class with the financial year-end of 31 December 2012, which loses its reporting fund status on 1 August 2013 due to non-delivery of annual data, can at the earliest regain the reporting fund status in the course of the annual DDI reporting as at 31 December 2013, which will generally take place in May 2014.

As a result, in case there are any Austrian investors (for whatever reason) invested in the share class at calendar year-end, lump sum taxation for black funds will be levied by the Austrian depositary bank. There is no way to avoid this lump sum taxation due to the retention period described above.
We have now received clarification from OeKB, that also in case of a

Newsticker:

The Austrian Ministry of Finance has announced an updated tax reporting ordinance until Easter.

For all financial years starting from 1 January 2013, 50% of all realised capital gains accumulated within the fund are taxable for Austrian investors.

formal deregistration of a reporting share class the same consequences as in case of a non-delivery of annual DDI figures apply. Thus, straightening the scope of reporting share classes by deregistration of share classes provides no advantage. The retention period is applied in anyway, which certainly limits the flexibility in the distribution strategy.

In the light of the said above, we recommend staying with your current scope of reporting share classes if no detailed information on the share classes Austrian investors are invested in is available, to avoid any negative tax consequences for Austrian investors and a reputation risk on your side. The regain of the reporting fund status is now always tied to a timely annual reporting to OeKB and thus not possible on short notice anymore.

Please always involve the tax representative and the local distribution team in discussions on the streamlining of your scope of reporting share classes to avoid negative surprises for Austrian investors.

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PKG Reporting, regulatory burdens and satisfied clients

In a world in which clients are focusing on performance, asset managers can offer additional value to their Austrian pension fund clients.

We expect 2013 to be a year of adjustment to a fast emerging capital markets landscape. Since mid 2012 we have been entering into a bull market. In the last 52 weeks the major stock markets have achieved double digit returns (+25.82% DAX; +27.08% Nikkei 225; +14.09% SPX). However, asset allocation has remained very strong in fixed income. If the economy continues to recover, it is likely that large institutional investors such as pension funds will also decide to make adjustments to their asset allocation. During this process they will search for investments which – besides exposure to the desired risks and a good track record – also offer the necessary regulatory requirements.

What is PKG Reporting?
PKG Reporting (reporting according to the Austrian Pension Fund Act or "PKG") consists of information about a fund's portfolio in accordance with the "substance over form" principle, which means that the economic substance of market factors is critical for the valuation of all assets. The exposure to market factors (risk assessment) can be determined on the basis of a sensitivity approach such as the VaR approach or the commitment approach. The latter is generally considered to be a more conservative approach and is the one that has been selected as the standard approach for PKG Reporting by the Austrian Financial Market Authority.

Like other regulatory requirements, Austrian PKG Reporting creates additional administrative effort for Austrian pension funds as well as for asset management companies without providing any additional value for investors.

What are the challenges?
According to our experience, most asset management companies calculate their portfolio risk on the basis of the VaR approach. Nevertheless, in accordance with PKG Reporting, the risk valuation of financial derivative instruments (FDI) must in all cases be carried out on the basis of the commitment approach, requiring an additional calculation.

Despite the fact that the commitment approach is intended to be a simpler method of calculating global exposure, it has in practice been difficult to apply this approach to more complex fund structures. Our clients have experienced uncertainty on how to complete the required templates for complex structures as well as the unclear interpretation of the regulation itself. Without a proper legal and best practice background it is very difficult to understand and comply with the reporting obligations.

Due to the reasons above, PKG reporting is a challenge for asset management companies as well as for their Austrian pension fund clients. Both have been investing time and resources in order to solve the difficulties related to PKG Reporting – with varying levels of success.

How we can assist you

In response to this market development, PwC Austria has developed different PKG Reporting services, thus enabling you to concentrate on your business and portfolio management while we deal with the implementation of a reporting solution that satisfies your investors' needs.

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Reporting of distributions to OeKB

Since the introduction of the new Austrian fund taxation regime in April 2012, the responsibility of the Austrian tax representative has increased a way that the tax representative is now responsible to report distributions as well as the applicable KESt ("Kapitalertragsteuer", Austrian withholding tax) on distributions to Oesterreichische Kontrollbank (OeKB).

The reporting of distributions ensures that all components of a distribution are taxed correctly at investor level. If a distribution is not reported to OeKB, the Austrian depository bank withholds 25% KESt on the total distribution amount received by the investor by default.

Reporting of distributions, yes or no? What has to be considered?

To ensure the best tax position of Austrian investors, a distribution reporting to OeKB is important if a distribution which includes less taxable portions (e.g. realised capital gains) or tax free parts (e.g. return of capital) is paid to the investors.

The deduction of 25% KESt on the total amount of the distribution will in such cases lead to a tax overpayment by the investor. The Austrian tax representative is able to correct this overpayment in the course of the annual DDI reporting to the extent of a positive additional accumulated income. However, the process to regain overpayments of KESt from the Austrian depositary bank is currently still under discussion.

Our experience over recent months

Our experience shows that for all different types of distribution frequency it can be advisable to report less taxable portions or tax free parts of distributions to OeKB. We also noticed that mostly funds and share classes distributing more than once a year or distributing a determined amount for each period can lower the taxation of the distribution for their Austrian investors through distribution reporting to OeKB.

Your line of action for the future

In order to ensure the correct taxation of the distributed income portions at investor level, we recommend reviewing your distribution schedules or policies. Following this, we suggest setting up a process with your Austrian tax representative to ensure that distributions, especially distributions including realised capital gains or return of capital, are reported to OeKB. If on the other hand only net investment income including equalisation (determined according to Austrian tax law) is distributed it seems that distribution reporting can be waived/omitted.

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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 eight senior staff and about six junior level staff to support you with your business challenges. Since two year's we have broaden our service with a separate Consulting branch, also working closely together with the Asset Management team of PwC Germany.

Our Asset Management Consulting services include transformation and distribution services, clearing, depositary and custodian issues, portfolio and collateral management as well as regulatory consulting.

Our Asset Management Team

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