

July 19, 2013

**German Investment Tax Act: The current scope of application continues as before for the time being**

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**The German Federal Ministry of Finance has declared in an Ordinance dated July 18, 2013 that the scope of the German Investment Tax Act (“GITA”) will continue to apply to domestic and foreign investment funds within the meaning of the German Investment Act even though said act will be repealed as per July 21, 2013. This provisional rule is necessary because the legislative process regarding the Act Amending the German Investment Tax Act and Other Acts (AIFM Tax Amendment Act, or “GITA–AIFM“) is still not been finalized. The reason therefor is that the Mediation Committee (Vermittlungsausschuss) was not successful in reaching a final agreement on two significant points in draft GITA–AIFM: (i) the introduction of a lump sum taxation for non–qualifying investment funds in corporate form (investment corporations, Kapitalinvestionsgesellschaften) and (ii) the introduction of an open–ended partnership for international pension pooling.**

The current scope of application of the GITA follows the scope of application of the German Investment Act, i.e. the GITA applies only to foreign investment funds, which also comply with certain requirements of the German Investment Act.

The legislation implementing the AIFMD into domestic law will repeal the German Investment Act as of July 22, 2013. It will be replaced by the new German Investment Code (Kapitalanlagegesetzbuch or “KAGB“), which will enter into force on July 22, 2013. As a result, the link of the GITA’s scope of application to the German Investment Act (as stated in the previous paragraph) will no longer be valid after July 21, 2013. The legislator has re-established the link between the GITA’s scope of application to the GITA’s successor legislation, the KAGB. The link is set forth in the GITA–AIFM, however, this legislation is still pending. Thus, after July 21, 2013, the GITA

would no longer apply to any investment fund, if no provisional rule had been provided. Rather, the German investors would become subject to the general rules of taxation. However, said rules of taxation are i.a. not designed for the tax treatment of investors in collective investment schemes with a large number of investors.

In order to avoid such a scenario, the Ordinance states that the current GITA will continue to apply to investment funds that comply with the current requirements of the German Investment Act after July 21, 2013 until the new statutory regulation of the GITA’s scope of application enters into force. This means that a temporary grandfathering for German investors of existing foreign investment funds is granted, i.e. for the time being the tax regime does not change. Moreover, the current GITA will also apply to new investment funds set up after July 21, 2013, provided these funds also comply with the requirements of the German Investment Act. However, for an investment fund set up after July 21, 2013, the challenge will be to accommodate the requirements according to the old regime under the German Investment Act and, at the same time, the requirements under the upcoming regime according to the KAGB.

The legislative process regarding the GITA–AIFM is expected to be continued in September. It must be completed before the German federal election, which will be held on September 22, 2013. Until then, the Mediation Committee must submit a proposal to resolve the remaining differences of opinion between the lower house (Bundestag) and the upper house (Bundesrat) of the German parliament. However, we trust that that an agreement will be reached in due time before the election of the German Federal Parliament (Bundestag) on September 22, 2013, and thereby the link of the GITA’s scope of application to the KAGB will finally enter into force - admittedly with a delay!



**be** in touch: If you have any questions, please do not hesitate to contact us!



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