



February 25, 2015

## Unclear issues for closed end alternative Investment funds set up as partnerships clarified

[http://docs.bepartners.pro/news/2015-02-12\\_BMF\\_Auslegungsfragen\\_18\\_InvStG.pdf](http://docs.bepartners.pro/news/2015-02-12_BMF_Auslegungsfragen_18_InvStG.pdf)

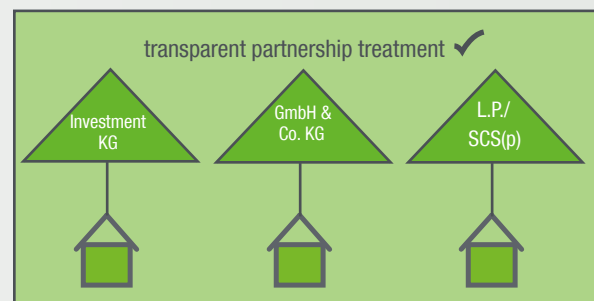
Since the transposition of the AIFMD into German tax law at the end of 2013, the taxation of closed end alternative investment funds depends on whether such funds are set up as partnership-type investment vehicles (“Investment Partnership”) or corporate-type investment vehicles (“Investment Corporation”). Generally, the taxation as an Investment Partnership is favorable compared to that of an Investment Corporation as the Investment Partnership itself does not qualify as taxable entity. The income is allocated to the investors and is taxed only once at their level. Investment Corporations are not tax transparent and thus an additional layer of tax may be triggered. On February 12, 2015, the German Federal Ministry of Finance issued a Decree that clarified unclear issues in relation to the taxation of Investment Partnerships, in particular which investment vehicles can benefit from the taxation as Investment Partnerships and under which circumstances a partnership return has to be filed.

### 1. Scope

As set forth in the law, only investment vehicles in the legal form of an Investment Limited Partnership (“Investmentkommanditgesellschaft”) and comparable foreign vehicles qualify as Investment Partnerships. In recent practice, such wording of the law gave rise to some confusion whether “regular” German limited partnerships (“GmbH & Co. KG”) as well as comparable foreign general partnerships and limited partnerships could also be taxed as Investment Partnerships or if, as this is the legal consequence, they would be taxed as Investment Corporations. The Federal Ministry of Finance now clarifies in its Decree of February 12, 2015 that those “regular” German limited partnerships as well as any foreign partnership that is comparable to a German “regular” partnership are taxed as Investment Partnerships. By such Decree, the scope of the favorable tax regime for Investment Partnerships is expanded and thus reconstitutes the status quo for closed end alternative investment funds as prior to the transposition of the AIFMD: As a general rule, foreign investment vehicles set up

as partnerships are treated as tax transparent. For example, the following legal entities should qualify as Investment Partnerships and are subject to such favorable tax treatment:

- German Investmentkommanditgesellschaft (InvKG)
- German GmbH & Co. KG
- Luxembourg Société en commandite simple (S.C.S.)
- Luxembourg Société en commandite spéciale (S.C.Sp.)
- English Limited Partnership
- Scottish Limited Partnership
- Delaware Limited Partnership
- Canadian Limited Partnership

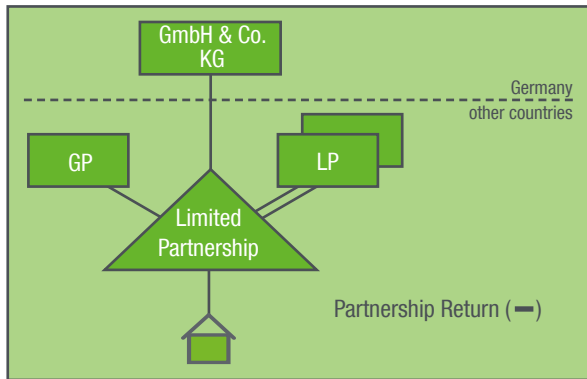


### 2. Partnership Return

The law provides that a partnership return has to be filed for Investment Partnerships. It has to be filed for German Investment Partnerships as well as for foreign Investment Partnerships with German investors. The filing requirement is triggered as soon as there is a single German investor in the Investment Partnership. Such general rule to file a partnership return for foreign Investment Partnership was criticized as for foreign partnerships, which do not qualify as investment vehicles and which have only a single German partner, filing such return is not required. The Federal Ministry of Finance now clarifies in its Decree of February 12, 2015, that a partnership return is not required to be filed for foreign Investment



Partnerships with a single German investor either. In our view, this should apply irrespective of whether the German single investor is a natural person, a body corporate or a German partnership.



### 3. Result

As a result, the clarifications of the German Federal Ministry of Finance are most welcome for fund sponsors and investors of closed end alternative investment funds. In particular, the fact that it is now clear that foreign limited partnerships in general are treated as tax transparent provides for much comfort in structuring closed end funds. For example, the recently introduced Luxembourg SCS and SCSp, which are currently commonly used to structure closed end alternative investment funds in Luxembourg, should qualify as tax transparent for German tax purposes. The Luxembourg tax treatment was also recently clarified for such vehicles (please see [beinformed](#) dated January 30, 2015): if set up as alternative investment funds, these vehicles are not subject to either income tax or municipal business tax in Luxembourg. Such Luxembourg vehicles should therefore be well-suited for optimized tax planning from a German as well as a Luxembourg tax perspective.

With regard to the clarification regarding the filing requirements by the German Federal Ministry of Finance, it has to be welcomed that the tax administrative burdens are minimized for single German investors in foreign Investment Partnerships.

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



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