

# WTS Global Financial Services Infoletter

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## 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<sup>1</sup>.

The following participants in the WTS Global network are contributing with a diverse range of FS tax topics, e.g. the key takeaways for Financial Services entities arising from the Australian Taxation Office focus on third-party data governance; the legacy of CJEU Case Fidelity (C-480/16), concerning foreign investment funds and Danish dividend WHT; and the Tiger Global ruling and its impact for foreign investment structures in India:

- > Australia – WTS Australia
- > China – WTS China
- > Denmark – HortenDahl
- > Germany – WTS Germany
- > India – Aurtus Consulting
- > Korea – Lee & Ko
- > Poland – WTS SAJA
- > Sweden – Svalner Atlas Sweden
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Thank you very much for your interest.

Frankfurt, 28 April 2026

With best regards,

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For details on WTS Global Financial Services please click [here](#).

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## Australia



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### Australian Taxation Office focus on third party data governance – Key takeaways for investment industry entities

The Australian Taxation Office ("ATO") continues to increase its focus on governance over data sourced from outsourced service providers (OSPs), including custodians, administrators, registries and technology platforms. This data is critical to income tax returns and investor distribution statements, and the ATO has been clear that outsourcing does not transfer legal responsibility for tax outcomes.

In 2022, the ATO released its Supplementary Guide on Governance over Third Party Data (TPD Guide), setting out expectations for how superannuation funds, investment managers, insurers and similar entities should govern third party data used for tax reporting. The guide builds on earlier ATO governance guidance and utilises the established three stage maturity model: Stage 1 – Controls exist; Stage 2 – Controls are effectively designed; Stage 3 – Controls operate effectively and are independently tested.

From 1 July 2024, the ATO commenced formal reviews of third-party data governance. Of the first 19 funds reviewed, 70% achieved a Stage 2 rating, with the remainder not rated due to fund wind-ups. The ATO has indicated that Stage 2 is now the expected industry standard, with a further 22 funds to be reviewed in both 2026 and 2027.

#### Key ATO observations

##### Board oversight

Boards are expected to receive regular, meaningful reporting on OSPs performance, including material service level breaches, remediation actions and preventative controls. High level reporting without insight into root causes or corrective action was viewed unfavourably. Reliance on assurance reports GS 007 and ASAE 3402 reports were often considered insufficient, particularly where tax control objectives were limited. The ATO reiterated that responsibility for tax data accuracy remains with the entity, not the OSPs.

##### Management level controls

Insufficient oversight of OSPs system changes and process improvements impacting tax data. Inconsistent identification and escalation of significant or complex transactions. Robust tax due diligence at investment entry, but there was limited focus on exits or post closure reviews. Gaps in documented controls for data migration events, including changes in OSPs, platform migrations and successor fund transfers. Increased scrutiny of international investments, particularly where custodians provide downstream tax reporting.

##### Practical steps for entities

Based on our experience assisting clients through these reviews, entities should prioritise: Mapping outsourcing arrangements to identify all material OSPs involved in tax data production. Documenting third party tax data flows, including manual interventions and review points. Gathering existing governance and control documentation and mapping it to the TPD Guide's principles and controls. Performing a structured gap analysis, ideally with independent input. Implementing a risk-based control framework with clear ownership, escalation criteria and board reporting. Establishing a periodic, independent testing of third-party data tax controls will assist progress to a stage 3 rating.

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## China



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### Tax exemption on bond interest and overseas institutional investors

China's finance and tax authorities have renewed the tax exemptions on bonds interest income earned by overseas institutional investors. This includes Corporate Income Tax (CIT) and Value-Added Tax (VAT) exemption on interest income from onshore bonds, and VAT exemption on interest from offshore Chinese government bonds.

Similar to prior arrangements, this extension is temporary, effective for a two-year period from 1 January 2026 through 31 December 2027.

#### Policy renewal and expansion

- a) Old policy: The previous tax exemption was limited to only onshore bonds, applicable to interest yields earned by overseas institutional investors. First implemented in 2018 and renewed in 2021, the policy was valid until the end of 2025. During this time, offshore Chinese bonds were not covered.
- b) New policy: The new policy introduces two key developments, outlined in two separate notices issued jointly by the Ministry of Finance (MoF) and the State Taxation Administration (STA) in mid-January 2026.
  - › Onshore bonds: The first notice (*MoF & STA Notice No. 5, 2026*, dated 13 January 2026) concerns onshore bonds. It confirms the renewal of the CIT and VAT exemption for interest from onshore bonds earned by overseas institutional investors, effective from 1 January 2026 through 31 December 2027.
  - › Offshore government bonds: The second notice (*MoF & STA Notice No. 6, 2026*, dated 14 January 2026) concerns offshore government bonds. It extends, for the first time, a VAT exemption to interest earned by overseas institutions from Chinese central or local government bonds issued outside China. The policy addresses VAT only; CIT is understandably not applicable to offshore investments by foreign entities.

Notably, this VAT exemption is applied retroactively from 8 August 2025 and remains in force until 31 December 2027, the same deadline applied to the first policy mentioned above for onshore bonds. This represents positive news for investments in overseas Chinese government bonds, which are witnessing rapidly growing foreign holdings. The retroactive effective date suggests a pre-emptive policy design, ensuring a broader range of overseas investors can benefit.

#### Summary

China's bond market continues to grow in both size and openness. According to the China Central Depository & Clearing Co. (CCDC), the total size reached approximately RMB 188.5 trillion by the end of June 2025, confirming its position as the world's second-largest bond market. Backed by China's sovereign credit, fiscal strength, and foreign exchange reserves, Chinese government bonds are experiencing a steady rise in foreign ownership. This ongoing expansion and openness provide a firm foundation for the continuation of these tax incentives.

Overseas institutional investors can primarily access China's bond market through the Qualified Foreign Institutional Investor (QFII/RQFII) schemes, direct investment in the China Interbank Bond Market (CIBM), and Bond Connect.

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By renewing tax exemptions for onshore bonds and extending them to offshore government bonds, China reaffirms its commitment to maintaining a stable, open, and investor-friendly bond market.

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## Denmark



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### Foreign investment funds and Danish dividend Withholding Tax – The legacy of CJEU Case Fidelity (C-480/16)

Danish investment institutes with minimum taxation ("section 16 C funds") effectively bear no Danish tax at fund level on dividends distributed from Danish companies whereas similar foreign investments funds traditionally have suffered a 15% Danish withholding tax after treaty relief.

This difference in tax treatment depending only on residency led the foreign funds to challenge this regime as the difference in tax treatment constituted a violation of Article 63 TFEU. This led to CJEU decision C-480/16.

#### **Fidelity (C-480/16) and SKM2021.353.HR**

In Case C-480/16 Fidelity Funds, the CJEU ruled that restricting the Danish withholding tax exemption only to funds resident in Denmark violated Article 63 TFEU. The Court had no reason to comment on the other conditions in Section 16C of the Danish Tax Assessment act – conditions that funds must also meet to be eligible for a full refund.

In SKM2021.353.HR the Danish Supreme Court confirmed the C-480/16 decision and stated that foreign funds can be entitled to withholding tax exemption. However, the Supreme Court also stated that the remaining conditions described in Section 16 C must still be met for any fund requesting a full refund. Foreign funds that had not met these conditions for the relevant years would not be entitled to refunds beyond ordinary treaty relief.

From a practical point of view none of the funds in question complied with the remaining conditions of Section 16C. The reason for this was that Section 16C according to the original wording was giving the possibility for favourable tax treatment to Danish funds only – leaving no reason for foreign funds to comply with the remaining conditions.

#### **SKM2026.23.LSR**

The Tax Appeals Board's decision in SKM2026.23.LSR is the latest confirmation that foreign funds must meet all conditions in section 16 C to qualify for tax-exempt treatment.

The case concerned a German UCITS fund that had already obtained a 12% refund under the Denmark-Germany tax treaty but claimed an additional 15% refund for the years 2014–2017.

The Board rejected the claim as the fund had not complied with the remaining conditions of Section 16C in the fiscal years 2014–2017.

The problem is that the fund in 2014–2017 had no reason to comply with the other conditions in Section 16C as Section 16C in those years did not apply to foreign investment funds. Foreign funds only got the opportunity to use Section 16C after the CJEU decision in the Fidelity case and the following Supreme Court decision in 2021.

From a practical point of view many of the funds did not comply with Section 16C because only Danish funds could use that rule. Once it was established that also foreign funds were eligible to use Section 16C it was too late to do so for the fiscal years that had already passed.

As a result, foreign funds that were effectively prevented from using Section 16C by an unlawful domestic-residence requirement are now denied the use of Section 16C because they cannot retroactively adjust their structure, governance or reporting to satisfy conditions that, at the relevant time, they had no legal possibility of meeting.

The conclusion is that full tax-exempt treatment under Section 16C is, as a practical matter, inapplicable to foreign investment funds for fiscal years prior to 2021.

For fiscal years from 2022 and onwards, Section 16C has been amended by legislation so that all minimum-taxed funds (Danish and foreign) are now subject to a 15% withholding tax on dividends from Danish companies. Accordingly, full tax-exempt treatment under Section 16C is no longer available for any (foreign or Danish) investment fund from 2022 and onwards.

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Unfortunately, it seems that the past WHT treatment of foreign investment funds up to the fiscal year 2022, which in our view qualified as a discrimination, is not likely to be remedied via Danish court decisions.

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## Germany



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## Cayman Funds – German Authority confirms continued eligibility for marketing under AIFMD II

Asset managers of Cayman Islands-domiciled funds and their distributors that market to German investors may find of interest the recent clarification regarding the AIFMD II EU Directive.

Recently, concerns in the market grew that funds domiciled on the Cayman Islands may no longer be permitted to market fund shares to German investors following Germany's National Private Placement Regime (NPPR), due to the German government's implementation of the EU Directive into national law (Fund Risk Limitation Act). Under this regime, non-EU-AIFMs may only market to German investors if the fund country of origin meets the following requirements:

1. Tax Information Exchange: The fund's jurisdiction of origin must be subject to an arrangement with Germany that ensures the effective exchange of tax information in line with the standards set out in Article 26 of the OECD Model Tax Convention.
2. No Blacklisting: The fund's jurisdiction of origin must not be classified by the European Union as a non-cooperative tax jurisdiction (EU Blacklist).

As the Cayman Islands do not have a comprehensive Double Taxation Agreement (DTA) with Germany, many AIFMs of Cayman Islands-domiciled funds were concerned that, in the absence of such a DTA, the Cayman Islands would not meet the requirements of Article 26 of the OECD Model Tax Convention. This raised fears that Cayman Islands-domiciled funds could effectively be excluded from the German market.

#### **BaFin Statement**

The German Federal Financial Supervisory Authority (BaFin), the German regulator overseeing financial services institutions and capital markets now clarifies that a formal DTA is not mandatory. Instead, an agreement on tax information exchange equivalent to the standards set out in Article 26 of OECD Model Tax is sufficient. BaFin further states that the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, developed by the OECD and the Council of Europe in 1988 and amended in 2010, which has been signed by both Germany and the Cayman Islands, meets these standards.

As the Cayman-Islands are also not included on the EU Blacklist, AIFMs of Cayman Islands-domiciled funds remain eligible to market to German investors under the NPPR, provided that the fund complies with standard notification procedures.

In this context, it may also be of interest that the Cayman Islands government recently published a revision of their International Tax Co-Operation (Economic Substance) Act on 5 February 2026.

#### **Conclusion**

BaFin's clarification provides legal certainty for AIFMs when making distribution decisions with respect to the German market.

Nevertheless, AIFMs should remain aware that the regulatory framework is dynamic. Should a jurisdiction be added to the EU blacklist or fail to meet the applicable tax information exchange standards, marketing eligibility may be revoked. Under the current regulatory framework, the German market remains accessible and continues to be an important market for Cayman Islands-domiciled funds and their asset managers.

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## India



### Tiger Global ruling – A moment of reckoning for foreign investment structures in India

The Tiger Global ruling by the Indian Supreme Court marks a decisive shift in how India's highest court views offshore investment structures into the country. While the decision turns on its facts, the broader message is unmistakable: treaty entitlement and structural defensibility will increasingly depend on real substance and decision-making. Foreign investors investing into India would be well advised to treat this judgment as a trigger to proactively review and recalibrate their India-inbound structures.

#### The ruling

The Supreme Court of India held that treaty benefits including the grandfathering benefit under the India–Mauritius Tax Treaty can be denied where an arrangement is found to be an impermissible tax avoidance structure, as the Indian domestic anti abuse provisions (viz. General Anti Avoidance Rules) and requirement therein of demonstrating economic substance, can be invoked to deny treaty benefits notwithstanding the availability of a Tax Residency Certificate, where the arrangement lacks commercial substance.

#### Background

- › Tiger Global invested in Flipkart India through a layer of Mauritius and Singapore entities. The investment was made before April 2017. Tiger global later exited during Walmart's acquisition of Flipkart. The sale was by a Mauritius company selling the shares of the Singapore holding company which ultimately held Flipkart India. The said Mauritius company claimed tax exemption under the India–Mauritius tax treaty on the gains arising out of such sale of shares.
- › Under the Indian domestic tax laws, such indirect transfer of shares of an India company would have been taxable in India.
- › The India – Mauritius Tax Treaty was revised in May 2016, pursuant to which the taxing rights over capital gains—which earlier vested exclusively with the jurisdiction of residence of the alienator—were also shifted to the source jurisdiction. However, investments and structures established prior to April 2017 were granted grandfathering protection under the revised treaty. Similar benefit of grandfathering was also extended under the domestic General Anti Avoidance Rules (GAAR) to investments made prior to April 2017.
- › Tiger Global approached Authority of Advance Ruling (AAR) in India to seek a ruling on the taxability under the India – Mauritius Tax Treaty.
- › Indian tax authorities challenged this, alleging the structure was set up mainly to avoid tax, leading to an extensive litigation from the AAR to the High Court and finally to the Supreme Court of India.

#### Outcome at various judicial levels in India

- › AAR (Advance Ruling Authority) rejected Tiger Global's request for an advance ruling stating that the investment structure prima facie was a tax avoidance arrangement.

- › The High Court however overturned the ruling of AAR and held that Tiger Global was entitled to treaty benefits. The High Court also held that the Tax Residency Certificate should be a valid proof of residency and in any case the investments held by Tiger Global was grandfathered under the India – Mauritius DTAA.
- › Supreme Court (the Apex court of India) ultimately reversed the High Court order and sided with the tax department, denying the benefits under the India-Mauritius Tax Treaty to Tiger Global, applying the Indian anti-abuse rules.

#### **Key observations of the Indian Supreme Court**

1. Tax Residency Certificate is not a conclusive of proof of residency – Merely having a Mauritius Tax Residency Certificate is not conclusive to determine residency under the applicable Tax Treaty.
2. Substance matters more than form – Where a company is incorporated is not of so much importance as to where the decisions are actually made.
3. The domestic GAAR can override tax treaty benefits – Even where investments were made prior to April 2017, GAAR may apply to exits or arrangements executed after that date if they are found to be impermissible avoidance arrangements.
4. Indirect transfers do not get grandfathering under the DTAA – The protection under the India–Mauritius DTAA applies mainly to direct holding of Indian shares. This was an indirect transfer (Mauritius company selling Singapore shares that derived value from India), so no grandfathering benefit under the India – Mauritius Tax Treaty was available.
5. Burden of proof is on the taxpayer – Once the tax department establishes a prima facie case of tax avoidance, the burden shifts to the taxpayer.
6. Treaties are to avoid double taxation, not double non taxation – Tiger Global was effectively trying to avoid tax on the exit (no tax in India and Mauritius), which goes against the spirit of tax treaties.

#### **Developments after the Supreme Court decision**

On 31<sup>st</sup> March 2026, the Government of India issued two Notifications amending the grandfathering rules for GAAR. The overall impact of the said Notifications is as under:

- a. From FY 2025–26 onwards, GAAR proceedings cannot be initiated in respect of investments in India which have happened prior to 1<sup>st</sup> April 2017.
- b. From 31<sup>st</sup> March 2026 onwards, the Indian Tax Office cannot initiate GAAR proceedings even for years prior to FY 2025–26 in respect of investments in India which have happened prior to 1<sup>st</sup> April 2017.

Any ongoing GAAR proceedings initiated prior to 31<sup>st</sup> March 2026 for years prior to FY 2025–26 or past adjudications involving GAAR would continue to be governed by the principles laid down by the Supreme Court in the case of Tiger Global.

### Why this matters

- › Old Mauritius grandfathered structures for India investment are no longer "safe by default." – irrespective of grandfathering benefits under the DTAA and GAAR provisions, the arrangements may be still be scrutinised from the lens of tax avoidance / abusive structures under GAAR, while the Tax Officer may not be permitted to initiate fresh GAAR proceedings in respect of investments made prior to 1st April 2017, basis the recent Notifications issued by the Indian Government.
- › Tax Residency Certificates under Indian tax treaties by itself won't be conclusive proof for residency — real substance and effective control would matter.
- › GAAR and judicial anti avoidance rules (JAAR) give wide powers to tax authorities.

Indirect shareholding structures for investment in India can be especially questioned. Past transactions could be scrutinised if the review and reassessment timelines are still open.

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## Korea



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## New Foreign Omnibus Account regime – Unlocking tax treaty benefits through WHT refund claims

Foreign institutional investors may find interesting that Korea improves accessibility to the Korean stock market, by relaxing the eligibility requirements for opening a foreign omnibus account (FOA). As a result, foreign investors are now permitted to trade Korean equities directly through their local securities firms without opening separate accounts with Korean brokerage firms.

### Key changes in the Foreign Omnibus Account system

- › **2025 Guidelines:** The new FOA framework eliminates the requirement for foreign financial investment firms to be controlling shareholders or affiliates of Korean firms. Now, foreign investors can trade Korean stocks directly via their local brokers, significantly simplifying the process.
- › **Operational efficiencies:** A global custodian can now open consolidated settlement accounts for foreign investors, reducing administrative burdens. Moreover, foreign corporate investors face fewer verification requirements, such as simplified identity checks and reduced notarization procedures.
- › **First successful implementation:** In August 2025, Korea's first foreign omnibus account was launched through a partnership between a Korean securities firm and a Hong Kong-based firm. This has led to growing interest among other foreign firms.

### Tax considerations and WHT benefits

Although the revised FOA system facilitates operational access, foreign investors should be aware of the tax treatment. Korean-source income from investments through FOAs is subject to the standard 22% WHT on dividends, but eligible investors can seek tax treaty benefits, reducing this rate (e.g., from 22% to 15% under the Korea-Germany tax treaty).

Investors must file a retroactive WHT refund application within five years of the tax imposition to claim the reduction. Supporting documentation, such as a certificate of residence, must be submitted to the relevant tax authorities. Although foreign investors cannot receive immediate WHT relief at the source, the post-tax refund process offers a pathway to lower tax rates.

#### How Lee & Ko and WTS Global can help

Lee & Ko (LK) has substantial experience in assisting overseas investment funds and non-resident investors with refund claims for Korean withholding taxes under the relevant double tax treaty, including numerous successful cases involving Korean equity investments by foreign investors.

Based on its extensive experience and established working relationships with the Korea Securities Depository (KSD) and Korean securities firms—both of which are key participants in the foreign omnibus account business for non-resident investors and foreign brokerage firms—LK is well positioned to provide practical guidance on Korean market practice and to support efficient and effective WHT refund claims for foreign securities firms and non-resident investors interested in investing in Korean equities through foreign omnibus account structures.

LK and WTS Global in cooperation offer assistance to overseas investment funds and non-resident investors, including:

- › analysis of WHT obligations and tax treaty applicability;
- › preparation and support of refund claims for excess WHT;
- › review of documentation and contractual arrangements with Korean securities firms; and
- › engagement with Korean tax and regulatory authorities throughout the investment process.

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## Poland



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### US investment fund and Polish WHT refund (2020 / 2021) – New court case

The points of law addressed in this case are relevant for:

- (i) investment funds from non-Member States that are not comparable to Polish open-ended funds (FIO) but are comparable to Polish close-ended funds (FIZ) or so-called special open-ended investment funds (non UCITS), and
- (ii) foreign investment funds that are transparent for tax purposes (flow-through entities).

There are interesting implications of a new judgment of the Provincial Administrative Court in Lublin dated 12 Nov 2025 in case no. I SA/Lu 346/25 (the "Polish Case"). The Polish Case in fact revolves around two issues:

1. whether the CJEU judgment of 10 April 2014 in case C-190/12 (Case C-190/12) is relevant solely for type-of-entity exemptions and is as such inapplicable to the type-of-income exemptions that became operative in Poland as of 1 January 2017;
2. whether the fact that a foreign investment fund is a flow-through entity under the rules of its home jurisdiction disqualifies such fund from the Polish tax exemptions for foreign investment funds (which apply to funds from EU and EEA countries pursuant to national law, and to funds from non-Member States pursuant to the test designed to check if they are comparable to Polish investment funds).

If Case C-190/12 is considered to apply also to the type-of-income exemptions that became operative in Poland after its date, then any other issues decided in the Polish Case, e.g. whether a fund is an FIZ or an FIO, are of secondary relevance.

The Polish Case involves the following facts:

- › A US investment fund (US Fund) requested a refund of WHT charged on its Polish dividend income between 2020 and 2021.
- › The US Fund sought the refund pursuant to CJEU case law, including Case C-190/12.
- › The US Fund argued that it is comparable to Polish FIOs (open-ended funds).
- › Under US law the US Fund was an open-ended investment company (trust fund).
- › Being a flow-through entity, the US Fund did not offer during the proceedings any certificate of residence, but instead provided Form 6166, which refers to Form 1065, which in turn is dedicated to partnerships that do not pay income tax themselves and instead report income distributable to partners.

### **Re. 1**

Under the law applicable until 31 December 2016, foreign investment funds from EU or EEA countries were exempt as such from Polish corporate income tax (Article 6(1)(10a) of the CIT Act). This exemption had been introduced to cure the infringement under notice 2006/4093 addressed by the European Commission to Poland, alleging Poland treated foreign investment funds unequally with equivalent Polish investment funds. There was no doubt that the exemption in question applied also to non-Member State investment funds which pass the comparability test. In such cases, the tax authorities granted tax refunds based on CJEU case law, including particularly Case C-190/12.

A new law was introduced as of 1 January 2017 to change the taxation framework for Polish and foreign undertakings for collective investment. After the changes, tax exemptions for foreign investment funds are governed by CIT Act Article 6(1)(10a) (type-of-entity exemptions) and Article 17(1)(58) (type-of-income exemptions).

In the Polish Case, the tax authorities argued that a non-Member State fund may not rely on Case C-190/12 when claiming the type-of-income exemption under Article 17(1)(58) CIT Act (as the exemption entered into force after Case 190/12 was resolved).

The Polish court disagreed and made a clear point of noting that Case C-190/12 must be interpreted as a prohibition of discriminating against comparable entities based on the location of their registered offices. Contrary to what the tax authorities claimed, the judgment in Case C-190/12 is a preliminary ruling that is effective *erga omnes* and applies to interpretation of Community law, not national law.

Thus, it is not appropriate to conclude that Case C-190/12 does not apply to a tax law that was introduced after the judgment was rendered.

### Re. 2

One of the conditions for the tax exemption to apply, whether to UCITs or AIFs, is that the fund must be "*subject to income tax on all of its income, wherever arising,*" in the country of residence (this condition is designed for both type-of-entity and type-of-income exemptions).

The requirement should be understood as the tax residence principle, not the effective taxation principle, as confirmed by the Polish Finance Minister already in 2012 (public tax ruling dated 3 July 2012, ref. DD5/033/4/12/RDX/DD-363).

In the Polish Case, the tax authorities refused exemption on the basis that the US Fund was unable to prove its tax residence due to being a flow-through entity (no certificate of residence).

Concerning this point, the court in Polish Case finds that US Fund being a flow-through entity (with taxation in the country of residence being applicable to its investors) is irrelevant for whether or not it is entitled to Polish tax exemption as long as the fund is comparable to Polish investment funds. While the court's argument is brief, it rests on the purposive and functional construal of the tax exemption regulations, rather than being limited to their literal (linguistic) interpretation.

Incidentally, while it did not seem to be relied on by the US Fund or entertained by the court in the Polish Case, the fact that the tax transparent nature of a fund cannot defeat its right to tax exemption was also confirmed by the European Commission.

Note here that, after Poland introduced the type-of-entity exemption for foreign investment funds from EU and EEA countries but made the exemption contingent on the fund being "*subject to income tax on all of its income, wherever arising,*" in the country of residence, the European Commission requested Poland on 16 June 2011 to change the regulations that discriminate foreign pension funds and investment funds: "*However, the Commission considers that the amendments to the Polish Law do not entirely eliminate tax discrimination against foreign funds. The Polish tax legislation grants the tax exemption to foreign funds on condition that they are subject to tax in their states of residence, whereas the exemption for domestic funds is granted unconditionally. Such a condition is not in line with EU law as some pension and investment funds from other EU/EEA States will not be granted the benefit of the exemption in Poland, which would otherwise be granted to all similar Polish funds without any additional requirements.*"

Yet, Poland has still not amended the impugned provision of Article 6(1)(10a)(a) CIT Act. In such circumstances, the requirements for the application of the tax exemption should be construed without reference to the discriminatory condition this provision lays down.

The implications of the judgment in the Polish Case are positive for the reclaim of Polish WHT by the types of funds concerned. The judgement is final yet; the Polish tax authority has appealed. We will inform you of the approach the higher court may take in this case.

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## Sweden



### Foreign non-UCITS funds exempt from Swedish Withholding Tax despite investments in commodities

A new Swedish ruling opens refund opportunities for asset managers of international (regulated) investment funds as limited commodity exposure no longer blocks withholding tax relief.

In a recent case from the Swedish Administrative Court of Appeal of Sundsvall, a Canadian mutual fund was deemed equivalent to a Swedish special fund and therefore exempt from Swedish withholding tax. This despite investments in commodities, an asset class which Swedish special funds are generally prohibited from investing in.

According to the Swedish Withholding Tax Act, dividends paid from Swedish limited companies to foreign legal persons are normally taxed at 30% (assuming the dividends are not attributable to income of business conducted through a Swedish permanent establishment). It is the legal person who is "entitled to" the dividend distribution that is tax liable.

Since 2012, Swedish mutual funds, Swedish special funds and foreign equivalents to such funds are exempted from Swedish withholding tax. Foreign UCITS funds are presumed to be equivalent to Swedish mutual funds, while funds established outside of the EEA and foreign special investment funds must be assessed against Swedish special funds criteria, including e.g. authorization and supervision, depositary requirements, capital raising, redemption rules and permitted asset classes.

In 2022, a Canadian mutual fund (with around 40 sub-funds) which had suffered Swedish withholding tax of over 12 million SEK on dividends received by its sub-funds applied for a refund of said tax, arguing that the main fund (or its sub-funds) should be considered equivalent to Swedish special funds. The Swedish Tax Agency refused the application by stating that because 3 of the sub-funds were allowed to invest in commodities (only one sub-fund had used this right), the main fund (the fund confirmed relevant for the assessment) could not be considered equivalent to a Swedish special fund. In accordance with the tax treaty between Sweden and Canada, the Agency however refunded half of the withheld tax (15%). The fund appealed the Agency's

decision to the administrative court of Falun which ruled in favor of the Agency. The fund then appealed that judgement to the Administrative Court of Appeal of Sundsvall.

The Administrative Court of Appeal stated that a foreign fund does not have to be identical to a Swedish special fund to be considered equivalent to such a fund. Further, the court noted that a Swedish special fund is theoretically also able to invest in commodities, although such an investment would require approval from the Swedish Financial Supervisory Authority. The court stated that the fund's chances of investing in precious metals as well as its actual investments in such assets were limited in an overall assessment and should not prevent the main fund from being considered equivalent to a Swedish special fund, when it corresponded to such a fund in other relevant aspects. Thus, the court ruled that the main fund should be considered equivalent to a Swedish special fund and exempted from taxation on the dividends received by its sub-funds. The ruling was never appealed.

While the ruling of a Court of Appeal does not constitute a precedent, this case indicates that foreign non-UCITS funds must not fully mirror Swedish special funds to be exempted from Swedish withholding tax. Consequently, non-Swedish non-UCITS funds that have suffered such tax may want to assess the possibilities of a refund.

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## Crypto-Assets Tax postponement, DST rate reduction, and investment fund taxation

While 2026 was anticipated to be the year of definitive taxation for digital assets in Türkiye, the recent withdrawal of the comprehensive crypto-tax proposal from the Parliament has introduced a tactical pause. The government's decision to allow more time for "broader discussions" means that the Financial Services sector must continue to operate under existing frameworks. The reduction of the Digital Service Tax (DST) and the comprehensive restructuring of withholding tax rates on investment funds mark a new strategic direction in capital market taxation.

### **The legislative pause on crypto asset taxation**

The decision to pull back the crypto-tax proposal indicates that Turkish authorities are seeking a more matured, globally aligned framework. The draft law envisaged a 10% withholding tax on crypto gains, calculated quarterly, with losses offset against profits within the same year. It also introduced a 0.03% transaction levy on crypto sales and transfers conducted or intermediated by service providers, while exempting deliveries of crypto assets from VAT. Taxation would be enforced through withholding obligations on providers operating in Türkiye, and foreign-sourced gains would require declaration.

However, by the end of March 2026, the bill was withdrawn, with plans to refine it further to align with international standards and strengthen the financial system.

### **Reduction of the Digital Service Tax (DST) rate**

As of January 1, 2026, the DST rate has been officially reduced from 7.5% to 5%. This reduction serves as a competitive move to support digital services for taxpayers of big tech giants and consumers, providing a more balanced fiscal environment while other countries imply similar rates. And the rate will be reduced to 2,5% as of the beginning of 2027.

### **New Withholding Tax (Stopaj) regime for investment funds**

An important shift occurred with the regulation effective March 27, 2026. This new WHT regime applies to fund units acquired on or after this date, while holdings acquired prior to that date retain their previous tax status.

- › Equity Intensive Funds: For TEFAS-traded (TEFAS is the official fund trading platform) fund units with at least 80% equity weight, the 0% withholding tax remains, encouraging long-term equity investment.
- › Non-TEFAS Hedge Funds: Equity-intensive hedge funds not traded on TEFAS have lost their 0% exemption; gains are now subject to a 17.5% withholding tax.

At its core, this change represents a SAAR (Specific Anti-Avoidance Rule), as individual shareholders of companies previously could establish equity funds outside TEFAS and thereby receive dividends tax free, instead of being subject to the standard 15% withholding tax.

- › REIFs and VCCFs: Real Estate Investment Funds (GYF) and Venture Capital Investment Funds (GSYF) maintain their 0% tax advantage, provided the units are held for more than two years.

These new WHT rules apply regardless of whether the investor is a resident (full taxpayer) or a non-resident (limited taxpayer).

### **Conclusion**

The withdrawal of the crypto-tax bill, combined with the precise new 17.5% withholding rates for various investment funds, reflects a "selective" taxation strategy. Türkiye is seeking to provide a tax environment aligned with global conditions and at the same time to implement solutions to avoid tax planning in specific areas.

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