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# WTS Global Financial Services Infoletter

## 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 13 countries with a focus on the international Financial Services industry.[1]

The following participants in the WTS Global network are contributing with a diverse range of FS tax topics, e.g. the recent EGC decision on whether the FS VAT exemption applies to loan servicing; how procedural hurdles regarding EU WHT claims remain in Germany; the new Italian 20% WHT for pension funds; and tax and regulatory considerations for institutional investors in Nigeria around carbon credits:

- Australia – WTS Australia
- China – WTS China
- Finland – Castrén & Snellman
- Germany – WTS Germany
- India – Aurtus Consulting
- Indonesia – WTS Indonesia
- Italy – WTS R&A Studio Tributario
- Luxembourg – Tiberghien Luxembourg
- Nigeria – WTS Blackwoodstone
- Poland – WTS SAJA
- Singapore – WTS Taxise
- Spain – ARCO Abogados y Asesores Tributarios
- United Kingdom – WTS Hansuke and WTS UK

Thank you very much for your interest.

Frankfurt, 17 September 2026

With best regards,

Robert Welzel
(Tel. +49 69 1338 456 80)

Steffen Gnutzmann
(Tel. +49 40 3208 666 13)

For details on WTS Global Financial Services please click here.

1 The editors would very much like to thank their WTS colleague Sergi Meseguer for his valuable support.

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## Hot Topic

# Original lender's loan servicing not VAT exempt

Banks and non-bank lenders that securitise loans or transfer them to special purpose vehicles will recognise the model: the loans are transferred to a special purpose vehicle (SPV) or a refinancing vehicle, while the actual customer-facing servicing (instalment calculations, interest rate adjustments, dunning) remains with the original lender, who receives a separate fee for this service. It is precisely this widespread practice that the General Court of the European Union (EGC) addressed in its judgment of 17 June 2026 in Finnish Case T-184/25 (Veronsaajien oikeudenvalvontayksikkö), relevant to many other EU jurisdictions.

In the underlying dispute, a Finnish bank sold residential mortgage loans to its subsidiary but continued to manage the loans in return for a cost-based fee plus a mark-up. The Finnish tax authority sought to treat this management service as an VAT exempt financial service. The body responsible for safeguarding the state's tax interests objected, and the matter was referred to the EGC by Finland's highest administrative court.

The EGC held that the exemption for "the management of credit by the person granting it" under Article 135(1)(b) of the VAT Directive covers only services supplied within the relationship between the person who originally granted the credit and the borrower. Once the loan is sold, that relationship comes to an end – and with it the exemption, even if the seller continues to actually carry out the management. In the EGC's view, the sale of the loan marks a cut-off point: any management services subsequently provided by the seller can no longer be attributed to the original credit relationship but must instead be characterised as a separate supply to the acquirer of the receivable. The Court also declined to allow recourse to the exemptions for security interests (subparagraph (c)) or for transactions concerning receivables (subparagraph (d)). Neither provision applies to credit management services, since otherwise the narrow personal scope of subparagraph (b) would be deprived of any practical effect. As a result, loan servicing fees that a lender charges to an acquirer – such as a special purpose vehicle, a refinancing vehicle or an investor – for continuing to manage the credit are now subject to VAT.

The decision is relevant for the asset management and banking industry. In many European securitisation structures, credit management remains with the lender, while the special purpose vehicle or the investor typically has no or only limited input VAT deduction. VAT on the servicing fees therefore becomes an additional cost, directly eroding the return on the transaction.

Although the judgment formally concerns only a Finnish set of facts, the EGC interprets the VAT Directive uniformly for all Member States. What matters is how the Court defines the term "the person granting" the credit for purposes of the exemption. On this reading, what is decisive is the party's role vis-à-vis the borrower at the time the service is performed, not who originally granted the credit.

In Germany, for instance, it had not been conclusively settled whether Section 4 No. 8(a) of the German VAT Act (UStG) also covers the continued management of a loan that has already been sold (see Konstantinou, UR 2026, 541, 547). The EGC's judgment is likely to significantly undermine that generous reading.

Tus, the EGC's decision should be taken into account in Germany (and further EU jurisdictions). Sellers and servicers of receivables in existing or planned securitisation or loan sale structures should promptly review their servicing arrangements for their VAT treatment and reassess the economic impact – particularly in view of the acquirer's restricted input VAT deduction.

*Jeremy Himpler*
*jeremy.himpler@ wts.de*

If you wish to discuss this topic, please contact the author.

## Australia

## Foreign resident capital gains tax (CGT) regime – Significant expansion ahead

Foreign asset managers, investment funds and institutional investors interested specifically in Australian real property asset transactions (including renewable energy and infrastructure projects), as well as other financial institutions with a focus on the Australian Financial Services arena in general, may want to prepare for substantial upcoming tax law changes.

The new Bill represents a significant expansion of Australia's foreign resident capital gains tax (CGT) regime, with particular implications for infrastructure, renewable energy and mining investments.

The revision materially broadens the scope of assets treated as taxable Australian property (TAP), extending Australia's CGT regime for foreign investors in real asset transactions.

The Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Bill 2026 was introduced into Parliament on 2 July 2026 and passed both Houses on 10 September 2026. As of 11 September 2026, it is awaiting Royal Assent. The substantive measures apply prospectively in accordance with their specific application provisions.

**Expansion of "real property" – targeting real asset structures**
Under current law, foreign investors are subject to CGT on disposals of Australian real property and certain indirect interests in land-rich entities. The Bill expands this concept beyond traditional legal definitions.

The expanded definition includes:

- rights or interests relating to land (including licences and contractual rights); and
- assets installed on land and expected to remain for the majority of their useful life.

This is particularly relevant for renewable energy assets, which have historically been structured on the basis that they are not "fixtures" and therefore fall outside the existing CGT net. The expanded definition would bring a broader range of these assets within scope.

**Implications for renewable energy and infrastructure funds**
The reforms are expected to have the greatest impact on foreign investors in renewable energy and infrastructure projects.

In effect, the changes introduce CGT exposure on exit where it may not previously have arisen, which:

- alters after-tax return assumptions for both new and existing investments; and
- limits structuring flexibility in isolating non-land value components from the CGT regime.

Existing investments are not generally grandfathered, meaning the reforms may affect future disposals of assets acquired before the new rules apply.

**Transitional relief for qualifying renewable energy assets**
The Bill includes specific transitional CGT relief for certain qualifying renewable energy investments disposed of before 30 June 2030.

The relief is subject to detailed eligibility requirements, including a high threshold relating to the proportion of relevant value attributable to qualifying real property. This may limit its practical application for operating projects where significant value is attributable to:

- power purchase agreements;
- other contractual rights; and
- intangible or other non-real-property assets.

Foreign investors should therefore test eligibility for the transitional relief against the statutory requirements rather than assume that renewable energy investments will automatically qualify.

**Prospective application – but existing investments are not grandfathered**
A significant change from the April 2026 exposure draft is the removal of the proposed retrospective expansion of the real-property definition. This substantially reduces the risk of historical transactions being brought within the expanded regime.

However, existing investments are not generally grandfathered (subject to the transitional relief above). Future disposals of existing holdings may therefore fall within the expanded regime once the relevant amendments apply.

The reforms also remain relevant to mining and resources investments, including through the treatment of relevant mining, quarrying and prospecting rights and associated interests.

Foreign investors should focus on exit readiness, including:

- whether an indirect interest satisfies the revised principal-asset test over the relevant 365-day testing period;
- whether asset valuations and the allocation of value between real-property and other assets can be supported; and
- whether the new pre-transaction notification requirements apply and how the transaction interacts with Australia's foreign resident CGT withholding regime.

**Practical and compliance considerations**
In addition to expanding the tax base, the reforms introduce additional complexity, including:

› more extensive valuation requirements, including testing over the relevant 365-day period;
› new pre-transaction notification requirements for certain disposals; and
› increased transaction complexity, including interaction with purchaser withholding obligations.

These factors are likely to affect transaction execution, pricing, due diligence and exit planning for foreign investors and their counterparties.

**Key takeaways**
For foreign funds and financial institutions, the reforms represent a material broadening of Australia's CGT regime as it applies to real asset investments.

Key implications include:

› expanded CGT exposure on exit for renewable energy, infrastructure and mining investments;
› no broad retrospective expansion of the real-property definition, but generally no grandfathering for existing investments; and
› increased importance of structuring, valuation, transaction planning and exit readiness.

If you wish to discuss this topic, please contact the authors.

*Len Nicita*
*len.nicita@wtsaustralia.com*

*Rod Henderson*
*rod.henderson@wtsaustralia.com*

## China

## Offshore trusts face China tax crackdown – Amnesty ends 22 October 2026

China has released landmark tax rules targeting offshore trusts, ending long-term tax "planning" for high-net-worth individuals by imposing Chinese Individual Income Tax (IIT) across the full offshore-trust lifecycle. A critical one-off 90-day voluntary-disclosure amnesty runs until 22 October 2026, waiving late-payment surcharges for eligible historical liabilities (MOF-STA Announcement 21 and STA Announcement 15, issued on 24 July 2026).

The new rules apply to formal offshore trusts and functional trust-like vehicles, excluding standard regulated retail financial products. Both PRC-tax-resident and non-resident settlors are covered, creating – urgent – compliance risks for international financial-service firms advising wealth-clients with China-related connections.

**Key tax scope & anti-avoidance risk**
Resident settlors: PRC-tax-residents are taxed on all global trust-transferred assets and all annual trust-accrued income — even where no actual cash distributions are made.

Non-resident settlors: Non-residents are only taxed on gains from China-sourced assets funded into trusts. Two major traps apply:

1. A trust is fully treated as resident-funded if a PRC-tax-resident holds de-facto control over it.
2. Joint funding by both resident and non-resident individuals is deemed as the entire trust resident-owned.

Popular mixed co-settlor wealth-planning structures now carry substantial China-tax risk.

**Core lifecycle-tax features**

Tax events are triggered at five trust-phases:

1. Asset injection: Asset contributions are treated as a transfer / realization for tax purposes; gains over cost basis attract 20% IIT.
2. Ongoing period: Accrued trust income (dividends, interest, capital gains) requires annual filing based on the nature of the gain, irrespective of cash distributions.
3. Residency shift: Where a PRC-tax-resident settlor becomes non-resident, the individual shall first file and pay all outstanding IIT for prior years and for the current-year period from 1 January to the conversion date under ongoing-period rules, taxed at 20%. A separate deemed-taxation event taxes unrealised net gains (market value less original cost basis at conversion date) at 20%.
4. Death & Succession: Tax crystallises where the trust passes to non-residents or remains unclaimed; the trustee bears filing obligations. If inherited by another PRC tax resident, the resident-trust regime continues.
5. Termination & Liquidation: Final liquidation gains are subject to 20% IIT. The trust is deemed fully liquidated 60-days post-termination to block tax deferral through delayed winding-up.

**The 90-day amnesty (deadline 22 October 2026)**

Taxpayers with historical unpaid liabilities can file voluntary disclosures within this window to avoid late-payment surcharges. Eligible items:

1. Asset injections: residents (2023–2025); non-residents (2023 – 24 July 2026).
2. Pre-2026 accrued income from resident-controlled offshore trusts.

Missing this deadline triggers 0.05% daily surcharges plus administrative penalties. Limited five-year-tax-instalments are only available for trust-liquidation or settlor-death-related tax debts. In order to be able to benefit from the amnesty, the taxpayer are advised to review their income items in scope within the deadline and get in touch with the local tax authority as soon as possible.

**What this means for international FS practitioners**

Long-standing offshore-trust tax-deferral assumptions no longer hold. Global wealth managers and trust-service providers need to review client arrangements:

1. Mixed co-settlor setups require urgent reviews.
2. Non-resident-established trusts may still fall under China's tax regime if controlled by a PRC-tax-resident.
3. High-net-worth-clients with existing or planned offshore trusts should run compliance gap assessments and evaluation.
4. In the short term, taxpayers are encouraged to review all relevant taxable income before the 22 October deadline for the amnesty period and pro-actively engage with their local tax authority.

If you wish to discuss this topic, please contact the authors.

*Ened Du*
*ened.du@wts.cn*

*Grace Zheng*
*grace.zheng@wts.cn*

## Finland

CASTRÉN & SNELLMAN

# Fund vs. CFC taxation – Where does the economic activity exemption end?

On 24 June 2026, the Supreme Administrative Court of Finland (SAC), in decision SAC 2026:50, confirmed that a Luxembourg UCITS sub-fund was not a controlled foreign company (CFC) of its Finnish institutional investor, despite the Luxembourg manager having outsourced portfolio execution to a UK group affiliate.

### Three separate questions, three separate rules

When evaluating the tax treatment of a Finnish investor in a foreign vehicle, the vehicle may be subject to three distinct tests. First, ordinary corporate taxation determines whether the vehicle is a separate taxable entity. Second, it must be determined based on the investment fund tax exemption provision (section 20a of the Income Tax Act), whether the vehicle is to be treated tax exempt, meaning that it has the character of a genuine collective investment undertaking: is it open-ended, does it have an unrestricted investor base, does it meet the minimum number of unit holders, and does it distribute profits as required? A holding company fails this test regardless of how passive its income is, since it lacks the redeemable units and the open investor base that defines a fund. Third, the CFC rules in the Controlled Foreign Company Act (1217/1994) apply once a Finnish taxpayer holds at least 25 per cent of a low-taxed entity. In assessing the applicability of the CFC rules, the key questions to consider are: has the entity genuinely established itself, and does it carry out real economic activity, in its own state of residence? This is a substance and location test built on the EU's anti-tax avoidance directive and the Cadbury Schweppes case law of the ECJ.

### Passing the fund test does not mean passing the CFC test

The now issued ruling SAC 2026:50 confirms, citing its own prior rulings SAC 2025:5 and SAC 2025:52, that a fund's ordinary investment activity can count as economic activity for CFC purposes. The SAC case law has clarified the content of the CFC exemption: the fund's home jurisdiction must also have personnel capable of running the business independently and taking its day-to-day decisions there. In its ruling SAC 2025:52, the Finnish SAC confirmed what happens when this substance is missing: a Swedish vehicle outsourced everything to its manager, kept no independent substance, and had no legal obligation to structure itself that way, so it was treated as a CFC despite looking like a genuine fund. A vehicle may qualify as an investment fund for tax purposes and still fail to meet the separate economic activity requirements of the CFC exemption.

### Whose activity counts?

This is the key question that the decision SAC 2026:50 answers. The tax authority argued that substance must sit inside the fund itself. The SAC took a broader view: the fund's own day-to-day activity was held to include what its Luxembourg manager does under UCITS delegation, namely administration, risk management, compliance, marketing and oversight, not just trade execution. Because those retained functions are substantial, outsourcing execution to the UK group affiliate did not break the connection. The investor cannot merely rely on the asset manager's activities. Rather, those activities may form part of the fund's own economic activity where they are performed on the fund's behalf within the UCITS framework. Under Finnish law, the fund's economic activity consists of what the manager does on its behalf, if what remains locally is genuinely significant. However, the SAC held (by a 4 to 1 vote) that if the management moved wholesale abroad, this would break the Luxembourg connection. No independent decision making would remain where the fund resides, and the exemption would be lost. The dissent agreed on outsourcing but would have preserved the exemption on full relocation, provided the new manager stayed in the EEA.

**Practical takeaway**
Based on the recently published SAC ruling, the dividing factor is not the fund's formal characteristics. It is about where the substantive functions sit, and whether enough functions remain genuinely local. Partial delegation of portfolio execution, which is common in UCITS structures, does not prevent the application of the economic activity exemption under Finnish CFC rules, provided that significant marketing and oversight functions remain in the fund's jurisdiction of residence. Full delegation, however, would.

We assume that this interesting Finnish decision could be of importance for other tax jurisdictions, too.

## Finland

## Reform of investment fund tax exemption to align with EU law and facilitate ELTIFs

The reform proposed by the Finnish Government serves two main purposes: aligning Finnish law with EU law and removing tax barriers that have so far prevented European Long-Term Investment Funds (ELTIFs), an EU fund category aimed at channeling capital into long-term projects, from being set up in Finland. The proposal is relevant for asset managers and fund promoters evaluating Finnish or EU fund structures, and for institutional and retail investors in closed-ended ELTIFs (draft bill to amend section 20a of the Income Tax Act (1535/1992, ITA) and related legislation, with the public consultation period having closed on 16 September 2026).

**Why the rules are changing**
Under Finnish law, investment funds and special investment funds are exempt from income tax at the fund level, with taxation instead applied at the level of the unitholder, so that investing through a fund is not treated less favorably than direct investment. The conditions for this exemption are set out in section 20a of the ITA. In Case C-342/20 of 7 April 2022 (A SCPI v. the Finnish Tax Recipients' Legal Services Unit), the Court of Justice of the European Union held that requiring a foreign fund to be contract based, rather than company or trust based, as a condition for tax exemption breaches the EU rules on the free movement of capital. The latest Government Programme in Finland committed to aligning the fund tax rules with EU law, and the 2025 mid-term policy review further committed to facilitating EU-enabled fund structures such as ELTIFs.

**Removal of the contractual-form requirement for foreign funds**
The requirement that a foreign fund be contract based to qualify for tax exemption would be removed. In its place, a foreign fund would need to be tax exempt, effectively tax exempt, or fiscally transparent in its state of registration. All other existing conditions, being openness and a minimum of 30 unitholders, or alternatively profit distribution and professional investor requirements, would remain unchanged. This is a

substitution of one condition for another, not a general widening of the exemption to all foreign corporate form funds.

**Clarification of the profit-distribution requirement**

The distribution requirement would be met not only where a fund actually distributes in cash at least three quarters of its realised annual profit, but also where at least three quarters of that profit is otherwise taken into account as the unitholder's income under the unitholder's own taxation, even without an actual cash distribution. The wording of the law would also be updated so that unrealised increases in value are replaced with unrealised changes in value (as being out of scope of the requirement, so that unrealised decreases are captured too, aligning the wording with the corresponding provision in the Act on the Managers of Alternative Investment Funds. Despite the envisaged clarifications, we expect that this requirement of the tax exemption will be challenged by taxpayers based on the free movement of capital (e.g. via a court case).

**Facilitating access to European Long-Term Investment Funds**

For closed-ended special investment funds structured as ELTIFs, the requirement that all unitholders be professional investors would be removed. A new, ELTIF-specific set of conditions would instead apply, requiring adequate profit distribution and minimum capital of EUR 2 million. This reflects the 2023 reform of the EU ELTIF Regulation, which removed the minimum investment requirement for retail investors in closed-ended ELTIFs, and is intended to remove tax obstacles to establishing ELTIFs in Finland, where no ELTIF exists to date.

**Consequential changes to withholding tax and other provisions**

The Act on the Taxation of Non-Residents' Income would be amended so that the withholding tax exemption based on the EU Parent-Subsidiary Directive would not apply to profit distributions made by tax exempt investment funds or special investment funds. The withholding tax exemption for dividends paid to foreign funds would also have its contractual-form requirement removed, consistent with the changes to section 20a. Minor technical clarifications are also proposed to section 10 of the Income Tax Act, section 3(2) of the Withholding Tax Act, and section 9 of the Prepayment Act.

**Expected impact and key considerations**

According to the draft government bill, the primary purpose of the changes envisaged is to align the statutory wording with EU law requirements already largely reflected in current case law and tax practice, and to remove barriers to establishing ELTIF fund structures in Finland. However, as with the original introduction of section 20a, which was also not expected to change the tax treatment, yet has since caused many interpretative disputes, the practical effect of these amendments may extend beyond what the bill anticipates. The changes are not expected to have significant impact on tax revenue. The proposed amendments are intended to enter into force as soon as possible, with the changes to the ITA applying for the first time in the taxation for 2027, and the amendments to the Withholding Tax Act and the Prepayment Act applying to income paid on or after 1 January 2027.

If you would like to discuss the topics at hand, please do not hesitate to contact the authors.

*Mikko Alakare*
*mikko.alakare@castren.fi*

*Anette Laitinen*
*anette.laitinen@castren.fi*

*Noora Kokko*
*noora.kokko@castren.fi*

## Germany

# Cum-cum transactions and the right to self-defence

Foreign institutional investors with portfolio holdings in shares of a German company are familiar with the issue: dividends are subject to an initial withholding tax (WHT) of usually 26,375 %. While German-resident investors can fully offset or reclaim this tax as part of their tax assessment, for many foreign investors – such as institutional investors, pension funds, investment funds and insurance companies – the tax remains a final, definitive burden. This unequal treatment was the starting point for so-called "cum-cum" arrangements in the past.

We refer to a recent tax-technical article in English language: Prof. Dr. Michael Stöber, European Taxation, June 2026, p. 255 ff.).

**Cum-cum transaction**
Put simply: before the dividend record date, the foreign shareholder transfers shares – often by way of a securities loan – to a German institution, typically a bank. The German borrower is entitled to credit or reclaim the WHT. After the dividend is paid, the shares are transferred back, with the foreign lender receiving a so-called dividend compensation payment. The economic effect is that the foreign lender ends up in (almost) the same after tax position as a similar German investor.

**The EU law background**
One aspect that often gets too little attention in the public debate is particularly noteworthy: the right to act in self–defence. The definitive burden of German WHT on foreign investors is itself questionable under EU law. Under the case law of the Court of Justice of the European Union, such unequal treatment regularly infringes the free movement of capital. If a cum-cum arrangement ultimately achieves what EU law already requires – namely, equal treatment with domestic investors – it is not convincing to argue that this arrangement amounts to a tax advantage "not provided for by law". In such cases, Germany arguably suffers no real loss of tax revenue to begin with, since it was never entitled to that revenue under EU law in the first place.

**The specific anti-abuse rules introduced in 2016/2017**
Since 2016 and 2017 respectively, the legislature has introduced two special provisions specifically targeting cum-cum arrangements (sections 36a and 50j of the German Income Tax Act). In essence, they require a minimum holding period for the shares and genuine economic risk on the part of the investor before WHT can be fully credited or refunded beyond the treaty-reduced rate. If these conditions are not met, the law presumes abuse across the board.

It is precisely this blanket approach that is legally questionable: the rules give taxpayers no opportunity to demonstrate, in an individual case, that there was in fact no abuse. This approach is difficult to reconcile with the requirements of EU law and the German constitutional principle of proportionality. In addition, these provisions only apply from 2016/2017 onwards – for earlier periods, there is no sound legal basis for treating such arrangements as abusive as a matter of course.

*Robert Welzel*
*robert.welzel@wts.de*

*Steffen Gnutzmann*
*steffen.gnutzmann@wts.de*

*Niklas Habermann*
*niklas.habermann@wts.de*

**What does this mean in practice?**
For foreign institutional investors, like pension funds, investment funds and insurance companies that were involved in securities lending or similar arrangements around dividend record dates in the past, a close look at the specific facts of each case is worthwhile. Blanket refusals by the German tax authority to refund WHT are by no means automatically lawful – neither at the level of beneficial ownership nor at the level of the abuse allegation. The broader question of whether the ongoing unequal treatment of foreign shareholders is even compatible with EU law can, in itself, provide a separate basis for a refund claim.

If you wish to discuss this topic, please contact the authors.

## Germany

## EU WHT claims in Germany – Refunds have started – Procedural hurdles remain

Following the German Federal Fiscal Court's landmark decisions in March 2024, foreign investment funds are, in principle, entitled to a refund of German withholding tax levied on dividends during the period from 2004 to 2017 where the taxation infringed Article 63 TFEU (Free Movement of Capital).

**WHT refunds started**
The German Federal Central Tax Office (Bundeszentralamt für Steuern – BZSt) started processing applications and issuing refund payments in these EU cases, from December 2024. After years of uncertainty, this development marks a significant milestone.

However, investment funds should not assume that pending reclaims applications will automatically result in a successful repayment. While the need for administrative appeal procedures is not uncommon, the enforcement via action before the German tax courts should be limited to exceptional cases.

**Remaining hurdles**
The substantive legal position has largely been clarified for EU investment funds via the named court decisions. There is no explicit case law for third-country funds, yet. The enforcement of refund claims continues to depend on several procedural and evidential requirements. In particular, the BZSt reviews whether the original refund application was filed within the applicable statutory limitation period and with the competent tax authority. This aspect is particularly relevant in older cases. Before jurisdiction was transferred to the BZSt in June 2021, uncertainty existed regarding the competent authority. Consequently, applications filed exclusively with the BZSt (instead of with the competent local tax office) face procedural objections despite the positive case law regarding the underlying EU law claim.

The tax authorities also examine whether the foreign fund is comparable to a German investment fund under the former German Investment Tax Act and whether the claimant fund can demonstrate beneficial ownership of the underlying shares and entitlement to the dividends and the related WHT. Additional questionnaires and requests by the BZSt for supporting documentation should therefore be expected, particularly where shares were acquired or disposed of within a short period before or after the relevant annual shareholders' meeting (dividend record date). Applicant investment funds that were liquidated in the meantime are another example for additional requests by the BZSt.

**Compensatory interest**

Besides the WHT refund itself, claimants are, in principle, also entitled to interest on unlawfully levied WHT. While the entitlement to interest has been confirmed by both the CJEU and the German Federal Fiscal Court, some calculation details remain to be clarified, including the applicable interest rate from 2019 onwards (6% or 1,8% p.a.) and specific aspects of the interest period. The 6% p.a. interest rate applies up to 2019. For the time being, these issues may delay the processing of interest claims, but they do not call into question the entitlement to compensatory interest as such.

**Third-country funds**

For third-country investment funds, those resident outside the EU/EEA (like US, UK or Canadian funds), the outlook likewise remains favourable. Based on the CJEU's established case law on the Free Movement of Capital, the prevailing view has long been that third-country funds should, in principle, benefit from the same protection as EU domiciled funds. A test case concerning a third-country investment fund is currently pending before the Hessian Fiscal Court and is widely expected to resolve most of the outstanding issues under the former German Investment Tax Act. At the same time, a recent referral by the German Federal Fiscal Court to the CJEU in another third-country dividend case has introduced renewed uncertainty regarding certain broader aspects of Article 63 TFEU. Fund managers should therefore continue to pursue existing claims while closely monitoring further judicial developments; WTS would be delighted to support with a pro-active strategy in order to expedite the refund process.

**Outlook**

Overall, the commencement of WHT refund payments marks a significant step forward—but successful recovery of German WHT still requires careful management of both the substantive and procedural aspects of each claim.

If you wish to discuss this topic, please contact the authors.

*Tobias Michaelis*
*tobias.michaelis@wts.de*

*Jonas Carstensen*
*jonas.carstensen@wts.de*

*Steffen Gnutzmann*
*steffen.gnutzmann@wts.de*

## Germany

## Hybrid entities and German dividend WHT – Good and bad news for US investors

Two separate recent developments affect German withholding tax ("WHT") on dividends paid to US shareholders by German subsidiaries. Both arise where a hybrid entity is involved, i.e., where a company is treated as a tax-opaque corporation in one country and as tax-transparent in the other country:

- Development 1 (good news) – For a US hybrid entity (specifically a so-called S-Corporation) as the recipient of a dividend distribution by a German corporation, the Federal Fiscal Court (Bundesfinanzhof) has affirmed the S-Corporation's eligibility for benefits under the US-Germany double tax treaty ("US-Germany DTT") and granted full relief from German dividend WHT.

› Development 2 (bad news) – Since late 2025, there has been a significant number of cases where the German Federal Central Tax Office (Bundeszentralamt für Steuern, "BZSt") apparently changed its longstanding administrative practice and now regularly denies treaty relief from German dividend WHT where the distributing German corporation (typically a GmbH) is disregarded for US federal tax purposes. While a recent statement suggests that, contrary to initial concerns, this does not represent a fundamentally new approach, uncertainty remains for US investors, as the BZSt has not yet officially clarified its position.

**Background**

Under the US-Germany double tax treaty ("DTT"), dividend WHT may be reduced to 15%, 5%, or 0%, subject to applicable requirements (including the Limitation on Benefits clause).

However, under domestic law, the distributing German entity is generally obliged to withhold, report, and remit WHT at the full statutory rate of 26.375% upon distribution. This applies unless the (US) shareholder holds at the time of the distribution a valid dividend WHT exemption certificate (Freistellungsbescheinigung) issued by the BZSt. This certificate permits the distributing German entity to partially or fully abstain from its withholding obligation in accordance with the US-German DTT.

In the absence of a dividend WHT exemption certificate, the US shareholder will suffer the 26.375% WHT but may apply for a refund in accordance with the applicable rate under the US-German DTT.

**Good news: Full treaty relief for a (hybrid) US S-Corporation**

On 11 March 2026 (decision I R 13/23, published on 28 May 2026), the Federal Fiscal Court addressed whether treaty entitlement must be determined at the level of a hybrid US entity or at the level of its shareholders.

The case concerned a US S-Corporation that held all the shares in a German GmbH. For US federal income tax purposes, an S-Corporation is treated as a pass-through entity, meaning that it is generally not subject to federal income tax at the corporate level. Instead, its income is attributed directly to its shareholders (here: individuals and trusts). However, for purposes of applying the US-German DTT, Germany performs its own classification of foreign entities (so-called comparison of legal type test, Rechtstypenvergleich). In the case at hand, the dividend-receiving S-Corporation was treated as a tax-opaque corporation rather than a transparent entity for German tax purposes.

Because the US attributed the S-Corporation's dividend income to its shareholders, the BZSt effectively tested the shareholders' treaty entitlement rather than the company's. As individuals and trust, they qualified for the 15% DTT rate (at most), and the refund was limited accordingly instead of covering the full WHT. In doing so, the BZSt relied on Section 50d (1) sentence 11 of the German Income Tax Act (Einkommensteuergesetz, "ITA") old version (today with identical wording in Section 50d (11a) ITA).

The court dismissed the tax authority's arguments and confirmed WHT relief in full, ruling that treaty entitlement must be tested at the level of the S-Corporation, not its shareholders. The court held that Section 50d (1) sentence 11 ITA, on which the BZSt had relied, merely determines who is entitled to submit the refund application (procedural effect), but does not determine substantive treaty entitlement.

The court's reasoning is not limited to S-Corporations. It covers any foreign shareholder that Germany qualifies as a tax-opaque corporation while the foreign jurisdiction treats it as tax transparent. In the US context, this could also apply particularly to US limited liability companies ("LLC") receiving dividend distributions from German corporations.

Recommended action:

- Identify hybrid US recipients of German dividends that Germany treats as tax-opaque corporations while the US treats them as tax-transparent (particularly S-Corporations and LLCs).
- Where treaty relief from German dividend WHT is or was denied or limited by the FCTO to the rate available to the shareholders or members of the hybrid entity although the recipient itself (here: the hybrid S-Corporations and LLC) would qualify for 5% or 0%, assess options to claim the lower treaty rate (e.g. in the refund procedure).

**Bad news: No treaty relief where the German subsidiary is disregarded in the US**
Since late 2025, the BZSt has frequently challenged relief from German WHT under the US-German DTT where dividends are paid to US shareholders by a German corporation (e.g., a GmbH) that is disregarded for US federal tax purposes. The revised BZSt approach constitutes a departure from its longstanding administrative practice and applies both in the exemption and refund procedures.

In such structures, Germany treats the payment as a dividend distribution by the German corporation, whereas for US federal tax purposes it is regarded merely as an internal transfer within the same taxpayer. According to the BZSt, this hybrid mismatch justifies denying treaty relief under Sections 50d (11a) and (14) ITA as well as under Article 1 (7) of the US-German DTT.

In our view, there are compelling legal arguments against this position based on both the wording of the relevant provisions and the treaty, a view that is also supported by German academic literature and there has been significant pushback from taxpayers and advisors. Moreover, the Federal Fiscal Court's recent ruling of 11 March 2026 (see above) should further strengthen the case against the BZSt position.

On August 7, 2026, the Institute of Public Auditors in Germany (Institut der Wirtschaftsprüfer, "IDW") published a short online statement reporting on discussions with the BZSt. According to the statement, the BZSt has not revised its principal position on treaty relief for distributions by German disregarded entities, but intends to target only specific cases where a hybrid mismatch could result in double non-taxation. To facilitate relief in typical cases, the BZSt and IDW have agreed that a self-certification from the dividend recipient, confirming they are not receiving double tax relief in the U.S. (template available in German and English), currently suffices. Nevertheless, while discussions with the IRS remain ongoing, uncertainty persists as this apparent softening conflicts with the BZSt's actual administrative practice since late 2025 and its stated reasoning for denying relief.

Recommended action:

- Establish whether any German corporation in the structure is disregarded in the US and distributes (directly) to a US shareholder.

- Review existing exemption certificates and where an existing exemption certificate remains valid, consider making (advance) distributions before the certificate's expiration.

- If treaty relief is denied, evaluate appeal options based on the specific facts.

The Federal Fiscal Court's decision provides welcome certainty for structures involving hybrid US holding entities. At the same time, the BZSt revised administrative practice creates significant uncertainty for structures involving German disregarded entities, making a timely review of existing WHT positions advisable.

*Justus Eisenbeiss*
*justus.eisenbeiss@wts.de*

If you wish to discuss this topic, please contact the author.

## India

AURTUS

## Integration with global financial markets – Recent tax news on first IFSC (Gujarat)

Cross border transactions in India are typically regulated under the foreign exchange control regulations. Gujarat International Finance Tec-City (GIFT City), located in Gujarat, India, is the country's first International Financial Services Centre ("IFSC"), conceptualized as a foreign exchange free zone to facilitate offshore financial activity on Indian soil and India's integration with global financial markets.

Under the Indian tax laws, in determination of their taxable income, business units set up in IFSC could claim a 100% deduction of income earned from the business for which they were approved to be set up in IFSC for any 10 consecutive years within a 15-year window starting from the year in which permission to set-up was granted.[2] In view of the said tax holiday, the Central Board of Direct Taxes ("CBDT") had also exempted specified payments to such units in IFSC from obligation to withhold tax ("WHT"), such exemption being available for a corresponding period of 10 years.[3]

The new Income-tax Act, 2025 ("New Act"), which has replaced the earlier tax legislation, continues this benefit for IFSC units and extends the tax holiday to 20 consecutive years within a 25-year window.4 Once the tax holiday ends, a concessional 15% tax rate on specified income applies instead of the standard corporate rate, easing the transition.[5]

The CBDT has now issued Notification No. 80/2026 dated 10 July 2026, effective from 1 April 2026, to carry forward the WHT exemption framework to align with extended tax holiday under the New Act. It continues to cover interest, dividends, insurance commissions, brokerage and certain service fees. Apart from the extension of the period of exemption from WHT, the said notification is merely an update of legal references to New Act and updated declaration requirements. Payee IFSC units must furnish a statement-cum-declaration in Form No. 1(N) to each payer, identifying the 20 years elected for the tax holiday.

While the exemption from WHT provisions has been extended, certain ambiguities remain, including whether the extended tax holiday and WHT exemption would also be

2 Section 80LA of the Income-tax Act, 1961
3 CBDT Notification No. 28/2024 dated 7 March 2024
4 Section 147 of the Income-tax Act, 2025
5 Section 218 of the Income-tax Act, 2025

available to IFSC units that have already exhausted their original 10-year benefit. It is unclear whether WHT exemption on interest payments (which clearly covers loan interest) to finance companies or units in IFSC, also extends to interest on debentures which are commonly used in group financing. A literal reading could exclude such interest on securities from the exemption, leaving Indian payers exposed to an unbudgeted WHT obligation. Further, the exemption in respect of certain income streams (such as insurance commission, fund management fee, service fee of capital market intermediaries etc.), is only provided for residents while branches of non-residents in IFSC could continue to be subject to WHT in respect of such incomes. For such cases where an express WHT exemption has not been provided, it may be possible for the parties to explore availing a lower withholding certificate by specifically approaching the tax authorities.

The new WHT exemption aligns with the extended tax holiday of 20 years and the new post-holiday concessional tax rate, it significantly improves the tax certainty for units in GIFT IFSC. The WHT exemption is a positive development for the overall ecosystem and would help units in IFSC to optimize their cashflows as well as payers to IFSC units in net-of-tax arrangements (i.e., where the payer contractually bears the tax cost). That said, unresolved questions – particularly on debenture interest and non-resident branches – mean payers should confirm the tax treatment before relying on the exemption.

*Zeel Jambuwala*
*zeel.jambuwala@aurtus.com*

If you would like to discuss this topic, please contact the author.

## Indonesia

wts indonesia

## International Financial Centre – Law published, including special tax regime

The legal framework for the development of an internationally competitive financial centre ("PFII") aimed at facilitating cross-border investment and international financial activities has now been published (Law on the Indonesia International Financial Centre – *Undang-Undang Pusat Finansial Internasional Indonesia* – of 21 July 2026). The law is now undergoing the formal promulgation process for publication in the state gazette, to be effective and implementable.

The PFII is intended to complement Indonesia's existing financial system and attract international investors, financial institutions, multinational groups, family offices, wealth managers and other global participants. Bali has been identified as a potential location for the PFII, although the final location and operational arrangements remain subject to further implementing regulations.

The framework encompasses a broad range of activities, including banking and investment banking, capital markets, asset and wealth management, insurance and reinsurance, family offices, financial technology, treasury activities, commodity and derivatives trading, venture capital, investment activities and trust services.

A key feature of the PFII framework is the availability of a special tax regime. Qualifying taxpayers and activities may be eligible for corporate income tax facilities of up to 100% for a period of up to 50 years. The framework also contemplates other potential facilities, including income tax incentives for qualifying investors, entities and foreign

professionals; VAT and luxury goods tax facilities; customs and import duty facilities; and specific tax treatment for certain investment and family office activities.
For multinational groups within the scope of the OECD Pillar Two rules, however, the potential benefits of reduced Indonesian taxation would need to be assessed together with the Global Minimum Tax framework. A reduced effective tax rate in Indonesia could potentially give rise to additional top-up tax.

In addition to the tax framework, PFII provides for dedicated institutions and governance arrangements, including a Board and Oversight Body, a Financial Services Authority, a dedicated PFII Court and a PFII Arbitration Institution. The effectiveness, independence and consistency of these institutions will be important in establishing the level of legal and regulatory certainty expected by international investors.

The framework also contemplates immigration facilities, including golden visa arrangements for eligible investors, ultra-high-net-worth individuals and international professionals, as well as the use of foreign currencies for certain financial instruments and transactions conducted within the PFII.

From a business perspective, the PFII may create opportunities for multinational groups to consider locating regional holding, treasury, financing, investment, family office and wealth management functions in Indonesia. Groups currently operating such functions through established financial centres such as Singapore, Hong Kong or Dubai may therefore wish to monitor the development of the PFII framework.

**Conclusion**
The PFII represents Indonesia's initiative to develop an international financial centre capable of competing with established regional and global financial hubs. However, as of the publication of this article, the law is undergoing the formal promulgation process for publication in the state gazette. Accordingly, key aspects of the regime—including eligibility requirements, the detailed scope and mechanics of the tax incentives, governance arrangements, immigration facilities and other operational requirements—remain to be clarified once the law is published in the state gazette and the relevant implementing regulations are issued.

The attractiveness of the PFII will ultimately depend not only on the incentives available, but also on legal certainty, regulatory stability, infrastructure, access to talent and institutional credibility. If effectively implemented, the PFII could provide an additional platform for international and regional financial activities and strengthen Indonesia's position as an emerging financial hub in Asia.

Please contact the author if you wish to discuss this topic.

*Tomy Harsono*
*tomy.harsono@wtsindonesia.com*

## Italy

Studio Tributario

# EU/EEA pension funds – New 20% Withholding Tax opens a possible new front on the free movement of capital

Asset managers of EU/EEA pension funds and foreign sub-accounts of Pan-European Personal Pension Products (PEPPs) receiving Italian-source dividends should note a significant change to Italy's withholding tax (WHT) regime, effective from 12 August 2026.

### The new rule

The domestic WHT rate on profits paid by Italian companies to pension funds established in the EU/EEA and to foreign PEPP sub-accounts rises from 11% to 20%. The new rate applies to profits paid on or after 12 August 2026 – the relevant date is payment, not the ex-date. The stated rationale is alignment with the 20% substitute tax on Italian domestic pension funds' annual accrued result, though only the nominal rate is aligned, not the tax base or the taxing mechanism (Legislative Decree No. 148/2026, amending Article 27(3) of Presidential Decree No. 600/1973, in force since 12 August 2026).

### A question under EU law, not yet decided

The timing is notable. On 5 June 2026, the Supreme Court, order No. 18106/2026, upheld a US pension fund's claim to a refund of the gap between the 15% WHT it suffered under the Italy-US tax treaty and the then 11% domestic rate for EU/EEA funds – holding that a treaty's mere existence does not excuse an unjustified restriction on the free movement of capital (Article 63 TFEU). The order reaffirmed the Court's 2022 precedent (No. 25691/2022) and drew on the CJEU's Emerging Markets judgment (C-190/12, 10 April 2014), extending Article 63 TFEU to dividends paid to third-country funds.

Raising the EU/EEA domestic rate to 20% creates a mirror-image scenario: a fund under the special regime could bear a higher nominal WHT than a third-country fund relying on a treaty. That fact pattern has not yet reached the Court – a strong argument for a possible restriction, not a decided precedent.

EU/EEA funds can in principle also invoke their own treaty with Italy where it caps dividends below 20% (commonly ~15%) – applied directly at source if documentary requirements are met, otherwise via refund. But a treaty rate does not automatically cure the EU-law issue: as order No. 18106/2026 shows, the mere existence of the treaty rule is not a defence to an unjustified restriction. Access to, and effect of, treaty relief needs checking fund-by-fund.

This Italian development sits within a wider line of CJEU case law: in C-39/23, Keva (29 July 2024), taxing non-resident public pension funds' dividends while exempting resident ones breached Article 63 TFEU where the funds were objectively comparable. In C-525/24, Santander Renta Variable España Pensiones (27 November 2025, Portugal), the CJEU distinguished evidencing substantive exemption conditions (permissible if proportionate) from requiring the same certificate as sole proof for a refund (not permissible absent an equivalent burden on residents).

### Practical implications

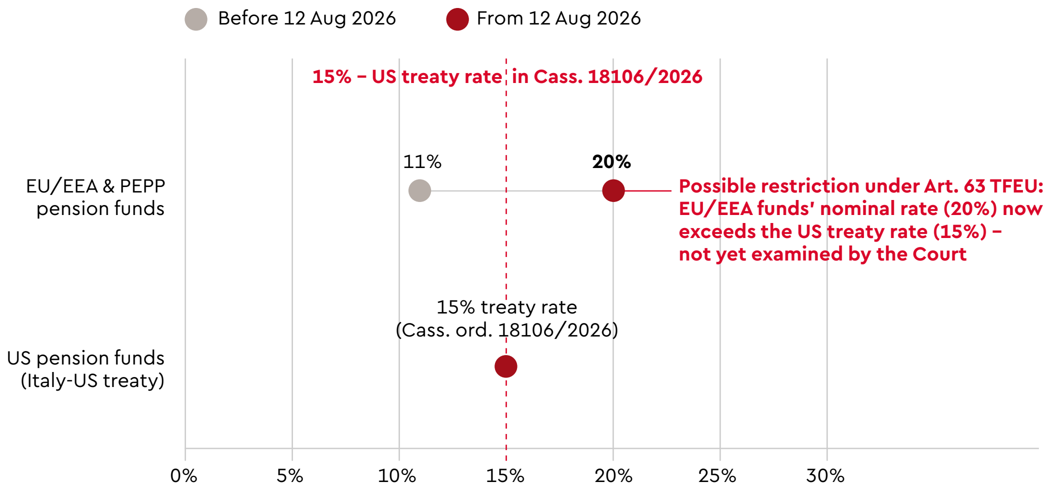
Asset managers and depositories should:

- Apply the new rate by payment date, not ex-date, flagging distributions before/after 12 August 2026;

- Check whether a lower treaty rate applies directly at source, and verify beneficial owner/treaty status;
- Consider WHT refund claims where the treaty, or Article 63 TFEU itself, supports a lower rate;
- Monitor for a legislative fix or further litigation on facts closer to the current regime.

**Supporting graphic**

**Italy's dividend WHT on pension funds: a new gap with the US treaty rate**
Withholding tax on Italian-source dividends under Art. 27(3), Presidential Decree No. 600/1973




Source: Legislative Decree No. 148/2026 (OJ No. 185/2026); Cass. ord. No. 18106/2026; Art. 10 Italy-US Tax Treaty.
WTS R&A Studio Tributario – August 2026

*Marina Lombardo*
*marina.lombardo@ ra-wts.it*

If you wish to discuss this topic in further detail, please contact the author.

## Luxembourg

Tiberghien
Advocaten / Avocats / Lawyers

## Share premium repayment may trigger WHT – New court decision

International asset managers and investors using Luxembourg holding or financing structures may find interesting the recent court decision. It affects the tax treatment of distributions by Luxembourg companies currently often considered a return of capital and therefore tax neutral. The ruling provides important clarification and may have an impact on cash repatriation strategies.

**Background**
In the case at hand, a Luxembourg company distributed amounts recorded as share premium to its shareholders. The company took the view that this distribution constituted a repayment of contributions and should therefore not trigger withholding tax. The tax authorities challenged this position and applied dividend withholding tax. This tax authority approach has now been confirmed by the Administrative Tribunal.

Under Luxembourg tax law, distributions made in the context of a formal share capital reduction may benefit from a withholding tax exemption, provided certain conditions are met. The key question in this case was whether such treatment can also apply to standalone share premium repayments.

**Administrative Tribunal's position**

The court decision clarifies that the exemption is limited to distributions implemented as part of a formal share capital reduction under company law.

In particular:

- Share premium is legally distinct from share capital, even though both form part of equity.
- A repayment of share premium without a corresponding capital reduction does not fall within the exemption.
- Such payments are treated broadly as investment income and may therefore be subject to the 15% Lux. withholding tax.

The court decision also rejects the taxpayer's reliance on foreign tax concepts, in particular German case law and doctrine. It explicitly dismissed references to decisions of the German Federal Fiscal Court, highlighting that such principles cannot be transposed to Luxembourg in the absence of a clear legal basis – despite the practical influence German tax approaches & principles have historically had in this area in Luxembourg.

**Practical implications**

The decision increases the risk that share premium repayments from Luxembourg entities are not tax neutral.

For international investors, this means specifically:

- Existing distribution mechanisms should be reviewed
- Share premium repayments may trigger Lux. withholding tax if not properly structured
- Formal corporate steps (e.g. capital reduction) may be required to achieve a tax neutral treatment

**Outlook**

This is a decision from a lower court based on specific facts and it may be subject to appeal. It nevertheless reflects a restrictive approach that should already be considered when planning distributions from Luxembourg structures. Further proceedings are likely and we will continue to monitor developments and keep readers informed.

If you would like to discuss the potential implications for your structures, please reach out to your usual contact at Tiberghien or any of the authors of this publication.

*Julian Wehlen*
*julian.wehlen@tiberghien.com*

*Maxime Grosjean*
*maxime.grosjean@tiberghien.com*

*Jeronimo Chavarria*
*jeronimo.chavarria@tiberghien.com*

*Michiel Boeren*
*michiel.boeren@tiberghien.com*

## Nigeria

wts blackwoodstone

## Carbon credits as a new asset class – Tax and regulatory considerations for institutional investors

Global carbon markets are attracting increasing institutional capital as investors seek new avenues for diversification and sustainable returns. In Nigeria, recent climate policy initiatives and efforts to develop a domestic carbon market have positioned the country as a potential hub for carbon trading in Africa. As carbon credits gain commercial value, they are increasingly viewed not merely as environmental instruments, but as an emerging asset class with investment potential.

**Why institutional investors are interested**
Global investment in carbon-credit activities reached about US$43.4 billion between 2021 and Q3 2024, showing the scale of capital entering the market. Carbon markets provide access to an asset with different drivers from traditional equities and fixed-income instruments, while giving investors exposure to the transition toward a lower-carbon economy.

ESG and sustainability mandates also influence demand. Pension funds, insurers and other asset owners face growing pressure to manage climate risks and align portfolios with net-zero commitments. Investors can gain carbon-market exposure through financing carbon projects, investment funds, forward offtake agreements or direct purchases of credits. Investment funds also spread exposure across projects, reducing reliance on the performance of a single project. In Nigeria, this interest aligns with a developing domestic market and a carbon-finance opportunity estimated at US$2.5 billion.

**Key Nigerian tax considerations**
Nigeria's tax treatment of carbon credits sits at the intersection of established tax rules and an asset class that the current Nigerian legal landscape does not expressly define. The Nigeria Tax Act 2025 (the "NTA"), effective from 1 January 2026, treats all forms of property as chargeable assets, including rights, digital or virtual assets and incorporeal property. This approach provides a basis for taxing gains from carbon-credit disposals but leaves questions over the precise legal character of carbon credits.

Nevertheless, for institutional investors, the disposal of credits carries a potentially significant corporate tax consideration. Under the new regime, capital gains form part of the corporate tax computation rather than attracting the former standalone 10% capital gains tax. For companies, taxable gains therefore face the applicable corporate income tax rate at 30%. The treatment also depends on whether credits are held as investment assets or as trading inventory, making the investor's purpose and accounting treatment important.

On the Value Added Tax (the "VAT") spectrum, Section 146 of the NTA brings certain incorporeal rights within the Nigerian VAT nexus where, among other tests, the right is assigned to or acquired by a person in Nigeria. Taxable supplies generally attract VAT at 7.5%. A transaction involving carbon credits therefore has a strong basis for VAT exposure, although the Act does not expressly identify carbon credits or prescribe their treatment.

For cross-border transactions, payments to foreign counterparties might trigger withholding tax where the underlying arrangement involves royalties, commissions or specified services, but a straightforward purchase of a carbon credit should not automatically be treated as a taxable service. The central issue is therefore not the absence of tax rules, but the absence of carbon-credit-specific guidance. As market volumes increase, clear guidance from the Nigerian tax authority on classification, valuation, WHT and cross-border treatment will reduce uncertainty and improve investment certainty.

It is however worth adding, pending the issuance of clear guidance that this class of assets may obtain a favorable tax treatment, considering that the Nigerian government has adopted a policy that seeks to encourage the adoption of cleaner energy sources. Therefore, while clear and precise guidance is necessary at this time, the potentially positive impact of this class of assets must be kept in view in the drafting of such tax guidelines.

**Regulatory developments**

Notably, Nigeria has moved from policy development toward an operational carbon-market framework. President Ahmed Tinubu approved the National Carbon Market Framework in January 2026, with the National Council on Climate Change serving as the central institutional authority. The framework covers project approval, credit issuance, recording, authorization and trading, including participation under Article 6 of the Paris Agreement.

The framework also connects Nigeria's voluntary carbon market with the Paris Agreement's Article 6 mechanisms, creating a basis for internationally transferred carbon credits and corresponding authorizations. In March 2026, Nigeria authorized the international transfer of 5.2 million carbon credits by a clean cooking company to the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), marking a move from policy design toward implementation.

**Conclusion**

Carbon credits are emerging as a distinct investment asset, supported by growing institutional interest and Nigeria's developing carbon-market architecture. Importantly, considerations for the regulation of this asset class must take into account the potentially positive impact of this asset class. Therefore, clearer tax rules, ownership rights and market regulations, issued promptly, will be essential to reduce uncertainty, strengthen investor confidence and support sustainable market growth and adoption.

If you would like to discuss this topic, please do not hesitate to contact the authors.

*Kelechi Okparaocha*
*kelechi@wtsblackwoodstone.com*

*Oluwatobiloba Adekoya*
*tobi@wtsblackwoodstone.com*

*Abdulateef Ibrahim*
*ibrahim@wtsblackwoodstone.com*

wts global

## Poland

wts saja

## Foreign real estate funds – Polish tax administration takes U-turn – Tax exemption for interest and dividend income

Certain income of foreign real estate funds (such as German *Immobilien-Sondervermögen*) may be exempted from taxation in Poland (Article 17(1)(58) of the Corporate Income Tax Act, or "CITA").

CITA offers tax exemption with respect to income derived by foreign collective investment schemes (non-UCITS) (see CITA Article 17(1)58 in conjunction with Articles 6(4)(1), 6(1)(10a)(a) and (d) to (f), 17(1)(57), 17(11), 17(12) and 17(13)). The exemption does not apply to certain categories of income listed in CITA, such as income from real estate subject to Polish buildings income tax, partnership income, and income from loans extended to partnerships.

To obtain the tax exemption, the taxpayer must comply with a number of requirements, such as having a relevant tax residence, being authorised by competent market supervision authorities, and having a depositary.

One of the exemption conditions is that the fund must only engage in collective investment of cash in securities, money market instruments or other economic rights (CITA Article 17(11)(1)).

Accordingly, assuming the fund meets the statutory exemption conditions, its interest and dividend income from companies (which are legal persons subject to corporate income tax) should be exempt from the tax.

However, recently the Polish tax administration has been widely questioning availability of the exemption to foreign real estate funds, claiming that direct or indirect investment in real estate is intended to generate rental income and as such is not among typical investing activities. This approach led the authorities to conclude that such investments do not meet the requirement for the fund to only engage in collective investment of cash in securities, money market instruments or other economic rights.

That approach has been questioned by Polish courts (see, e.g., WSA Warsaw, case III SA/Wa 846/25, III SA/Wa 845/25, judgment of 17 Jun 2025, WSA Poznań, case I SA/Po 237/25, judgment of 28 Oct 2025).

According to the courts:

- in accordance with linguistic construal, rights or interests in real estate may be treated as "other economic rights",
- if the lawmakers had intended to make the exemption unavailable to foreign real estate funds, it would be superfluous to exclude real estate income from exempt income;
- Polish close-ended investment funds are allowed to invest in real estate, so if the exemption is available to Polish funds, comparable foreign funds should not receive a different treatment by the exemption being denied to them.

The good news is that, under the impact of that case law, the Polish tax administration has recently revised its approach.

Even though the tax administration has a right to appeal court decisions favourable for foreign funds, it has given up on this option since December 2025 and started to issue favourable tax rulings in accordance with guidance from the courts (see tax rulings dated 10 December 2025 ref. 0111-KDIB1–1.4010.663.2024.8.SH, 16 December 2025 ref. 0111-KDIB1–2.4010.644.2024.9.ANK, 17 March 2026 ref. 0111-KDIB1-2.4010.633.2024.8.AW, 16 March 2026 ref. 0111-KDIB1–1.4010.667.2024.8.AND). This turnaround offers foreign funds a shorter path to obtaining their tax exemption for interest and dividend income streams from Polish companies.

Note that, despite that change of heart by the Polish tax administration, it may continue to question the availability of the interest and dividend income exemption to foreign real estate funds in certain cases, including where:

- the business of the foreign real estate fund is more than just investing (e.g. it is engaged in real estate development), or
- the fund does not meet any of the other exemption conditions (e.g. is not authorised by competent financial supervision authorities).

Therefore, before any such exemption is applied, funds are advised to verify compliance with all the statutory exemption requirements, including on the basis of their investment policy.

If you wish to discuss this topic, please contact the author.

*Magdalena Kostowska*
*magdalena.kostowska@wtssaja.pl*

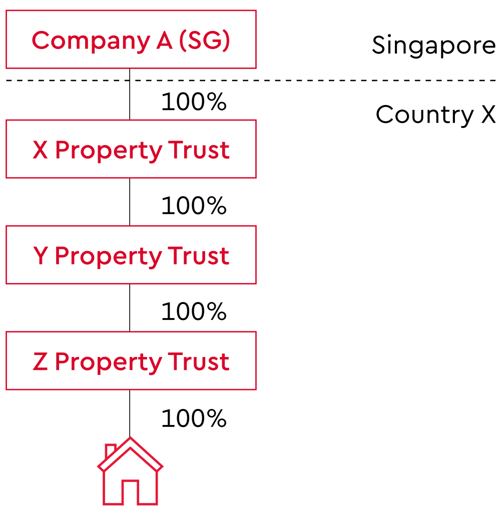
## Singapore

wts taxise

## Return of capital, return of certainty – Tax-deferred distributions from foreign trusts

Tax-deferred distributions from a foreign property trust are a return of capital and not income, as confirmed by the Inland Revenue Authority of Singapore ("IRAS") in Advance Ruling Summary No. 13/2026 published on 3 August 2026.

**The facts**
Company A is a Singapore tax resident investment-holding company. It is the sole unitholder of X Property Trust. X holds Y Property Trust, which holds Z Property Trust. All three Property Trusts are in Country X. Z Property Trust owns rental property in Country X.




Z Property Trust earns rental income from its rental property and such income flows up the chain to Company A via trust distributions, and Country X imposes withholding tax on it.

Some distributions exceed the trusts' net taxable income. These arise from building allowances, tax depreciation, and other timing differences. They are the "tax-deferred distributions".

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### The ruling

Under Section 10(1) of Singapore's Income Tax Act, tax-deferred distributions are not taxable in Singapore to the extent of the capital invested in X Property Trust. They instead reduce the acquisition cost of Company A's investment. Any taxable gain on a later disposal is computed on original cost less the distributions received.

### Why it matters

The relief is a deferral and not an exemption. Every tax-deferred distribution erodes the cost base. As such, the gain on exit is correspondingly larger.

That matters because of Section 10L. Since 1 January 2024, gains on the disposal of foreign assets received in Singapore are taxable unless the seller is an "excluded entity". Units in a foreign trust would likely be considered a foreign asset. A holding company with thin substance may find that years of tax-free distributions crystallise as a taxable gain on sale.

### Takeaway

Structures holding foreign trust units through a Singapore company should track cost base carefully, document capital contributions, and stress-test Section 10L substance before an exit.

### Further important changes (MAS Circular 05/2026 of 31 July 2026)

As at 1 January 2025, non-single-family office ("SFO") funds no longer have to maintain annual minimum assets under management in designated investments ("AUM in DI")—funds now must have the minimum AUM in DI at the point of application and at the end of each basis period; incentivised non-SFO funds are required to have third-party capital contributions; lesser IPs are required at the point of application; tokenised interests now qualify as designated investments; and the 5% cap on physical precious metals is lifted from 1 August 2026.

If you wish to discuss this topic, please contact the authors.

*Eugene Lim*
*eugene.lim@*
*taxiseasia.com*

*Yeo Mei*
*mei.yeo@*
*taxiseasia.com*

## Spain

ARCO
ABOGADOS Y ASESORES TRIBUTARIOS

## Spanish Supreme Court decision on WHT reclaims

We would like to highlight a recent Spanish Supreme Court judgment concerning the taxation of dividends received by non-resident investment funds: Judgment No. 713/2026 of 9 June 2026 (Mora Multistrategy Fund FI, Andorra).

In our view, the judgment does not represent a substantive difference from the Supreme Court's existing case law. It should instead be read as a further confirmation of the doctrine established in the landmark judgments of 5 April 2023 and subsequently reaffirmed in the decisions delivered in March 2025.

The Court expressly presents its ruling as an application of its settled case law on the comparability of non-resident collective investment vehicles with Spanish resident investment funds.

A relevant feature of the case is that the Spanish State Attorney's Office acquiesced to the claim, expressly acknowledging that the matter was materially aligned with prior

Supreme Court rulings. This further evidences the degree of consolidation of the Court's case law in comparable fact patterns.

The Supreme Court reiterates that Spanish legislation is incompatible with the free movement of capital under Article 63 TFEU where non-resident funds in a comparable position are subject to materially less favourable tax treatment than Spanish resident investment funds. In particular, the Court refers to the difference between the 1% corporate income tax regime applicable to resident funds and the Spanish withholding tax levied on dividends paid to non-resident funds, generally at 19% or at the applicable treaty-reduced rate.

The Court also confirms that comparability does not require strict legal identity with a Spanish fund. The analysis should focus on whether the non-resident fund has the essential features that justify the favourable tax treatment granted by the Spanish legislator to resident collective investment vehicles.

The judgment restates the comparability criteria developed in the Supreme Court's prior case law. A non-resident fund should generally be regarded as comparable where it can evidence that:

- it raises capital collectively from investors;
- it operates as an open-ended collective investment vehicle;
- it has been duly authorised by the competent supervisory authority in its jurisdiction of residence;
- it is managed by an authorised and supervised investment manager; and
- it is subject to an appropriate regulatory and supervisory framework.

The Court also reiterates that the initial burden of proof lies with the claimant fund. However, once the taxpayer has provided serious and credible evidence of comparability, the Spanish tax authorities may not impose disproportionate evidentiary requirements and must make effective use of the exchange-of-information mechanisms available under the relevant tax treaty and international cooperation framework.

The fact that the claimant was an Andorran investment fund is noteworthy, given Andorra's specific tax profile. The Court nevertheless applied its settled comparability doctrine and accepted that the Spain-Andorra exchange of information framework was sufficient for the assessment.

From a practical perspective, the judgment provides further confirmation that the Supreme Court's case law on WHT reclaims by non-resident investment funds is now well established. It supports the position that, where the relevant comparability criteria are met, a discriminatory withholding tax burden imposed on non-resident funds is contrary to the free movement of capital and may give rise to a refund claim.

Accordingly, the judgment should not be viewed as a change in the Court's approach, but rather as an additional authority confirming and consolidating the line of case law initiated by the Supreme Court in April 2023 and reaffirmed in 2025 and 2026.

If you wish to discuss this topic, please contact the authors.

*Marina Esquerrà*
*marinaesquerra@arcoabogados.es*

*Concha García*
*conchagarcia@arcoabogados.es*

## United Kingdom

## New UK Securities Transfer Tax (STT) – Simpler in law, harder in practice

The UK is planning to replace stamp duty and stamp duty reserve tax (SDRT) on UK share transfers with a single Securities Transfer Tax ("STT") from 2027. The reform is intended as a modernisation rather than a revenue-raising measure: the main 0.5% charge and the 1.5% higher-rate charge for certain transfers to clearance services or depositary receipt issuers are broadly retained. Draft legislation is expected to be included in the upcoming Finance Bill. The revised rules could be applicable from 1 January 2027.

**What changes?**
The envisaged regime consolidates the existing rules into a single statutory framework. Chargeable securities will broadly include shares and equity-like debt interests in UK-incorporated companies, units in certain unit trusts and related rights and interests. Existing reliefs for recognised intermediaries, certain fund transactions, in specie redemptions and fund reconstructions are largely preserved, but are expressed directly in the new legislation.

Importantly, historic stamp duty and SDRT practice will not automatically carry over. The draft rules expressly provide that STT is not to be treated as a re-enactment of subordinate legislation under the old regimes. Existing approaches therefore need to be tested against the new statutory wording.

**Operational impact for financial institutions**
The most significant change is administrative. STT moves transfer tax further into a formal self-assessment and reporting framework. Returns will generally be required for electronic transactions and other relevant transactions unless an exemption applies that does not need to be claimed. Electronic transactions must generally be filed and paid within 14 days, while other transactions are subject to a 30-day deadline.

This places greater responsibility on buyers, accountable persons and agents and will require changes across CREST, registrars, custodians and other market participants. Companies will also be restricted from registering transfers without HMRC acknowledgement of a return or confirmation that no return was required.

**What should market participants do now?**
Financial institutions should map where STT arises across trading, custody, corporate actions and fund administration, review eligibility for intermediary and other reliefs, and identify who will be responsible for filing, payment and documentation. Existing systems and controls should also be tested to ensure that the new requirements can be handled at scale. The technical consultation on the draft legislation runs until 7 September 2026.

The key message is that the legal framework may become simpler, while implementation may become more demanding. For many institutions, STT should therefore be treated not only as a tax project, but as an operational and technology project ahead of 2027.

If you wish to discuss this topic, please contact the author.

*Ali Kazimi*
*alikazimi@wtshansuke.co.uk*

United Kingdom

## Asset management – New carried interest tax rules and the BlueCrest decision

Two significant UK developments are reshaping how asset management executives are taxed and classified. From 6 April 2026, all carried interest is taxed as trading income rather than under the capital gains regime, materially changing effective rates and widening the population caught, including non-UK residents. Separately, the Supreme Court's decision in HMRC v BlueCrest Capital Management (UK) LLP has narrowed the scope for LLP members to argue "significant influence" over partnership affairs, increasing the risk that senior investment professionals are taxed as employees. These developments are particularly relevant to heads of tax and to reward at hedge funds, private equity houses and other asset managers operating through UK LLPs, and to their UK and non-UK resident executives and portfolio managers.

### New carried interest regime

Since 6 April 2026, carried interest arising to UK asset management executives is charged to income tax and Class 4 National Insurance Contributions as profits of a deemed trade, replacing the previous capital gains treatment. The change affects both new and existing carried interest arrangements.

"Qualifying" carried interest, broadly determined by a fund's average holding period, benefits from a 72.5% multiplier, giving an effective top tax rate of around 34.1%. "Non-qualifying" carry is taxed at up to 47%. Qualification turns on a fund's weighted "average holding period" (AHP) for its investments, built on the existing income-based carried interest rules: carry from funds with a sufficiently long AHP (broadly reflecting longer-term investment strategies, such as typical private equity or infrastructure holds) qualifies for the multiplier, while carry from shorter-term or high-turnover strategies more commonly seen in hedge funds will not.

The reforms also expand the definitions of "investment scheme" and "investment management services" and remove the previous employment-related securities safe harbour, drawing more individuals and structures into scope.

Critically, non-UK tax residents are now subject to UK tax on carried interest to the extent it is attributable to UK duties, a fundamental change for internationally mobile executives and globally structured fund groups.

### BlueCrest and the salaried members rules

The salaried members rules were introduced in 2014 to prevent LLP members who function, in substance, as employees from accessing the tax advantages of self-employed partner status, notably exemption from employer's National Insurance and PAYE withholding. A member is taxed as an employee if three conditions are all met; failing any one of the conditions preserves partner status.

On 1 July 2026, the Supreme Court dismissed BlueCrest's appeal, confirming HMRC's narrow interpretation of "significant influence" (Condition B) under the salaried members rules.

Influence must derive from a member's legally enforceable rights under the LLP's governance framework, and must extend to the LLP's affairs as a whole, not merely to a desk, team or portfolio. Economic importance, investment authority or profit generation are not, of themselves, sufficient. The Condition B question for BlueCrest's own members has been remitted to the First-tier Tribunal.

**Conclusion**

Together, these developments demand a fresh look at reward structures across UK asset management firms. Firms with LLP structures should revisit governance documentation and delegated authorities against the narrower BlueCrest test. It is expected that HMRC will scrutinise such structures closely.

While qualifying carried interest remains attractive compared with alternative reward structures, the complexities of the new regime are likely to require additional record keeping – to track the fund's AHP and to count UK workdays for non-UK based executives. Existing carry arrangements should be reviewed, and new carry schemes should be designed, to ensure compliance with the new rules and to optimise the outcome for both UK and non-UK executives that work in the UK.

If you wish to discuss this topic, please contact the author.

*Christopher Austin*
*christopher.austin@wts.com*

wts global

## Contact

**Germany**
**Jeremy Himpler**
jeremy.himpler@wts.de
**WTS Germany**
Friedenstraße 22
81671 Munich
https://wts-global.com/services/financial-services

**Australia**
**Len Nicita**
len.nicita@wtsaustralia.com
T +61 449 060 065
**Rod Henderson**
rod.henderson@wtsaustralia.com
T +61 412 250 784
**WTS Australia**
Level 17
175 Pitt Street
Sydney NSW 2000
www.wtsaustralia.com

**China**
**Ened Du**
ened.du@wts.cn
**Grace Zheng**
grace.zheng@wts.cn
T +86–021–50478665
**WTS China Co., Ltd.**
Unit 06 – 07, 20th Floor, Building 1,
Shengbang International Tower,
Hongkou District
No.1318 North Sichuan Road
200080, Shanghai
https://www.wts.cn

**Finland**
**Mikko Alakare**
mikko.alakare@castren.fi
T +358 20 7765 290
**Anette Laitinen**
anette.laitinen@castren.fi
T +358 20 7765 373
**Noora Kokko**
noora.kokko@castren.fi
T +358 20 7765 071
**Castrén & Snellman Attorneys Ltd.**
PO Box 233
Eteläesplanadi 14
FI-00131 Helsinki
https://www.castren.fi

**Germany**
**Robert Welzel**
robert.welzel@wts.de
**Steffen Gnutzmann**
steffen.gnutzmann@wts.de
**Niklas Habermann**
niklas.habermann@wts.de
**Tobias Michaelis**
tobias.michaelis@wts.de
**Jonas Carstensen**
jonas.carstensen@wts.de
T +49 40 3208 666 13
**Justus Eisenbeiss**
justus.eisenbeiss@wts.de
T +49 171 9262049
**WTS Germany**
Brüsseler Straße 1–3
60327 Frankfurt am Main
https://wts-global.com/services/financial-services

**India**
**Zeel Jambuwala**
zeel.jambuwala@aurtus.com
**Aurtus Consulting LLP**
1st Floor, Springhouse, DLF Center Court
Golf Course Road, DLF Phase 5, Sector 42
122002 Gurugram
https://www.aurtusconsulting.com

**Indonesia**
**Tomy Harsono**
tomy.harsono@wtsindonesia.com
T +62 811 9196 939
**WTS Indonesia**
Wisma Metropolitan I/
Gedung WTC 5 Lt. 3A
Jl. Jend Sudirman, Kav 29–31
12920 Jakarta
https://wtsindonesia.com

**Italy**
**Marina Lombardo**
marina.lombardo@ra-wts.it
T +39 02 36751145
**WTS R&A Studio Tributario**
Piazza Sant'Angelo 1
20121 Milan
https://www.ra-wts.it

## Contact

**Grand Duchy of Luxembourg**
**Julian Wehlen**
julian.wehlen@tiberghien.com
**Maxime Grosjean**
maxime.grosjean@tiberghien.com
**Jeronimo Chavarria**
jeronimo.chavarria@tiberghien.com
**Michiel Boeren**
michiel.boeren@tiberghien.com
T +352 27 47 51 11
**Tiberghien Luxembourg**
23, Boulevard Joseph II
L-1840 Luxembourg
www.tiberghien.com

**Nigeria**
**Kelechi Okparaocha**
kelechi@wtsblackwoodstone.com
**Oluwatobiloba Adekoya**
tobi@wtsblackwoodstone.com
**Abdulateef Ibrahim**
ibrahim@wtsblackwoodstone.com
T 09033501613
**WTS Blackwoodstone**
Lekki Phase 1
Unit 12, No 8 Office Apartments, Plot 8,
Road 13, Rasheed Alaba Williams Street
Lagos
www.wtsblackwoodstone.com

**Poland**
**Magdalena Kostowska**
magdalena.kostowska@wtssaja.pl
T +48 61 643 45 50
**Doradztwo Podatkowe**
**WTS&SAJA Sp. z o.o.**
Bałtyk Building, 13th floor
ul. Roosevelta 22
60–829 Poznań
https://wtssaja.pl

**Singapore**
**Eugene Lim**
eugene.lim@taxiseasia.com
T +65 6304 7978
**Yeo Mei**
mei.yeo@taxiseasia.com
T +65 6304 7972
**Taxise Asia LLC**
61 Robinson Road, #17–01A
068893 Singapore
taxiseasia.com

**Spain**
**Marina Esquerrà**
marinaesquerra@arcoabogados.es
**Concha García**
conchagarcia@arcoabogados.es
T +34 915 222 063
**ARCO Abogados y Asesores Tributarios**
Marqués de la Ensenada, 2, 1º
28004 Madrid
www.arcoabogados.es

**United Kingdom**
**Ali Kazimi**
alikazimi@wtshansuke.co.uk
T +44 7818522779
**WTS Hansuke**
One Canada Square, Canary Wharf
London, E14 5AB
https://wtshansuke.co.uk

**United Kingdom**
**Christopher Austin**
christopher.austin@wts.com
T +44 (0)7956 983 640
**WTS UK**
3rd Floor
1 Ashley Road
Altrincham, Cheshire WA14 2DT
www.wts.co.uk

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**Imprint**
WTS Global
P.O. Box 19201 | 3001 BE Rotterdam
Netherlands
T +31 (10) 217 91 71 | F +31 (10) 217 91 70
wts.com | info@wts.de

**Publisher**
WTS GmbH
Frankfurt Office
Brüsseler Straße 1 – 3
60327 Frankfurt/Main
Germany

› Robert.Welzel@wts.de T +49 69 1338 45680
› Steffen.Gnutzmann@wts.de T +49 40 3208 66613
› Christiane.Schoenbach@wts.de T +49 69 1338 45670
› Katrin.Classen@wts.de T +49 69 1338 45672
› Christian.Bischler@wts.de T +49 69 1338 45620
› Guido.Dahm@wts.de T +49 69 1338 45610
› Stefan.Zwiesele@wts.de T +49 69 1338 45630