

Luxembourg, September 19, 2005

News: Aktiengewinn / Immobiliengewinn

Circular of the German Federal Ministry of Finance dated

September 9, 2005

In a BMF circular issued on September 9, 2005, the German Federal Ministry of Finance publicly answered the questions raised by the investment fund industry regarding the publication of the "Aktiengewinn" (equity income related) and of the "Immobiliengewinn" (real estate income related).

BMF September 9, 2005 - What is relevant for foreign investment funds?

The Question

"Depending on the structure of the funds' portfolio, is the publication of either the "Aktiengewinn" or of the "Immobiliengewinn" sufficient?"

The Background

To enable their business investors to benefit from tax exemptions related to income derived from equity investments such as dividends, realised and unrealised capital gains from equities (briefly "equity income"), investment funds can opt to publish daily the percentage of "equity income" out of the net asset value (= "Aktiengewinn").

Similar to the "Aktiengewinn", the "Immobiliengewinn" represents the percentage of real estate income (rental income, leasing, realised and unrealised income from non-German real estate, for which treaty exemptions apply) out of the net asset value and can also be published to grant tax exemptions to investors.

The Answer

The Federal Ministry of Finance surprisingly answered the question in the affirmative. According to the Ministry, it is necessary in case an "Aktiengewinn" is published to also publish in any event an "Immobiliengewinn", to ensure that investors can benefit from the "Aktiengewinn", even in cases where the fund does not have any real estate income. The Ministry explains its decision by the fact that the "Immobiliengewinn" can also contain other treaty exempt income.

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The Consequence

Investment funds publishing the “Aktiengewinn” will have to publish the “Immobilien-gewinn” too. If there is no real estate or other exempt income, it is necessary to publish a “zero”. If no “Immobilien-gewinn” has been published so far, this won’t have any adverse consequences until September 30, 2005.

The majority of Luxembourg investment funds distributed to German investors have not yet published any “Immobilien-gewinn”, as they do not receive any real estate income. This will have to be changed starting October 1, 2005.

However, according to verbal comments made on Friday, 16 September 2005 by the Ministry of Finance, it is very likely that the starting day for this mandatory publication will be postponed to January 2, 2006.

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