



Introduction of the proposed Flat Taxation on Investment Income in Germany

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Frank Aussendahl
Sebastian Meinhardt

Financial Services Tax, Frankfurt

Agenda

- New taxation on investment income
 - **Capital income**
 - **Taxation of the increase of asset's value (capital gains)**
- Flat tax to be withheld at the credit institution's level
 - **Offset against gains as well as profits/losses**
 - **Certifications/ notifications/verifications**
- Capital gains and yearly investment income statement ("Jahresbescheinigung")
- Flat tax' effects on financing conduct of companies
- Effects on investing conduct of private investors

Flat-tax on direct investments

Scope of flat-tax and tax rate (1)

- Investment income is subject to flat-tax...
 - Interest and dividend revenues, income from silent partnerships etc.
 - Gains from derivatives and received option premiums
 - Realized gains for all kind of investments in securities irrespective of a holding period (ex real estate)
 - Extend of the scope ...
- Flat-tax to the amount of 25% (plus solidarity surcharge and church tax if applicable)
 - **However, option to assessment due for application concerning all capital revenue in the assessment period (benefit test (so-called "Günstigerprüfung") conducting by tax office; advantageous, if marginal tax rate < 25%)**
 - **Flat amount of income related expenses (EUR 801 bzw. EUR 1.602 for married couples assessed jointly) instead of present saver's tax free amount ("Werbungskosten-Pauschbetrag")**

Flat-tax on direct investments

Scope of flat-tax and tax rate (2)

- No application of flat-tax rate...
 - **...if the income is allocated to business income (corporation or partnership)**
 - **...in special (structuring) cases**
 - creditor and debtor are related persons (definition arguable as in AStG)
 - if financing the “own” company (participation > 10%, as assumed a exercising influence on the company)
 - also applying correspondingly to cash flow income (“Überschusseinkünfte”), in case of back to back loans

Flat-tax on direct investment Capital Income

- Capital Income
 - **Applicable on profits received after 31. December 2008**
 - **Dividends**
 - abolishment of the semi-income procedure concerning private Investors
 - also foreign dividends are now subject to withholding tax
 - special problem concerning dividends in kind (so-called "Sachdividende") :
 - As the bank has to conduct the flat-tax in cash, the investor does not receive cash dividend but securities etc.
 - **Interest income (no change to current law)**
 - **Received options premiums (short option)**
 - so far: other income with own loss offsetting basket (no issue of ring fencing rules under the new flat-tax system)
 - costs for cash settlement decrease income

Flat-tax on direct investment Capital Gains (1)

- Gains from increase of asset's value (Capital Gains) will be attributed to capital income
- Realized gains from stocks
 - **Abolishment of semi-income procedure**
 - **Specific ring fencing basket for offset capital gains against losses by disposal of shares**
 - applicable also for subscription rights ...
 - **Applicable for shares purchased from 1. January 2009 on**

Flat-tax on direct investment Capital Gains (2)

- Realized gains from interest bearing instruments (bonds etc.)
 - **Extension the scope of the term bond / obligation to full risk bonds (“Vollrisikopapier”)**
 - **Assignment or redemption is deemed to be a disposal of interest bearing instruments („clarification“?)**
 - **Accrued interest: recognized only at acquisition date as negative income**
 - **Application**
 - normal bonds (government bonds) : if purchased from 1. January 2009 on
 - bonds qualified as financial innovations: if sold from 1. January 2009 on (advantage)
 - “full risk bonds “(certificates): if sold from 30. June 2009 on, unless purchased before 15. March 2006.
- **A correct classification of all interest bearing instruments at 14. March 2007 and at 31. December 2008 is necessary**

Flat-tax on direct investment Capital Gains (3)

- Profits from derivatives
 - **Applies for financial futures, swaps etc.**
 - .. as well as financial instruments structured as derivatives like options etc. ..
 - **Application to derivatives positions as entered in from 1. January 2009 on**
- Not usual in current bank-tax reporting:
 - **Realized gains from disposal of silent partnerships**
 - **Realized gains from disposal life insurance contracts at secondary market**

Flat-tax on direct investments

Proceeding of the flat-tax deduction (1)

- Flat-Tax can only be levied in Germany
 - **German banks are obligated to withhold (paying agent)**
- Taxation on basis of individual tax declaration if capital income/capital gains are received via a Non German bank
 - **... but flat-tax rate is applicable**
 - **Requirements concerning information and reporting remain largely unchanged with respect to Non German banks**

Flat-tax on direct investments

Proceeding of the flat-tax deduction (2)

- Determination of capital income subject to flat-tax liability at a German credit institution's level
 - **Taxable are gross amounts**
 - **Withheld foreign withholding tax has to be considered within determination of the flat-tax´ amount**
 - reduction of flat-tax by the most creditable Non German withholding tax
 - according to DTT between Germany and the state of source

Flat-tax on direct investments

Proceeding of the flat-tax deduction (3)

- Determination of capital income subject to flat-tax liability at a German credit institution's level
 - **Capital gains**
(disposal proceeds less acquisition costs less incidental costs)
 - **Corporate actions (adjustment of acquisition costs ...)**

Flat-tax on direct investments

Proceeding of the flat-tax deduction (4)

- Determination of flat-tax liability with respect to investment income at a domestic credit institution's level
 - **extended accrued interest basket (so called „Erweiterter Stückzinstopf“)**...
 - ...starts with loss carry forward from the foregoing calendar year
 - ...and includes:
 - Capital income (also negative income!)
 - Realized capital gains und losses (excluding such stocks, separate ring fencing basket)
 - ... if applicable consideration of flat amount of income related expenses (“Werbungskosten-Pauschbetrag”; EUR 801/EUR 1.602)

Flat-tax on direct investments

Proceeding of the flat-tax deduction (5)

- Special issue: Transfer of a deposit
 - Case A: no change of creditors:
 - transmission of acquisition information possible (without any certificate requirement among German banks but with a certificate is needed among banks within EU/EWR)
 - Case B: change of creditors
 - basically treated as a realization
 - Determination of realized gains, if acquisition information is not available:
 - tax basis is 30% of the realized gain

Flat-tax on direct investments

Tax assessment at the taxpayer's level

- General option to tax assessment to individual tax rate
 - **Profitable, if marginal tax rate < 25%**
 - **Benefit test (so-called "Günstigerprüfung") for application concerning all capital income**
- Special options to assessment
 - **Church tax, unless it is not already withhold**
 - **Offset of positive/ negative investment income over all accounts at different**
 - **Offset of "new" capital gains according to sec. 20 para. 2 EStG-E against "old" losses acc. to sec. 23 para. 3 EStG (no offset with new interests/dividends)**

Flat-tax pursuant to the InvStG

Distribution and Accumulated Deemed Distributions

- Flat-tax is not yet completely incorporated in the InvStG
- Distributions
 - **Payment of flat-tax by the German paying agent and respectively within tax assessment process in case of foreign deposits**
 - on distributions on domestic and foreign investment funds
 - not applicable to realized gains on “old” securities/derivates (purchased before 1. January 2009 are still non-taxable)
- Accumulation/Deemed Distributions
 - **Domestic accumulating investment funds:**
 - payment of flat-tax by the German investment company
 - ... also applicable on domestic and foreign dividends
 - **Flat-tax is not levied on Non German investment funds with a deemed distribution**

Flat-tax pursuant to the InvStG Realized gains on disposal of fund unit's

- Flat-tax on realized gains on the disposal/redemption of fund unit itself
 - **...only applicable if the fund unit has been purchased after 31. December 2008**
 - accumulated deemed income within the gain from disposal of fund unit (already taxed) has to be deducted
 - the real estate gains (“ImmobilienGewinn”) within capital gain is tax exempt (DTT)

Flat-Tax

Effects on private capital investment

- Recommendations, in particular if individual tax rate $> 25\%$
 - **Interest received should be postponed after the 31. December 2008**
 - purchase of interest bearing instruments, which do not bear interests in 2007 and 2008, in 2009 correspondingly higher
 - **Investment made pursuant to the grandfathering rules (excluding financing innovations) should be invested on a long term basis**
 - flexible [mixed] investment funds etc.

Thank you very much!

Frank Aussendahl

KPMG

Tel. + 49 69/9587-2350

faussendahl@kpmg.com

www.kpmg.de

Sebastian Meinhardt

KPMG

Tel. + 49 69/9587-2622

smeinhardt@kpmg.com

www.kpmg.de

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