



December 2016

## New rules of taxation of Investment Funds from 1 January 2017

**The Act dated 29 November 2016 amending the Personal Income Tax Act, Corporate Income Tax Act and Tax Ordinance and some other acts was signed by the President and published in the Journal of Laws (Dz. U. from 29.11.2016, position 1926).**

**With regard to investment funds, the amended provisions of the CIT Act will enter into force on 1 January 2017. No transitional provisions were provided for.**

### Current rules

According to the current rules all investment funds are covered by a general CIT exemption regardless of nature of income derived by them. In practice, by using tax transparent entities this exemption has been extended to all categories of taxable revenues.

### General exemption for FIOs and SFIOs

The amendment to the CIT Act maintains the general exemption for open ended investment funds (FIOs) and specialized open ended investment funds (SFIOs), except for those SFIOs which apply the rules and limitations prescribed for closed-end investment funds (FIZs).

### Exemption for foreign UCI's

The exemption will also be applicable to undertakings for collective investment (UCI's) from the EU and EEA. The exemption will not apply to foreign UCI's, if such institutions are operating under similar conditions as FIZs.

### FIZ

The current general exemption for closed-end investment funds (FIZs) has been replaced by specific exemption.

Moreover, certain types of FIZ revenues will be subject to taxation:

- from participation in Polish and foreign entities without legal personality, if in the country of their residence and management these entities are not treated as legal persons and are not subject to taxation on revenues;
- from interest on loans granted by FIZs to such entities and interest on other liabilities towards FIZs;
- from interest on capital share in such entities;
- from donations and other free-of-charge or partially free-of-charge benefits granted by these entities;
- from interest (discount) on securities issued by such entities;
- from the sale of securities issued by the above-mentioned entities or their shares.

### SFIOs applying the rules and restrictions applicable to FIZs and foreign FIZs

The same rules apply to SFIOs operating under the rules and restrictions applicable to FIZs and foreign UCI's that fulfill the conditions specified in the Act.

### Other changes

The Act amending the CIT Act also provides that deposits and withdrawals of the participants will be tax neutral for the investment fund.

Pursuant to the new specific exemption for foreign UCI's, the provisions regarding withholding tax were adjusted accordingly.

### Summary

The amendments to the CIT Act should allow for further planning of business ventures with the use of investment funds, without the necessity of urgent restructuring.

However, from the 1 January 2017, the efficiency of structures using foreign partnerships (in particular entities from Luxembourg and Denmark) will be significantly diminished.

The amendment can also have a negative influence on the binding force of tax rulings obtained prior to 1 January 2017 concerning general exemption of foreign UCI's.

Please contact us if you would like to obtain more information on the amendments or discuss potential changes in your business structure in order to adapt to the new regulations of the CIT Act.

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