

Transfer stamp tax for single investor funds



Principle: Fund is exempt investor

Domestic and foreign investment funds are generally considered exempt investors for the purposes of the transfer stamp tax. This means that in the case of securities transactions subject to the transfer stamp tax, half the tax is not owed that affects the fund as a counterparty.

Exception: Fund does not meet conditions

In order to qualify for exempt investor status, the fund must be either a domestic or a foreign collective investment scheme pursuant to articles 17a para 1 let. b and c SDA¹. For the definition of a collective investment scheme, the SDA refers to articles 7 and 119 CISA². Accordingly, collective investment schemes are assets that are raised by investors for collective investment and managed for their account.

In practice, the vast majority of investment funds fall under this definition and are therefore considered exempt investors for transfer stamp tax purposes. However, in the case of funds with only one investor (so-called single investor funds), it must be examined on a case-by-case basis whether the condition of "collective" investment is met and whether the fund qualifies as a collective investment

scheme and thus as an exempt investor for stamp duty purposes.

Domestic single investor funds

Pursuant to article 7 para. 3 CISA, the Federal Council may authorize collective investment schemes for a single qualified investor (single investor fund). Due to the explicit reference of the SDA to article 7 CISA, all authorized Swiss single investor funds qualify as exempt investors.

Liechtenstein investment funds are considered domestic investment vehicles for stamp duty purposes, but are not subject to the Swiss CISA. Section 1.2 of the FTA Circular No. 12 on the stamp duty therefore states that Liechtenstein collective investment schemes are equivalent to Swiss collective investment schemes for stamp duty purposes. Accordingly, all single investor funds domiciled in the Principality of Liechtenstein that fall under the relevant Liechtenstein legislation³ should be considered exempt investors for stamp duty purposes. However, the FTA applies a more restrictive interpretation here and has in practice denied this status to various Liechtenstein investment funds with only one investor.

¹ Federal Act on Stamp Duties

² Federal Act on Collective Investment Schemes

³ Law concerning specific Undertakings for Collective Investment in Transferable Securities (UCITSG), Investment Undertaking Act

(IUG) or Law concerning the Managers of Alternative Investment Funds (AIFMG).

Foreign single investor funds

In section 3.1.1 of circular no. 24 concerning collective investment schemes, the FTA has laid down so-called equalization rules under which foreign investment vehicles are deemed to be collective investment schemes for Swiss tax purposes.

These equalization rules are largely based on article 119 CISA. Accordingly, foreign investment vehicles are generally deemed to be foreign collective investment schemes if they are either (1) licensed for distribution in Switzerland, (2) subject to supervision of collective investment schemes abroad or (3) whose purpose is collective investment.

According to the circular, a foreign single investor fund is deemed to be a collective investment scheme if it is accepted by the foreign supervisory authority for collective investment schemes. This practice is based on condition (2) of the equalization rules and is to be understood as a safe harbor rule, according to which the criterion of collectivity does not need to be further examined in the case of regulated foreign single investor funds.

However, a foreign single investor fund that has not been authorized by a foreign regulatory authority for collective investment schemes should still be able to qualify as a collective investment scheme for stamp duty purposes if condition (3) of the equalization

rules is met, i.e., if its purpose is collective investment. This may be the case in particular if the collectivity criterion is met on the basis of the so-called beneficiary theory, i.e., if the single investor is a professional investor indirectly representing a large number of end beneficiaries.

In practice, however, the FTA usually assumes that no collective investment scheme exists if a foreign single investor fund has not been recognized by an equivalent supervisory authority.

Conclusion

The different legal and regulatory structures of investment vehicles in different jurisdictions combined with the formal character of the transfer stamp tax, lead to complex tax issues in the qualification of foreign single investor funds.

Since neither the Federal Supreme Court nor the Federal Administrative Court have so far dealt with the tax qualification of single investor funds, there is a risk, especially in the case of non-regulated foreign single investor funds, that they will be denied the exempt investor status for transfer stamp tax purposes. Domestic securities dealers are therefore advised to thoroughly examine the exempt investor status claimed by the fund when conducting transactions with single investor funds.



Contact

NFI Steuerberatung AG
André Kuhn
Alpenstrasse 6
CH-8853 Lachen
Phone +41 78 703 68 56
Email akuhn@nfitax.com



Contact

NFI Steuerberatung AG
Nicolai Fischli
Alpenstrasse 6
CH-8853 Lachen
Phone +41 79 221 07 05
Email nfischli@nfitax.com