

September 5, 2013

## Amendment of German Investment Tax Act Hits a Snag

[http://www.bepartners.pro/documents/2013-07-18\\_BMF\\_Weitergeltung\\_Anwendungsbereich\\_InvStG.pdf](http://www.bepartners.pro/documents/2013-07-18_BMF_Weitergeltung_Anwendungsbereich_InvStG.pdf)

The scope of application of the German Investment Tax Act (“GITA”) follows the scope of application of the German Investment Act (“GIA”), i.e. the GITA applies only to foreign investment funds, which also comply with certain requirements of the GIA. However, the legislation that implemented the European Alternative Investment Fund Managers Directive (“AIFMD”) into domestic law has repealed the GIA as of July 22, 2013. It was replaced by the new German Investment Code (Kapitalanlagegesetzbuch or “KAGB”) as of July 22, 2013. The German legislator must therefore now base the GITA’s scope of application on the GIA’s successor legislation, the KAGB, and has attempted to do so by introducing the Act Amending the German Investment Tax Act and Other Acts (AIFM Tax Amendment Act, or “GITA–AIFM”). This is where the German legislator has hit a snag.

Unfortunately, the German legislator could not agree on a final draft of the GITA–AIFM yet. As a result, the legislative process regarding the GITA–AIFM has been put on hold and will not be finalized prior to the upcoming German federal election on September 22, 2013. Thus, the German legislator will have to commence an entirely new legislative enactment process in order to align the German investment fund taxation with the AIFMD during the next legislative period.

In the meantime, the GITA’s scope of application is hanging in limbo. This gives rise to some unease for German investors in foreign investment funds as the application of the GITA (or not) could have significant tax consequences for these investors. To provide some legal certainty in this situation, the German Federal Ministry of Finance has issued an Ordinance on July 18, 2013, stating that the previous scope of application of the GITA would continue to apply to investment funds that comply with the current requirements of the GIA until a new statutory regulation of the GITA’s scope of application is passed and enters into force. In other words, the GITA should continue to apply and the tax reporting thereunder by German investors in existing foreign investment funds should remain as before.

Moreover, the current scope of application of the GITA will also apply to new investment funds, which have been set up after July 21, 2013, provided these funds also comply with the requirements of the GIA. However, for these new investment funds the challenge is to accommodate the requirements according to the abolished regime under the GIA and, at the same time, the requirements under the new regime according to the KAGB.

We will keep you informed of any new developments in this regard.



**be** in touch: If you have any questions, please do not hesitate to contact us!



**Dr. Carsten Bödecker**

Partner . Steuerberater . Rechtsanwalt

Tel. +49 (0) 211 946847-51

Fax +49 (0) 211 946847-01

carsten.boedecker@bepartners.pro



**Carsten Ernst**

Partner . Steuerberater

Tel. +49 (0) 211 946847-52

Fax +49 (0) 211 946847-01

carsten.ernst@bepartners.pro



**Holger Hartmann**

Partner . Rechtsanwalt

Tel. +49 (0) 211 946847-53

Fax +49 (0) 211 946847-01

holger.hartmann@bepartners.pro



**Alexander Skowronek**

Steuerberater . Rechtsanwalt

Tel. +49 (0) 211 946847-62

Fax +49 (0) 211 946847-01

alexander.skowronek@bepartners.pro