

Extension of tax exemption for foreign investment funds

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The Ministry of Finance has published a draft amendment to the Corporate Income Tax (CIT) Act, responding to key judgements of the Court of Justice of the European Union (CJEU). The proposed regulations aim to eliminate the inconsistencies of current Polish law with EU law, as highlighted in two landmark CJEU rulings. The main objective of the draft is to significantly broaden the group of foreign funds eligible for the tax exemption in Poland. The new law is intended to take effect on January 1, 2026, and will apply to income earned from that date onwards.

Which provisions raised doubts?

The existing regulations have been the source of numerous legal disputes, and their non-compliance with EU law has been confirmed by the CJEU. Two main conditions proved to be problematic:

- **The seat/residency criterion:** The right to the exemption was exclusively reserved for collective investment undertakings that were domiciled in the EU or EEA. In its judgement of April 10, 2014 (Case C-190/12), the CJEU ruled that such a geographical limitation is in breach of EU freedoms.
- **The management structure criterion:** The provisions granted the exemption only to funds managed by external, specialized entities. In a landmark judgement of February 27, 2025 (Case C-18/23), the CJEU found that discriminating against funds with an internal management structure violates the free movement of capital.

What changes does the draft amendment introduce?

The draft act directly implements the guidance from the CJEU judgements. The amendment to the CIT Act will introduce two fundamental changes:

Opening up to third-country funds:

- Entities domiciled outside the EU and EEA (e.g., in the United States, United Kingdom, Canada, or Australia) will become eligible for the exemption.
- The change will cover both open-ended (UCITS-type) and closed-ended funds.

Acceptance of self-management:

- The requirement to use an external fund manager will be abolished, and the exemption will also be available to funds that are self-managed by their own management board.
- A key condition will be that the competence of such an internal management body is formally confirmed, for example, through an entry in the relevant register in the fund's country of domicile or by holding an authorization.

New conditions and safeguard mechanisms

To prevent potential abuse, the draft amendment also introduces additional restrictions:

- **Condition of tax information exchange:** Funds from third countries will qualify for the exemption only if there is an effective legal basis for the exchange of tax information with Poland. This can be a double tax treaty, an agreement under the CRS/MCAA standard, or a FATCA agreement with the US.
- **Anti-abuse clause:** A specific clause targeting artificial structures will be introduced. Tax authorities will gain a tool to challenge the exemption if they find that the main purpose of a fund's (especially a closed-ended fund's) activities was to obtain a tax benefit contrary to the object and purpose of the law.

Summary – key changes for funds

- Funds domiciled in third countries (outside the EU/EEA) will become eligible for the CIT exemption.
- The right to the exemption will be extended to self-managed funds.
- A new condition regarding the existence of a tax information exchange agreement will be introduced.
- A dedicated anti-abuse clause will be implemented to prevent the use of artificial structures for tax avoidance.
- The new regulations are set to enter into force on January 1, 2026.

If you have any questions, please contact:

Piotr Paśko

piotr.pasko@mddp.pl

+48 602 197 893

[LinkedIn](#)

Tomasz Janik

tomasz.janik@mddp.pl

+48 503 976 021

[LinkedIn](#)

Marek Kończak

marek.kończak@mddp.pl

+48 508 016 680

[LinkedIn](#)

or your advisor from MDDP.

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