

Landmark judgement of the CJEU reshapes Polish tax exemption for investment funds

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The Court of Justice of the European Union (CJEU) issued a judgement (Case C-18/23) on February 27, 2025, declaring that Polish requirements limiting CIT exemption to externally managed funds are in breach of the EU law.

What provisions have been controversial?

In Poland, the Corporate Income Tax Act provides for a tax exemption for certain collective investment undertakings from EU/EEA member states, subject to meeting specific criteria. One of the most controversial requirements was introduced in December 2011 which:

- limited the tax exemption only to externally managed funds;
- was interpreted by tax authorities in a restrictive manner, considering that the exemption only applies to funds where the external management company's authority to manage the fund was derived from statutory provisions (rather than contracts);
- effectively excluded all EU-based self-managed investment funds from the exemption.

This approach led to numerous disputes before administrative courts, one of which decided to refer a preliminary question to the CJEU.

What has the CJEU decided?

The CJEU ruled that Article 63 of the Treaty on the Functioning of the European Union (establishing free movement of capital) precludes member state provisions that:

- discriminate against foreign investment funds based on their management structure;
- deny tax exemptions to self-managed funds while granting them to externally managed ones;
- create obstacles for foreign funds to access the domestic investment market.

Notably, the CJEU rejected the opinion of Advocate General Juliane Kokott from July 11, 2024, who had supported the position of Polish tax authorities.

What are the implications of the CJEU judgement for investment funds?

The CJEU judgement is of a **fundamental significance** for foreign investment funds operating in Poland. **The judgement may have a direct impact on all completed and pending tax proceedings!**

Significance of the judgment for completed proceedings

Investment funds can apply for:

- a) resumption of proceedings where tax exemption was denied due to the self-managed structure;
- b) refund of overpaid tax with interest (which in some cases may exceed 50% of the collected tax).

Significance of the judgment for ongoing proceedings

Foreign investment funds in ongoing proceedings should:

- a) assert their right to tax exemption regardless of management structure;
- b) challenge any tax authority decisions that apply the incompatible requirement;
- c) reference the CJEU judgement in their argumentation.

An opportunity for funds that have not previously claimed a tax refund:

- a) self-managed funds that have not previously applied for tax refunds can also benefit from the CJEU judgement;
- b) they are entitled to claim a refund of tax paid along with interest from the date of remittance.

What taxes does the CJEU judgement concern?

The judgement directly affects corporate income tax (CIT) and potentially impacts:

- taxation of dividends received from Polish companies;
- interest income from Polish sources;
- capital gains from investments in Poland.

Short deadlines for taking action

The CJEU judgement creates an opportunity to recover overpaid taxes, but there are short deadlines for making such requests:

- I. **1 month** from the publication of the judgement in the Official Journal of the EU for the resumption of proceedings before the tax authorities;
- II. **3 months** from the publication of the judgment for reopening proceedings before administrative courts.

The judgement is expected to be published within 1-2 months. Foreign investment funds should analyze the possible effects of the judgement and take measures to safeguard their interests.

Applications for tax refunds should be submitted within this timeframe to avoid unnecessary complications.

What opportunities the CJEU ruling brings for the funds

The CJEU judgement creates significant opportunities for foreign investment funds to:

- resume completed proceedings before tax authorities and courts;
- challenge previous denials of tax exemption;
- reclaim tax previously paid with interest;
- benefit from tax exemption going forward regardless of management structure;
- enjoy enhanced competitiveness in the Polish market.

Foreign funds that have historically faced challenges in applying for Polish tax exemptions should reassess their position in light of this favourable development and take prompt action to secure their rights.

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